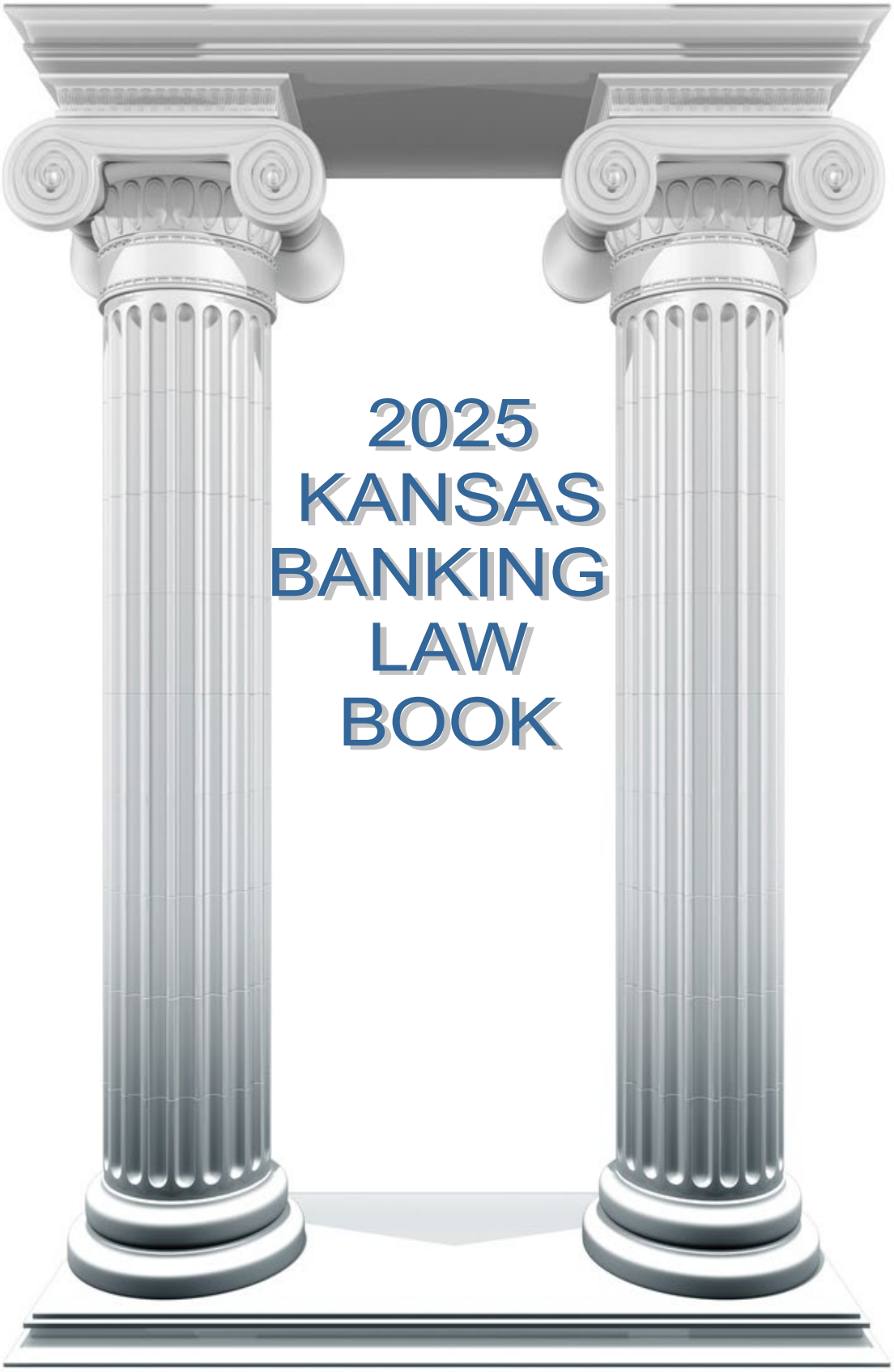

# 2025 KANSAS BANKING LAW BOOK

Current as of July 2025

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*The Kansas Statutes may be viewed online at the Kansas Legislature website:*
*https://kslegislature.gov/li/*

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# KANSAS STATUTES

## Chapter 9 – BANKS AND BANKING; TRUST COMPANIES

## Article 5 – MISCELLANEOUS PROVISIONS

### K.S.A. 9-519. Bank holding companies; definitions.

For the purposes of K.S.A. 9-520 through 9-524 and K.S.A. 9-532 through 9-541, and amendments thereto, unless otherwise required by the context:

(a) "Bank" means an insured bank as defined in 12 U.S.C. § 1813(h). "Bank" does not include a national bank that:

(1) Engages only in credit card operations;

(2) does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others;

(3) does not accept any savings or time deposits of less than $100,000;

(4) maintains only one office that accepts deposits; and

(5) does not engage in the business of making commercial loans.

(b) (1) "Bank holding company" means any company that:

(A) Directly or indirectly owns, controls, or has power to vote 25% or more of any class of the voting shares of a bank or 25% or more of any class of the voting shares of a company that is or becomes a bank holding company by virtue of this act;

(B) controls in any manner the election of a majority of the directors of a bank or of a company that is or becomes a bank holding company by virtue of this act;

(C) the commissioner determines, after notice and opportunity for a hearing to be conducted in accordance with the Kansas administrative procedure act, directly or indirectly exercises a controlling influence over the management or policies of the bank or company.

(2) Notwithstanding paragraph (1), no company:

(A) Shall be deemed to be a bank holding company by virtue of the company's ownership or control of shares acquired by the company in connection with such company's underwriting of securities if such shares are held only for such period of time as will permit the sale thereof on a reasonable basis;

(B) formed for the sole purpose of participating in a proxy solicitation shall be deemed to be a bank holding company by virtue of the company's control of voting rights of shares acquired in the course of such solicitation;

(C) shall be deemed to be a bank holding company by virtue of the company's ownership or control of shares acquired in securing or collecting a debt previously contracted in good faith, provided such shares are disposed of within a period of two years from the date on which such shares could have been disposed of by such company; or

(D) owning or controlling voting shares of a bank shall be deemed to be a bank holding company by virtue of the company's ownership or control of shares held in a fiduciary capacity except where such shares are held for the benefit of such company or the company's shareholders.

(c) "Company" means any corporation, limited liability company, trust, partnership, association or similar organization including a bank, but does not include any corporation the majority of the shares of which are owned by the United States or by any state or any individual, partnership or qualified family partnership upon the determination by the commissioner that a general or limited partnership qualifies under the definition in 12 U.S.C. § 1841(o)(10).

(d) "Foreign bank" means any company organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands or any subsidiary or affiliate organized under such laws, that engages in the business of banking.

(e) "Kansas bank" means any bank, as defined by subsection (a), that, in the case of a state chartered bank, is a bank chartered under the authority of the state of Kansas and, in the case of a national banking association, a bank with its charter location in Kansas.

(f) "Kansas bank holding company" means a bank holding company, as defined by subsection (b), with total subsidiary bank deposits in Kansas that exceed the bank holding company's subsidiary bank deposits in any other state.

(g) "Out-of-state bank holding company" means any holding company that is not a Kansas bank holding company as defined in subsection (f).

(h) "Subsidiary" means, with respect to a specified bank holding company:

(1) Any company with more than 5% of the voting shares, excluding shares owned by the United States or by any company wholly owned by the United States, that are directly or indirectly owned or controlled by, or held with power to vote, such bank holding company; or

(2) any company, the election of a majority of the directors of which is controlled in any manner by such bank holding company.

*History:* L. 1985, ch. 55, § 2; L. 1991, ch. 45, § 1; L. 1991, ch. 46, § 1; L. 1995, ch. 79, § 1; L. 1996, ch. 175, § 17; L. 2015, ch. 38, § 14; L. 2016, ch. 54, § 1; 2025 SB 139; July 1.

**K.S.A. 9-520. Same; ownership limitations; exceptions.**

(a) Excluding shares held under the circumstances set out in K.S.A. 9-519(b)(2), and amendments thereto, no bank holding company or any subsidiary thereof shall directly or indirectly acquire ownership or control of, or power to vote, any of the voting shares of any bank which holds Kansas deposits if, after such acquisition, the bank holding company and all subsidiaries would hold or control, in the aggregate, more than 15% of total Kansas deposits.

(b) This section shall not prohibit a bank holding company or any subsidiary thereof from acquiring ownership or control of, or power to vote, any of the voting shares of any bank if the commissioner, in the case of a bank organized under the laws of this state, or the comptroller of the currency, in the case of a national banking association, determines that an emergency exists and that the acquisition is appropriate in order to protect the public interest against the failure or probable failure of the bank.

(c) As used in this section, "Kansas deposits" means all deposits, shares or similar accounts held by banks, savings and loan associations, savings banks and building and loan associations attributable to any office in Kansas where deposits are accepted as determined by the commissioner on the basis of the most recent reports to supervisory authorities which are available at the time of the acquisition.

*History:* L. 1985, ch. 55, § 3; L. 1990, ch. 54, § 2; L. 1993, ch. 138, § 1; L. 1997, ch. 59, § 3; L. 2015, ch. 38, § 15; July 1.

**K.S.A. 9-532. Same; authority; fee.**

(a) With prior approval of the commissioner:

(1) Any company by virtue of acquisition of ownership or control of, or the power to vote the voting shares of, a bank or another company, may become a bank holding company;

(2) any bank holding company may acquire, directly or indirectly, ownership or control of, or power to vote, any of the voting shares of, an interest in or all or substantially all of the assets of a Kansas state chartered bank or of a bank holding company that has an ownership interest in a Kansas state chartered bank.

(b) Request for approval shall be made by filing an application in such form as required by the commissioner, containing the information prescribed by K.S.A. 9-533, and amendments thereto, and by rules and regulations adopted by the commissioner.

(c) Any applicant making application under this section shall pay to the commissioner a fee in an amount established pursuant to K.S.A. 9-1726, and amendments thereto, to defray the expenses of the commissioner in the examination and investigation of the application. The commissioner shall remit all moneys received under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the bank investigation fund. The moneys in the bank investigation fund shall be used to pay the expenses of the commissioner in the examination and investigation of such applications and any unused balance shall be transferred to the bank commissioner fee fund.

*History:* L. 1991, ch. 45, § 4; L. 1992, ch. 62, § 2; L. 1993, ch. 158, § 1; L. 1995, ch. 79, § 3; L. 2012, ch. 83, § 1; L. 2015, ch. 38, § 16; July 1.

**K.S.A. 9-533. Same; application; required information.**

An application filed pursuant to K.S.A. 9-532 and amendments thereto shall provide the following information and include the following documents:

(a) A copy of any application by an applicant seeking approval by a federal agency of the acquisition of the voting shares or assets of a Kansas state chartered bank or of a bank holding company that has an ownership interest in a Kansas state chartered bank and of any supplemental material or amendments filed with the application.

(b) Statements of the financial condition and future prospects, including current and projected capital positions and levels of indebtedness, of the applicant and the Kansas state chartered bank or bank holding company that has an ownership interest in a Kansas state chartered bank which is the subject of the application filed pursuant to K.S.A. 9-532, and amendments thereto.

(c) Information as to how the applicant proposes to adequately meet the convenience and needs of the community served by the Kansas state chartered bank or bank holding company that has an ownership interest in a Kansas state chartered bank which is the subject of the application filed pursuant to K.S.A. 9-532, and amendments thereto, and the communities served by other Kansas banks which are subsidiaries of the applicant, in accordance with 12 U.S.C. § 2901 et seq.

(d) Any additional information the commissioner deems necessary.

*History:* L. 1991, ch. 45, § 5; L. 1995, ch. 79, § 4; L. 2012, ch. 83, § 2; L. 2015, ch. 38, § 17; July 1.

**K.S.A. 9-534. Same; application; approval; factors.**

In determining whether to approve an application filed pursuant to K.S.A. 9-532, and amendments thereto, the commissioner shall consider the following factors:

(a) Whether the subsidiary banks of the applicant are operated in a safe, sound and prudent manner.

(b) Whether the subsidiary banks of the applicant have provided adequate and appropriate services to their communities, including services contemplated by 12 U.S.C. § 2901 et seq.

(c) Whether the applicant proposes to provide adequate and appropriate services, including services contemplated by 12 U.S.C. § 2901 et seq., in the communities served by the Kansas state chartered bank or by the Kansas bank subsidiaries of the bank holding company that has an ownership interest in a Kansas state chartered bank.

(d) Whether the proposed acquisition will result in a Kansas state chartered bank or bank holding company that has an ownership interest in a Kansas state chartered bank that has adequate capital and good earnings prospects.

(e) Whether the financial condition of the applicant or any of the applicant's subsidiary banks would jeopardize the financial stability of the Kansas state chartered bank or bank holding company that has an ownership interest in a Kansas state chartered bank which is the subject of the application.

(f) Whether the competence, experience and integrity of the managerial resources of the applicant or any proposed management personnel of any Kansas state chartered bank or any Kansas bank subsidiaries of the bank holding company that has an ownership interest in a Kansas state chartered bank indicates that to permit such person to control a bank would not be in the interest of the depositors of a bank or in the interest of the public.

*History:* L. 1991, ch. 45, § 6; L. 1995, ch. 79, § 5; L. 2012, ch. 83, § 3; L. 2015, ch. 38, § 18; L. 2016, ch. 54, § 2; July 1.

**K.S.A. 9-535. Bank holding companies; approval of application; applicant right to appeal.**

(a) The commissioner shall approve the application if the commissioner determines that the application favorably meets each and every factor prescribed in K.S.A. 9-534, and amendments thereto, the proposed acquisition is in the interest of the depositors and creditors of the Kansas state chartered bank or bank holding company that has an ownership interest in a Kansas state chartered bank that is the subject of the proposed acquisition and in the public interest generally.

(b) If the commissioner denies the application, the applicant shall have the right to a hearing before the state banking board to be conducted in accordance with the Kansas administrative procedure act. The state banking board shall render the board's decision affirming or rescinding the determination of the commissioner. Any action of the state banking board pursuant to this section is subject to review in accordance with the Kansas judicial review act.

*History:* L. 1991, ch. 45, § 7; L. 1995, ch. 79, § 6; L. 2010, ch. 17, § 25; L. 2012, ch. 83, § 4; L. 2015, ch. 38, § 19; 2024 HB 2560 July 1.

**K.S.A. 9-536. Same; subject to change of control provisions.**

An applicant filing an application pursuant to K.S.A. 9-532, and amendments thereto, may be required to the extent applicable to supplement the application with such information as may be required pursuant to K.S.A. 9-1719 et seq., and amendments thereto.

*History:* L. 1991, ch. 45, § 8; L. 1995, ch. 79, § 7; L. 2015, ch. 38, § 20; July 1.

**K.S.A. 9-537. Same; review of operations by commissioner; additional information.**

The commissioner at any time may review the activities of any bank holding company with a subsidiary bank in Kansas and its subsidiary banks to determine if the proposals of the company as stated in the information provided pursuant to K.S.A. 9-533 and amendments thereto, are being fulfilled. The commissioner may require the company and such banks to furnish such additional information as the commissioner finds necessary to make such determination.

*History:* L. 1991, ch. 45, § 9; L. 1995, ch. 79, § 8; September 29.

**K.S.A. 9-540. Foreign bank prohibited from having branch bank in state.**

No foreign bank shall establish or maintain any branch, agency, office or other place of business in this state.

*History:* L. 1995, ch. 79, § 11; Apr. 6.

**K.S.A. 9-541. Acquisition of bank by out-of-state bank holding company; age limitation; exceptions.**

(a) No out-of-state bank holding company or any subsidiary thereof shall directly or indirectly acquire ownership or control of, or power to vote, more than 5% of any class of the voting shares of any Kansas bank unless such Kansas bank has been in existence and actively engaged in business for five or more years.

(b) This section shall not prohibit an out-of-state bank holding company or any subsidiary thereof from acquiring ownership or control of, or power to vote, more than 5% of the voting shares of any Kansas bank which has been organized solely for the purpose of, and does not open for business prior to, facilitating a merger of such Kansas bank with or into a Kansas bank which has been in existence and actively engaged in business for five or more years, or a consolidation of such Kansas bank and one or more Kansas banks which have been in existence and actively engaged in business for five or more years.

(c) This section shall not prohibit an out-of-state bank holding company or any subsidiary thereof from acquiring ownership or control of, or power to vote, more than 5% of any class of the voting shares of any Kansas bank if the commissioner, in the case of a bank organized under the laws of this state, or the comptroller of the currency, in the case of a national banking association, determines that an emergency exists and that the acquisition is appropriate in order to protect the public interest against the failure or probable failure of the Kansas bank.

*History:* L. 1995, ch. 79, § 12; Apr. 6.

**K.S.A. 9-542. Citation of code; statutes comprising.**

Articles 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 of chapter 9 of the Kansas Statutes Annotated, K.S.A. 74-3004, 74-3005, 74-3006, 75-1304, 75-1305 and 75-1306, and 75-1308, and K.S.A. 9-814, 9-815, 9-816, 9-1141, 9-1409, 9-1725, 9-1726, 9-1810, 9-1811, 9-1919, 9-1920, 9-1921 and 9-2019, and amendments thereto, shall constitute and may be cited as the state banking code.

*History:* L. 2000, ch. 106, § 5; L. 2015, ch. 38, § 21; July 1.

**K.S.A. 9-550. Certificate of existence and authority.**

(a) For any deposit account, loan account or other banking relationship hereinafter referred to as "account," that is opened by one or more persons acting or purporting to act for or on behalf of an entity with any financial institution transacting business in this state, such person may provide the financial institution with a certificate to provide evidence of the existence of the entity and the authority of the person to act for or on behalf of the entity with respect to the account.

(b) The certificate of existence and authority shall be an affidavit executed by such person and shall include the following, as applicable:

(1) The name and mailing address of the entity;

(2) the type of entity and the state, country or other governmental authority, under which laws, the entity was formed;

(3) the organization date of the entity;

(4) the name, mailing address and office or other position held by the person executing the certificate; and

(5) a statement that the board of directors, managers, members, general partners or other governing body of the entity opening the account has duly taken all action legally required to open the account in the name of the entity and the name, office or other position of the person who has been duly authorized to engage in transactions with respect to the account, including any limitation that may exist upon the authority of such person to bind the entity and any other matters concerning the manner in which such person may deal with the account.

(c) If a financial institution accepts a certificate of existence and authority pursuant to this section, the financial institution may open and administer the account in accordance with the information set forth therein and shall not be liable for so doing, even if any such information is inaccurate, unless the financial institution has actual knowledge of such inaccuracy or knowledge sufficient to cause a reasonably prudent person to doubt the accuracy of such information.

(d) Nothing in this section shall be construed to prohibit a financial institution from requesting additional information or requiring other agreements in order to establish an account for an entity, including, without limitation, a resolution, certificate of good standing, request for a taxpayer identification number, entity agreements or documents or parts thereof evidencing the existence of the entity or the authority of the person executing the certificate, and an indemnification that is acceptable to the financial institution. No party may infer that the financial institution relying on the certificate of existence has knowledge of the terms of the entity's documentation solely because it holds a copy of all or a part of the entity's documentation.

(e) As used in this section:

(1) "Entity" means any government or governmental subdivision or agency, any domestic or foreign corporation, limited liability company, general partnership, limited liability partnership, joint venture, cooperative, association or other legal entity, whether operated for profit or not-for-profit; and

(2) "financial institution" means any federal- or state-chartered commercial bank, savings and loan association or savings bank.

(f) This section shall be a part of and supplemental to the state banking code.

*History:* L. 2018, ch. 75, § 6; L. 2019, ch. 25, § 1; July 1.

**K.S.A. 9-551. Applicability of Act.**

(a) Sections 1 through 4, and amendments thereto, shall be known and may be cited as the Kansas financial institutions information security act.

(b) The purpose of the Kansas financial institutions information security act is to establish information security standards for any covered entity consistent with 16 C.F.R. § 314, as in effect on July 1, 2023.

(c) The Kansas financial institutions information security act applies to the handling of customer information by the following covered entities: (1) Credit services organizations, as defined in K.S.A. 50-1117, and amendments thereto; (2) mortgage companies, as defined in K.S.A. 9-2201, and amendments thereto; (3) supervised lenders, as defined in K.S.A. 16a-1-301, and amendments thereto; (4) financial institutions engaging in money transmission, as defined in K.S.A. 9-508, and amendments thereto; (5) trust companies, as defined in K.S.A. 9-701, and amendments thereto; and (6) technology-enabled fiduciary financial institutions, as defined in K.S.A. 9-2301, and amendments thereto.

(d) The commissioner may adopt all rules and regulations necessary to govern and administer the provisions of the Kansas financial institutions information security act.

(e) The Kansas financial institutions information security act shall be a part of and supplemental to chapter 9 of the Kansas Statutes Annotated, and amendments thereto.

*History:* L. 2023, ch. 54, § 1; April 27.

**K.S.A. 9-552. Definitions.**

As used in the Kansas financial institutions information security act:

(a) "Commissioner" means the state bank commissioner or the commissioner's designee.

(b) "Covered entity" means each person, applicant, registrant or licensee subject to regulation by the office of the state bank commissioner that is not directly regulated by a federal banking agency.

(c) "Customer information" means any record containing nonpublic personal information about a customer of a covered entity, whether in paper, electronic or other form, that is handled or maintained by or on behalf of the covered entity or its affiliates.

*History:* L. 2023, ch. 54, § 2; April 27.

**K.S.A. 9-553. Information security requirements.**

A covered entity shall:

(a) Set forth standards for developing, implementing and maintaining reasonable safeguards to protect the security, confidentiality and integrity of customer information pursuant to 16 C.F.R. § 314, as in effect on July 1, 2023;

(b) develop and organize its information security program into one or more readily accessible parts; and

(c) maintain its information security program as part of the covered entity's books and records in accordance with the record retention requirements of such covered entity.

*History:* L. 2023, ch. 54, § 3; April 27.

**K.S.A. 9-554. Powers and duties of the commissioner; enforcement and review.**

(a) The Kansas financial institutions information security act shall be implemented, administered and enforced by the commissioner.

(b) (1) The commissioner may conduct:

(A) Routine examinations of the operations of a covered entity; or

(B) investigations of the operations of the covered entity if the commissioner has reason to believe that the covered entity has been engaged or is engaging in any conduct in violation of the Kansas financial institutions information security act.

(2) In furtherance of an investigation or examination, or while enforcing the provisions of the Kansas financial institutions information security act, the commissioner may take such action that is necessary and appropriate, including, but not limited to, the following:

(A) Issue subpoenas and seek enforcement thereof in a court of competent jurisdiction;

(B) assess fines or civil penalties on a covered entity not to exceed $5,000 per violation and assess costs of the investigation, examination or enforcement action;

(C) censure a covered entity if such covered entity is registered or licensed;

(D) enter into a memorandum of understanding or consent order with a covered entity;

(E) issue a summary order to a covered entity;

(F) revoke, suspend or refuse to renew the registration or licensure of a covered entity;

(G) order a covered entity to cease and desist from engaging in any conduct in violation of the Kansas financial institutions information security act or file for an injunction to prohibit the covered entity from continuing such conduct; or

(H) issue emergency orders if necessary to prevent harm to consumers.

(c) Any enforcement action required or requested under the Kansas financial institutions information security act shall be conducted in accordance with the Kansas administrative procedure act, K.S.A. 77-501 et seq., and amendments thereto.

(d) Any enforcement action required or requested under the Kansas financial institutions information security act shall be subject to review in accordance with the Kansas judicial review act, K.S.A. 77-601 et seq., and amendments thereto.

*History:* L. 2023, ch. 54, § 4; April 27.

## Article 7 – BANKING CODE; DEFINITIONS

### K.S.A. 9-701. Definitions.

Unless otherwise clearly indicated by the context, the following words when used in the state banking code, for the purposes of the state banking code, shall have the meanings respectively ascribed to them in this section:

(a) "Bank or state bank" means a bank, savings and loan association or savings bank incorporated under the laws of Kansas.

(b) "Business of banking" means receiving or accepting money on deposit, and may include the performance of related activities that are not exclusive to banks, including paying drafts or checks, lending money or any other activity authorized by applicable law. "Business of banking" shall not include any activity conducted by a student bank.

(c) "Trust company" means a trust company incorporated under the laws of Kansas and which does not accept deposits.

(d) "Commissioner" means the Kansas state bank commissioner.

(e) "Executive officer" means a person who participates or has authority to participate, other than in the capacity of a director, in major policymaking functions of the bank or trust company, whether or not the officer has an official title, the title designates the officer as an assistant or the officer is serving without salary or other compensation. The chairperson of the board, the president, every vice president, the cashier, the secretary and the treasurer of a company or bank are considered executive officers.

(1) A bank may, by resolution of the board of directors or by the bylaws of the bank or trust company, exempt an officer from participation, other than in the capacity of a director, in major policymaking functions of the bank or trust company if the officer does not actually participate therein.

(2) The commissioner may make the determination that a person is an executive officer if the commissioner determines that the criteria are met despite the existence of a resolution allowed pursuant to this subsection.

(f) "Demand deposit" means a deposit that:

(1) (A) Is payable on demand;

(B) is issued with an original maturity or required notice period of less than seven days;

(C) represents funds for which the depository institution does not reserve the right to require at least seven days' written notice of an intended withdrawal; or

(D) represents funds for which the depository institution does reserve the right to require at least seven days' written notice of an intended withdrawal; and

(2) is not also a negotiable order of withdraw account.

(3) "Demand deposit" does not include "time deposits" or "savings deposits" as defined in this section.

(g) "Time deposit," also known as a certificate of deposit, means a deposit that the depositor does not have a right and is not permitted to make withdrawals from within six days after the date of deposit unless the deposit is subject to an early withdrawal penalty of at least seven days' simple interest on amounts withdrawn within the first six days after deposit. A time deposit from which partial early withdrawals are permitted must impose additional early withdrawal penalties for at least seven days' simple interest on amounts withdrawn within six days after each partial withdrawal. If such additional early withdrawal penalties are not contractually imposed, the account ceases to be a time deposit, but may become a savings deposit if the account meets the requirements for a savings deposit.

(h) "Savings deposit" means a deposit or account with respect to which the depositor is not required by the deposit contract, but may at any time, be required by the depository institution to give written notice of an intended withdrawal not less than seven days before such withdrawal is made and that is not payable on a specified date or at the expiration of a specified time after the date of deposit.

(i) "Public moneys" means all moneys coming into the custody of the United States government or any board, commission or agency thereof, and also shall mean all moneys coming into the custody of any officer of any municipal or quasi-municipal or public corporation, the state or any political subdivision thereof, pursuant to any provision of law authorizing any such official to collect or receive the same.

(j) "Municipal corporation" means any city incorporated under the laws of Kansas.

(k) "Quasi-municipal corporation" means any county, township, school district, drainage district, rural water district or any other governmental subdivision in the state of Kansas having authority to receive or hold moneys or funds.

(l) "Certificate of authority" means a certificate signed and sealed by the commissioner evidencing the authority of a bank or trust company to transact a general banking or trust business as provided by law.

(m) "Trust business" means engaging in, or holding out to the public as willing to engage in, the business of acting as a fiduciary for hire, except that no accountant, attorney, credit union, insurance broker, insurance company, investment adviser, real estate broker or sales agent, savings and loan association, savings bank, securities broker or dealer, real estate title insurance company or real estate escrow company shall be deemed to be engaged in a trust

company business with respect to fiduciary services customarily performed by those persons or entities for compensation as a traditional incident to their regular business activities.

(n) "Community and economic development entity" means an entity that makes investments or conducts activities that primarily benefit low-income and moderate-income individuals, low-income and moderate-income areas, or other areas targeted by a governmental entity for redevelopment, or would receive consideration as "qualified investments" under the community reinvestment act pub. L. 95-128, title VIII, 91 stat. 1147, 12 U.S.C. § 2901 et seq., and any state tax credit equity fund established pursuant to K.S.A. 74-8904, and amendments thereto.

(o) "Depository institution" means any state bank, national banking association, state savings and loan or federal savings association, without regard to the state where the institution is chartered or the state in which the institution's main office is located.

(p) "Student bank" means any nonprofit program offered by a high school accredited by the state board of education, where deposits are received, checks are paid or money is lent for limited in-school purposes.

(q) "Stock bank" means a bank that has an ownership structure represented by stock.

(r) "Mutual bank" means a bank that does not have an ownership structure represented by stock.

(s) "Savings and loan association" or "savings bank" means a bank that is required to have qualified thrift investments that equal or exceed 65% of its portfolio assets, and its qualified thrift investments are required to equal or exceed 65% of its assets on a monthly average basis in nine out of every 12 months. For purposes of this subsection, "portfolio assets" and "qualified thrift investments" have the same meanings as in 12 U.S.C. § 1467a, as amended.

*History:* L. 1947, ch. 102, § 1; L. 1970, ch. 61, § 1; L. 1975, ch. 45, § 1; L. 1976, ch. 54, § 1; L. 1981, ch. 49, § 1; L. 1983, ch. 46, § 1; L. 1987, ch. 54, § 1; L. 1989, ch. 48, § 11; L. 1993, ch. 31, § 1; L. 1994, ch. 202, § 2; L. 1995, ch. 79, § 13; L. 1995, ch. 250, § 1; L. 2015, ch. 38, § 22; L. 2016, ch. 54, § 3; L. 2018, ch. 75, § 7; July 1.

*Revisor's Note:* This section was also amended by L. 1995, ch. 31, § 1, but such amended version was repealed by L. 1995, ch. 250, § 3.

## Article 8 – BANKING CODE; ORGANIZATION

### K.S.A. 9-801. Incorporation; application; criteria for approval of application.

(a) No bank or trust company shall be organized or incorporated under the laws of this state nor transact either a banking business or a trust business in this state, until the application for such bank's or trust company's incorporation and application for certificate of authority has been submitted to and approved by the state banking board. The form for making any such application shall be prescribed by the state banking board and any application made to the state banking board shall contain such information as the state banking board shall require.

(b) No private bank shall engage in the banking business in this state.

(c) The state banking board shall not accept an application unless:

(1) The bank or trust company is organized by five or more persons who shall also be stockholders of the proposed bank or trust company or parent company of the proposed bank or trust company;

(2) at least five of the organizers are residents of the state of Kansas and at least those five sign and acknowledge the articles of incorporation;

(3) the name selected for a bank is different from that of any other bank:

(A) Doing business in the same city or town; and

(B) within a 15-mile radius of the proposed location;

(4) the name selected for the trust company is different or substantially dissimilar from any other trust company doing business in this state; and

(5) the articles of incorporation contain the names and addresses of the bank's or the trust company's stockholders and the amount of common stock subscribed by each. The articles of incorporation may contain such other provisions as are consistent with the general corporation code.

(d) Any bank or trust company may request an exemption from the commissioner from the provisions of subsections (c)(3) and (c)(4).

(e) If the state banking board shall determine any of the following factors unfavorably to the applicants, the application may be denied:

(1) The financial standing, general business experience and character of the organizers and incorporators;

(2) the character, qualifications and experience of the officers of the proposed bank or trust company;

(3) the public need for the proposed bank or trust company in the community wherein it is proposed to locate the same and whether existing banks or trust companies are meeting such need;

(4) the prospects for success of the proposed bank or trust company; and

(5) any other criteria the state banking board may require.

(f) The state banking board shall not make membership in any federal government agency a condition precedent to the granting of the authority to do business.

(g) The state banking board may require fingerprinting of any officer, director, incorporator or any other person of the proposed trust company related to the application deemed necessary by the state banking board. Such fingerprints may be submitted to the Kansas bureau of investigation and the federal bureau of investigation for a state and national criminal history record check. The fingerprints shall be used to identify the person and to determine whether the person has a record of arrests and convictions in this state or other jurisdictions. The state banking board may use information obtained from fingerprinting and the criminal history for purposes of verifying the identification of the person and in the official determination of the qualifications and fitness of the persons associated with the applicant trust company to be issued a charter. Whenever the state banking board requires fingerprinting, any associated costs shall be paid by the applicant or the parties to the application.

(h) Any final action of the state banking board approving or disapproving an application shall be subject to review in accordance with the Kansas judicial review act.

(i) 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, the commissioner is of the opinion 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 an application for authority to do business from applicants for the organization and establishment of a successor bank or trust company.

*History:* L. 1947, ch. 102, § 4; L. 1975, ch. 44, § 5; L. 1977, ch. 45, § 1; L. 1985, ch. 56, § 1; L. 1989, ch. 48, § 12; L. 2015, ch. 38, § 23; L. 2016, ch. 54, § 4; July 1.

**K.S.A. 9-802. Date of existence; transaction of business before authorization.**

(a) The existence of any bank or trust company as a corporation shall date from the filing of the bank's or trust company's articles of incorporation with the Kansas secretary of state's office

from which time such bank or trust company shall have and may exercise the incidental powers conferred by law upon corporations, except that no bank or trust company shall transact any business except the election of officers, the taking and approving of official bonds, the receipts of payment upon stock subscriptions and other business incidental to their organization, until such bank or trust company has secured the approval of the state banking board and the authorization of the commissioner to commence business.

(b) The full amount of the common stock including the surplus and undivided profits as required by the Kansas banking code shall be subscribed before the articles of incorporation are filed with the Kansas secretary of state's office.

*History:* L. 1947, ch. 102, § 5; L. 1989, ch. 48, § 13; L. 2015, ch. 38, § 24; L. 2016, ch. 54, § 5; July 1.

**K.S.A. 9-803. Renewal and extension of corporation; lapse in authority or existence.**

(a) Any bank or trust company with articles of incorporation that have lapsed, or hereafter shall lapse, may renew and extend the bank's corporate existence or the trust company's corporate existence in the manner provided by law and upon payment of the requisite fees.

(b) The acts of any bank or trust company with articles of incorporation that have lapsed or terminated by the expiration of time and such bank's or trust company's corporate existence is renewed and extended are hereby legalized and declared to be valid in the same manner and to the same effect as though the banks and trust companies had been duly authorized at all times since their organization.

*History:* L. 1947, ch. 102, § 6; L. 2015, ch. 38, § 25; L. 2016, ch. 54, § 6; L. 2021, ch. 78, § 1; July 1.

**K.S.A. 9-804. Certificate of authority; examination; issuance.**

(a) Upon approval of an application to organize a bank or trust company with the state banking board, such board shall cause to be made by and through the commissioner, a careful examination and investigation concerning:

(1) The amount of moneys paid in for capital, surplus and undivided profits, the persons that paid and the amount of capital stock owned in good faith by each stockholder;

(2) whether such bank or trust company has complied with the applicable provisions of law; and

(3) any other criteria the commissioner may require.

(b) When the capital of any bank or trust company shall have been paid in, the president or cashier shall transmit to the commissioner a verified statement showing the names and addresses of all stockholders, the amount of stock each subscribed and the amount paid in by each.

(c) If the commissioner finds, after examination and investigation, that the bank or trust company has been organized as provided by law, has complied with the provisions of law and has secured the preliminary approval of the commissioner, if required by K.S.A. 9-801(i), and amendments thereto, or upon the approval of the state banking board, the commissioner shall issue a certificate showing that such bank or trust company has been organized and capital has been paid in as required by law, and that the bank or trust company is authorized to transact a general banking or trust business as provided by law.

*History:* L. 1947, ch. 102, § 7; L. 1977, ch. 45, § 2; L. 1989, ch. 48, § 14; L. 2015, ch. 38, § 26; L. 2016, ch. 54, § 7; July 1.

**K.S.A. 9-806. Failure to engage in business; abandonment or expiration of application; reapplication required.**

(a) If the applicant fails to complete any application under the state banking code within 60 days after being notified that the application is incomplete, such application shall be considered abandoned and the application fee shall not be refunded. An applicant whose application is abandoned under this section may reapply at any time.

(b) Except as provided by subsection (c), the bank or trust company shall engage in the activity requiring an application and approval by the commissioner or state banking board within 18 months from the date of approval. If the bank or trust company fails to engage in the activity within 18 months from the date of the approval, the application shall be deemed expired and a new application, application fee and approval is required. The provisions of this subsection do not apply to applications approved under K.S.A. 9-1601, and amendments thereto.

(c) Any newly organized bank or trust company that did not begin business within 120 days after a certificate of authority has been issued to such bank or trust company by the commissioner shall not engage in the banking business or the business of a trust company without again obtaining a certificate of authority from the commissioner.

(d) The commissioner may extend the deadline under subsection (b) or (c):

(1) Indefinitely, if approval from another state or federal regulator is necessary for the bank or trust company to engage in the activity; or

(2) up to 180 days for good cause.

(e) The state banking board may designate the commissioner to determine the completeness of any application requiring state banking board approval or deem as expired any state banking board approved application.

*History:* L. 1947, ch. 102, § 9; L. 2015, ch. 38, § 27; ; L. 2024, ch. 64, § 60; July 1.

**K.S.A. 9-808. Stockholder vote for conversion to state bank or state trust company; application to commissioner; investigation; capital and name; stock for stock or property; powers continued; assets transferred; same entity; divesture of unauthorized assets and liabilities.**

(a) Any national bank, federal savings association or federal savings bank organized under the laws of the United States and located in this state may become a state bank or state trust company upon the affirmative vote of not less than 2/3 of the institution's outstanding voting stock or voting interests of members. Any national bank, federal savings association or federal savings bank desiring to become a state bank or state trust company shall apply to the commissioner for permission to convert to a state bank or state trust company and:

(1) Shall submit a transcript of the minutes of the meeting of the institution's stockholders or voting interests of members showing approval of the proposed conversion;

(2) the name selected for the bank shall not be the name of any other state bank:

(A) Doing business in the same city or town; or

(B) within a 15-mile radius of the location of the converted institution;

(3) the name selected for the trust company shall be different or substantially dissimilar from any other trust company doing business in the state. The name shall be accepted or rejected by the commissioner, although any state bank or state trust company may request exemption from the commissioner from this paragraph; and

(4) provide any other information required in the application form prescribed by the commissioner.

(b) A federal savings association or federal savings bank operating in a mutual form and seeking to become a stock bank must also convert to a stock form prior to converting to a state bank and shall submit appropriate documentation to the commissioner to show that the appropriate federal regulator has approved such mutual to stock conversion.

(c) Upon receipt of each of the items required by this section the commissioner shall make or cause to be made such investigation as the commissioner deems necessary to determine whether:

(1) All state and federal requirements for a conversion have been satisfied;

(2) the conversion or the financial condition of the bank or trust company will not adversely affect the interests of the depositors;

(3) the resulting state bank or state trust company will have an adequate capital structure in accordance with K.S.A. 9-901a et seq., and amendments thereto; and

(4) the competence, experience or integrity of the proposed management personnel indicates that approving the conversion would be in the interest of the depositors of the bank or trust company and in the interest of the public.

(d) If the commissioner determines each of the matters in subsection (c) favorably, the conversion shall be approved, and the commissioner shall issue a certificate of authority. Upon issuance of a certificate of authority, the articles of incorporation, duly executed as required by the Kansas corporate code, shall be filed with the Kansas secretary of state's office.

(e) In any conversion authorized by this section, the resulting state bank or state trust company by operation of law shall continue all trust functions being exercised by the national bank, federal savings association or federal savings bank and shall be substituted for the national bank, federal savings association or federal savings bank and shall have the right to exercise trust or fiduciary powers created by any instrument designating the national bank, federal savings association or federal savings bank, even though such instruments are not yet effective.

(f) In any conversion authorized by this section, the resulting state bank or state trust company shall succeed by operation of law without any conveyance or transfer by the act of the national bank, federal savings association or federal savings bank to all the actual or potential assets, real property, tangible personal property, intangible personal property, rights, franchises and interests, including those in a fiduciary capacity of the national bank, federal savings association or federal savings bank and shall be subject to all of the liabilities of the national bank, federal savings association or federal savings bank.

(g) In any conversion authorized by this section the corporate existence of the national bank, federal savings association or federal savings bank shall be continued in the resulting state bank or state trust company, and the resulting state bank or state trust company shall be deemed to be the identical corporate entity as the national bank, federal savings association or federal savings bank.

(h) Within a reasonable time after the effective date of the conversion, the resulting state bank or state trust company shall divest all assets and liabilities that do not conform to state banking laws and rules and regulations. The length of this transition period shall be determined by the commissioner.

*History:* L. 1947, ch. 102, § 11; L. 1994, ch. 192, § 2; L. 2000, ch. 106, § 2; L. 2015, ch. 38, § 28; L. 2016, ch. 54, § 8; L. 2018, ch. 75, § 8; L. 2019, ch. 25, § 2; L. 2021, ch. 78, § 2; July 1.

**K.S.A. 9-809. Stockholder vote for conversion to national bank; copy of application to commissioner.**

(a) Any state bank or state trust company may convert to a national bank, federal savings and loan association or federal savings bank upon the affirmative vote of not less than 2/3 of the bank's outstanding voting stock or members.

(b) The state bank or state trust company shall provide a copy of the application submitted to the comptroller of currency to the commissioner within 10 days after the date the state bank or state trust company applies for approval to convert to a national banking association, federal savings and loan association or federal savings bank from the office of the comptroller of the currency.

(c) The state bank or state trust company shall provide to the commissioner written notice of approval by the comptroller of currency to convert to a national bank, federal savings and loan association or federal savings bank within 10 days of receiving the approval.

(d) Within 15 days following the issuance of a charter certificate to the bank or trust company by the comptroller, the state bank or state trust company shall surrender its state certificate of authority or charter and shall certify in writing that notice of the conversion has been given to the Kansas secretary of state's office.

*History:* L. 1947, ch. 102, § 12; L. 1995, ch. 19, § 1; L. 2015, ch. 38, § 29; L. 2016, ch. 54, § 9; L. 2018, ch. 75, § 9; L. 2021, ch. 78, § 3; July 1.

**K.S.A. 9-811. Prohibition against nonbank banks; exceptions.**

No financial institution with deposits insured by the federal deposit insurance corporation shall conduct business in this state unless such institution:

(a) Has the legal right to accept deposits that the depositor has the legal right to withdraw on demand and to engage in the business of making commercial loans; or

(b) is a national bank which engages only in credit card operations, does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others, does not accept any savings or time deposits of less than $100,000, maintains only one office that accepts deposits and does not engage in the business of making commercial loans.

*History:* L. 1985, ch. 84, § 1; L. 1991, ch. 46, § 2; L. 2015, ch. 38, § 30; L. 2016, ch. 54, § 10; July 1.

**K.S.A. 9-812. Bank change of name; approval required.**

(a) No bank or trust company shall change its name until such name change has been submitted to and approved by the commissioner.

(b) The commissioner shall not approve the name selected for the bank if it is the name of any other bank:

(1) Doing business in the same city or town; or

(2) within a 15-mile radius of any bank or branch bank.

(c) The commissioner shall not approve the name selected for the trust company if it is the same or substantially similar name of any other trust company doing business in the state of Kansas.

(d) Any bank or trust company may request exemption from the commissioner from subsection (b) or (c).

(e) Upon approval of such name change, the bank or trust company must notify and make the necessary filings as may be required by the Kansas secretary of state's office.

(f) Any bank or trust company authorized to do business pursuant to the state banking code may use a name other than the name approved by the commissioner, provided:

(1) The bank or trust company must notify the commissioner, and the commissioner must approve, any use of a name other than the name approved by the commissioner;

(2) the bank's or trust company's actual name is prominently displayed adjacent to any other name displayed; and

(3) the bank or trust company continues to use the name approved by the commissioner in all legally enforceable documents and memoranda.

*History:* L. 1986, ch. 53, § 1; L. 2001, ch. 87, § 1; L. 2015, ch. 38, § 31; L. 2016, ch. 54, § 11; July 1.

**K.S.A. 9-814. Change of place of business; application and approval process.**

(a) No bank or trust company organized under the laws of this state shall change the bank's or trust company's place of business, from one city or town to another or from one location to another within the same city or town, without prior approval. Any such bank or trust company desiring to change the bank's or trust company's place of business shall file written application with the office of the state bank commissioner in such form and containing such information 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) The commissioner shall examine and investigate the application. The commissioner shall approve the application if it is found that:

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

(2) the applicant bank's or trust company's financial history and condition is sound; and

(3) the name selected for the bank is different from that of any other bank:

(A) Doing business in the same city or town; and

(B) within a 15-mile radius of the proposed location; and

(4) the name selected for a trust company is different or substantially dissimilar from any other trust company doing business in this state.

(c) Any bank or trust company may request an exemption from the commissioner from the provisions of subsection (b)(3) or (b)(4).

(d) If the commissioner denies an application, the applicant shall have the right to a hearing before the state banking board to be conducted in accordance with the Kansas administrative procedure act. Any action of the state banking board pursuant to this section is subject to review in accordance with the Kansas judicial review act.

(e) Upon approval of such place of business change, the bank or trust company must notify and make the necessary filings as may be required by the secretary of state's office.

*History:* L. 2015, ch. 38, § 9; L. 2016, ch. 54, § 12; July 1.

**K.S.A. 9-815. Expenses of examination or investigation; payment; disposition of moneys received.**

(a) Any applicant making application under article 8 of chapter 9 of the Kansas Statutes Annotated, and amendments thereto, shall pay to the commissioner a fee in an amount established pursuant to K.S.A. 9-1726, and amendments thereto, to defray the expenses of

the state banking board, commissioner or other designees in the examination and investigation of the application.

(b) The commissioner shall remit all moneys received under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the bank investigation fund. The moneys in the bank investigation fund shall be used to pay the expenses of the commissioner, or designee, in the examination and investigation of such applications and any unused balance shall be transferred to the bank commissioner fee fund.

(c) Any members of the state banking board who make such an examination or investigation shall be paid the sum of $35 per diem for the time the members actually are engaged in performing duties as members of the state banking board and shall be compensated from such funds all the actual and necessary expenses incurred in the performance of the members' duties.

*History:* L. 2015, ch. 38, § 10; L. 2016, ch. 54, § 13; July 1.

**K.S.A. 9-816. Bankers' bank; application for organization.**

(a) As used in this section, "bankers' bank" means a state bank which is owned exclusively, except to the extent directors' qualifying shares are required by law, by other state banks, federally chartered banks or a one-bank holding company and is organized to engage exclusively in providing services for other state banks or federally chartered banks and the banks' officers, directors and employees.

(b) The state banking board may approve the application for the organization of a state bankers' bank under the provisions of K.S.A. 9-801 et seq., and amendments thereto.

*History:* L. 2015, ch. 38, § 11; L. 2016, ch. 54, § 14; July 1.

**K.S.A. 9-817. Mutual banks; deposits and related powers.**

(a) Subject to the terms of its articles of incorporation and bylaws, and rules and regulations of the commissioner, a mutual bank may:

(1) Raise funds through deposit, share or other accounts, including demand deposit accounts, hereafter referred to as "accounts"; and

(2) issue passbooks, certificates or other evidence of accounts.

(b) No mutual bank shall permit any overdraft, including an intra-day overdraft, on behalf of an affiliate, or incur any overdraft in its account at a federal reserve bank or federal home loan bank on behalf of an affiliate.

(c) A mutual bank may require no less than a 14-day notice prior to payment of savings accounts, if the articles of incorporation or bylaws of the bank or the rules and regulations of the commissioner so provide.

(d) If a mutual bank does not pay all withdrawals in full, subject to the right of the bank, where applicable, to require notice, the payment of withdrawals from accounts shall be subject to the provisions prescribed by the bank's articles of incorporation or bylaws or the rules and regulations of the commissioner. Except as authorized in writing by the commissioner, any mutual bank that fails to make full payment of any withdrawal when due shall be deemed to be in an unsafe or unsound condition.

(e) A depositor of a mutual bank shall be a voting member and shall have such ownership interest in the bank as may be provided in the articles of incorporation and bylaws of the bank.

(f) The articles of incorporation and the bylaws of a mutual bank may provide that all borrowers from the bank are members and, if so, shall provide for their rights and privileges.

(g) All savings accounts and demand accounts shall have the same priority upon liquidation.

(h) This section shall be a part of and supplemental to the state banking code.

*History:* L. 2018, ch. 75, § 1; July 1.

## Article 9 – BANKING CODE; CAPITAL STOCK AND STRUCTURE

### K.S.A. 9-901a. Capital requirements.

(a) For purposes of this section:

(1) "Capital" means:

(A) For a stock bank or trust company, the total of the aggregate par value of a bank's or trust company's outstanding shares of capital stock, its surplus and its undivided profits; and

(B) for a mutual bank, the total of the funds pledged by its members and its undivided profits;

(2) "equity capital" means the total of common stock, preferred stock, surplus and undivided profits less intangibles; and

(3) "total assets" means the total of all tangible bank assets as reported on the daily balance sheet of the bank.

(b) (1) For stock banks organized on or after July 1, 2015, the minimum capital of a stock bank at the time of organization shall be the greater of $3,000,000 or an amount equal to 8% of the proposed bank's estimated deposits five years after its organization. The capital shall be divided with 60% of the amount as the aggregate par value of outstanding shares of capital stock, 30% as surplus and 10% as undivided profits.

(2) For trust companies organized on or after July 1, 2015, the minimum capital shall at all times be $500,000. The capital shall be divided with 60% of the amount as the aggregate par value of outstanding shares of capital stock, 30% as surplus and 10% as undivided profits.

(3) For mutual banks organized on or after July 1, 2018, the founding members of the bank must pledge funds at the time of organization the greater of $3,000,000 or an amount equal to 8% of the proposed bank's estimated deposits five years after its organization.

(4) The state banking board may require that a bank or trust company have capital in excess of the amounts specified in this subsection if the state banking board determines that excess capital is necessary based on the character and qualifications of the proposed board of directors and the nature of the business of the bank or trust company.

(c) The minimum capital of a bank or trust company organized pursuant to K.S.A. 9-801(j), and amendments thereto, shall be determined by the commissioner, provided that the successor bank has obtained deposit insurance from the federal deposit insurance corporation or any successor.

(d) All banks shall maintain a capital ratio of at least 5% of equity capital to total assets at all times.

(e) Any bank that relocates its main office from one city to another pursuant to K.S.A. 9-814, and amendments thereto, shall have equity capital equal to the greater of $3,000,000 or 8% of its estimated deposits five years after the relocation.

(1) The commissioner, in the commissioner's discretion, may approve a relocation with a smaller equity capital amount if the bank can show that the circumstances surrounding the relocation warrant consideration of a lesser amount and the safety of depositors would not be impacted by requiring a lesser amount.

(2) If the main office relocation is part of an interchange of the main office with a branch location that has been in operation for at least one year, this equity capital requirement shall not apply.

(f) Any national bank, federal savings association or federal savings bank which converts its charter to a state bank pursuant to K.S.A. 9-808, and amendments thereto, shall have a minimum capital ratio of 5% of equity capital to total assets at the time of its conversion. The capital division requirements of subsection (b) shall not apply.

(g) The commissioner may require that a bank or trust company have capital in excess of the amounts specified in subsections (b) through (d) if the commissioner determines that excess capital is necessary based on the character and qualifications of the proposed board of directors and nature of the business of the bank or trust company.

(h) Any bank that fails to meet the minimum capital ratio of 5% of equity capital to total assets required by this section shall notify the commissioner within three business days. Upon notice, the commissioner may require the bank to submit a written plan for restoring capital approved by the commissioner.

*History:* L. 1975, ch. 44, § 7; L. 1976, ch. 55, § 1; L. 1986, ch. 55, § 2; L. 1987, ch. 54, § 2; L. 1989, ch. 48, § 15; L. 2015, ch. 38, § 32; L. 2016, ch. 54, § 15; L. 2018, ch. 75, § 10; July 1.

**K.S.A. 9-902. Par value of stock.**

(a) The common and preferred stock of any stock bank or trust company hereafter created shall be divided into shares of $1 each, or any whole number multiple thereof. All subscriptions to such stock shall be paid in cash and any bank or trust company may change the par value of its shares to conform with this section.

(b) Any stock bank or trust company may reduce the number of shares of common stock and replace the shares of common stock with a like amount of shares of preferred stock, as long as the total dollar amount of capital stock is not changed. In lieu of reducing the number of shares of common stock, the stock bank may reduce the par value of the common stock and

issue preferred stock with a par value that is equal to the amount of the reduction in the par value of the common stock. When the preferred stock is retired, the par value of the common shares shall be restored.

(c) The requirements for a capital reduction pursuant to K.S.A. 9-904, and amendments thereto, and the requirements for new issue of preferred stock pursuant to K.S.A. 9-908, and amendments thereto, shall not apply to the circumstance described in this section.

*History:* L. 1947, ch. 102, § 15; L. 1965, ch. 74, § 1; L. 1969, ch. 60, § 1; L. 1989, ch. 48, § 16; L. 2015, ch. 38, § 33; L. 2016, ch. 54, § 16; L. 2018, ch. 75, § 11; July 1.

**K.S.A. 9-903. Transfer of stock; report to commissioner.**

(a) The shares of stock of any stock bank or trust company shall be deemed personal property and shall be transferred on the books of the bank or trust company in such manner as the bylaws thereof may direct.

(b) No transfer of stock shall be valid against the issuing stock bank or trust company so long as the registered owner thereof shall be liable as principal debtor, surety or otherwise to the stock bank or trust company on a matured, charged off or forgiven obligation. No dividend, interest or profit shall be paid on such stock so long as the registered owner thereof is indebted to the bank or trust company on a matured, charged off or forgiven obligation. All such dividends or profits shall be retained by the stock bank or trust company and applied to the discharge of any such obligations.

(c) No stock shall be transferred on the books of any bank or trust company when the bank or trust company is in a failing condition, or when its capital stock is impaired, except upon approval of the commissioner.

(d) The president or other chief executive officer of a bank or trust company shall report to the commissioner within 10 days of the transfer of shares of stock on the books of the bank or trust company if there is a transfer of:

(1) Shares of stock that results in the direct or indirect ownership by a stockholder or an affiliated group of stockholders of 10% or more of the outstanding stock of the bank or trust company; or

(2) additional shares of stock to stockholders or an affiliated group of stockholders who own 10% or more of the outstanding stock of a bank or trust company.

(e) If there is a transfer of shares of stock that results in the direct or indirect ownership by a stockholder or an affiliate group of stockholders of 25% or more of the outstanding stock of the bank or trust company, a change of control shall be filed pursuant to K.S.A. 9-1719 et seq., and amendments thereto.

*History:* L. 1947, ch. 102, § 16; L. 1975, ch. 44, § 8; L. 1988, ch. 59, § 1; L. 1989, ch. 48, § 17; L. 1996, ch. 175, § 11; L. 2015, ch. 38, § 34; L. 2016, ch. 54, § 17; L. 2018, ch. 75, § 12; July 1.

*Revisor's Note:* 2016 amendments contain no substantive change.

**K.S.A. 9-904. Reduction of capital stock, when.**

(a) With prior approval of the commissioner, a stock bank or trust company may reduce the amount of its capital stock account. No such reduction shall be approved unless the commissioner finds that:

(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 the amount required by K.S.A. 9-901*, and amendments thereto;

(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;

(4) the proposed reduction poses no significant risk to the financial stability, safety or soundness of the institution;

(5) the bank's or trust company's surplus account will be increased in an amount equal to the amount of the proposed reduction in the capital stock account, unless a waiver is granted by the commissioner; and

(6) a resolution approving the reduction has been adopted by the stockholders representing 2/3 of the voting stock of the bank or trust company.

(b) Upon completion of the reduction, the stock bank or trust company shall file with the commissioner a list of its stockholders and the amount of stock held by each.

(c) Whenever the capital stock of any stock 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.

*History:* L. 1947, ch. 102, § 17; L. 1989, ch. 48, § 18; L. 1996, ch. 175, § 12; L. 2001, ch. 87, § 2; L. 2015, ch. 38, § 35; L. 2016, ch. 54, § 18; L. 2018, ch. 75, § 13; July 1.

*Revisor's Note:* * Reference should be to 9-901a instead.

**K.S.A. 9-905. Increase of capital stock.**

The capital stock of any stock bank or trust company may be increased. The president and cashier shall forward a verified statement to the commissioner showing the amount of the increase, paid in full, the names and addresses of the subscribers and the amount subscribed by each.

*History:* L. 1947, ch. 102, § 18; L. 1989, ch. 48, § 19; L. 2015, ch. 38, § 36; L. 2018, ch. 75, § 14; July 1.

**K.S.A. 9-906. Restoration of impaired capital.**

(a) Whenever it shall appear that the capital stock of any stock bank or trust company is impaired, the commissioner shall notify the stock bank or trust company to restore the capital stock within 90 days of receipt of such notice.

(b) For purposes of this section, "impairment" means that charges or losses to the bank or trust company's capital accounts have been sufficient to eliminate all of the bank or trust company's allowance for loan and lease loss, undivided profits, surplus fund and any other capital reserves and has brought the book amount of the capital stock below the par value of the capital stock.

(c) Within 15 days of receipt of the impairment notice from the commissioner, the board of directors of the bank or trust company shall levy an assessment on the common stockholders sufficient to restore the capital stock.

(d) A bank or trust company may reduce its capital stock to the extent of the impairment, if such reduction is conducted pursuant to the requirements of K.S.A. 9-904, and amendments thereto.

*History:* L. 1947, ch. 102, § 19; L. 1987, ch. 54, § 3; L. 2015, ch. 38, § 37; L. 2016, ch. 54, § 19; L. 2018, ch. 75, § 15; July 1.

**K.S.A. 9-907. Delinquent stockholders; public or private sale of stock.**

(a) Whenever any stockholder of a stock bank or trust company or an assignee of such stockholder, fails to pay any assessment as required by K.S.A. 9-906, and amendments thereto, the directors of the bank or trust company may sell the stock of such delinquent stockholder, or so much of the stock as necessary, to satisfy the assessment and any related incidental expenses within 120 days of the bank or trust company's receipt of impairment notice.

(b) The sale of stock of a delinquent stockholder may be either public or private. The bank or trust company may sell the stock to any person paying the highest price, however, the price shall not be less than the amount due upon the stock, including any incidental expenses. If the stock is sold at private sale and the price offered by any non-stockholder does not exceed the highest bid of any stockholder, then such stock shall be sold to the stockholder. If the stock is sold at a public sale, then notice of the public sale shall be published on the same day for two consecutive weeks, in a newspaper of general circulation in the city or county where the bank or trust company is located.

(c) Any excess moneys realized from the sale of the stock shall be paid to the delinquent stockholder, unless the stockholder is indebted to the bank or trust company. If the stockholder has debt, then the excess may be retained by the bank or trust company as an offset against the debt.

(d) If no purchaser can be found for the stock at the public or private sale, the stock shall be forfeited to the bank or trust company to be disposed of as the board of directors shall determine within six months from the date of the public or private sale. If the stock cannot be disposed of within six months, the bank or trust company may request permission from the commissioner for additional time to dispose of the stock.

*History:* L. 1947, ch. 102, § 20; L. 1987, ch. 54, § 4; L. 2015, ch. 38, § 38; L. 2016, ch. 54, § 20; L. 2018, ch. 75, § 16; July 1.

**K.S.A. 9-908. Preferred stock.**

(a) Upon the affirmative vote of 2/3 of the voting shares of the common stock of a stock bank or trust company, and with the prior approval of the commissioner, a stock bank or trust company may issue preferred stock of one or more classes. The stockholders shall have a meeting to vote on the issuance of preferred stock. Notice of this meeting shall be given to all stockholders at least five days in advance of the date of the meeting by registered or certified mail, or electronically pursuant to the uniform electronic transactions act, K.S.A. 16-1601 *et seq.*, and amendments thereto.

(b) 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.

*History:* L. 1947, ch. 102, § 21; L. 1975, ch. 44, § 9; L. 1989, ch. 48, § 20; L. 2001, ch. 87, § 3; L. 2015, ch. 38, § 39; L. 2018, ch. 75, § 17; L. 2019, ch. 25, § 3; July 1.

**K.S.A. 9-909. Preferred stock; rights and immunities of holders.**

The holders of preferred stock shall not be liable for assessments to restore any impairment in the capital stock of a bank or trust company.

No dividends shall be declared or paid on common stock until all cumulative dividends, if any, on the preferred stock shall have been paid. If the bank or trust company is dissolved or placed in liquidation no payments shall be made to the holders of common stock until the holders of the preferred stock are first paid in full for any sums due upon the preferred stock.

*History:* L. 1947, ch. 102, § 22; L. 1975, ch. 44, § 10; L. 1989, ch. 48, § 21; L. 1993, ch. 14, § 1; L. 2015, ch. 38, § 40; July 1.

**K.S.A. 9-910. Dividends from capital stock prohibited; how current dividends paid.**

No dividends shall be paid from the capital stock account of a stock bank or trust company. The current dividends of any stock bank or trust company or of any mutual bank shall be paid from undivided profits after deducting losses. These losses are determined by using generally accepted accounting principles at the time of making the dividend.

*History:* L. 1947, ch. 102, § 23; L. 1989, ch. 48, § 22; L. 1990, ch. 55, § 1; L. 2015, ch. 38, § 41; L. 2018, ch. 75, § 18; July 1.

**K.S.A. 9-911. Declarations of dividends.**

(a) The directors of any stock bank or trust company or of any mutual bank may declare cash dividends only from undivided profits. For a stock bank, before paying this dividend, the directors shall ensure that the surplus fund equals or exceeds the capital stock account. If the surplus fund is less than the capital stock account, the directors shall transfer 25% of the net profits of the bank or trust company, since the last preceding dividend from undivided profits to the surplus fund, except no additional transfers shall be required once the surplus fund equals the capital stock account.

(b) The directors of any bank or trust company may not declare or pay an asset dividend, other than cash dividends allowed pursuant to subsection (a), without prior approval from the commissioner.

*History:* L. 1947, ch. 102, § 24; L. 1989, ch. 48, § 23; L. 2015, ch. 38, § 42; L. 2018, ch. 75, § 19; July 1.

**K.S.A. 9-912. Surplus account; stock dividends from reduction.**

(a) Any losses sustained by a bank or trust company in excess of its undivided profits may be charged to its surplus fund.

(b) Any stock bank or trust company, after receiving approval from the commissioner, may declare a stock dividend from its surplus fund, but no dividend shall reduce the surplus fund to an amount less than 30% of the resulting total capital.

(c) Any bank or trust company may reduce its surplus account with permission of the commissioner.

*History:* L. 1947, ch. 102, § 25; L. 1975, ch. 44, § 11; L. 1989, ch. 48, § 24; L. 2001, ch. 87, § 4; L. 2015, ch. 38, § 43; L. 2018, ch. 75, § 20; July 1.

## Article 11 – BANKING CODE; POWERS

### K.S.A. 9-1101. General powers.

(a) Any bank hereby is authorized to exercise by its board of directors or duly authorized officers or agents, subject to law, the following powers:

(1) To receive and to pay interest on deposits. The commissioner, with approval of the state banking board, may by rules and regulations fix maximum rates of interest to be paid on deposit accounts other than accounts for public moneys;

(2) to buy, sell, discount or negotiate domestic currency, gold, silver, foreign currency, bullion, commercial paper, bills of exchange, notes and bonds. Foreign currency shall not be bought, sold, discounted or negotiated for investment purposes;

(3) to make all types of loans, subject to the loan limitations contained in the state banking code;

(4) (A) to buy and sell:

(i) Bonds, securities or other evidences of indebtedness, including temporary notes, of the United States of America;

(ii) bonds, securities or other evidences of indebtedness, including temporary notes, fully guaranteed, directly or indirectly, by the United States of America; or

(iii) general obligation bonds of any state of the United States of America or any municipality or quasi-municipality thereof.

(B) No bank shall invest in bonds, securities or other evidences of indebtedness in excess of 15% of capital stock paid in and unimpaired and the unimpaired surplus fund of such bank if:

(i) The direct and overlapping indebtedness of such municipality or quasi-municipality is in excess of 10% of its market value, excluding therefrom all valuations on intangibles and homestead exemption valuation; or

(ii) any bond, security, or evidence of indebtedness of any such municipality or quasi-municipality that 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;

(5) to buy and sell investment securities which are evidences of indebtedness limited to buying and selling without recourse marketable obligations evidencing indebtedness of any 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. The total amount of such investment securities of any one obligor or maker held by such bank shall at no time exceed 25% of the capital stock, surplus, undivided profits, 100% of the allowance for loan and lease loss, capital notes and debentures and reserve for contingencies of such bank, except that this limit shall not apply to obligations of the United States government or any agency thereof;

(6) to buy and sell investment securities which are evidences of indebtedness limited to buying and selling without recourse marketable obligations evidencing indebtedness of any person, copartnership, association or corporation. The total amount of such investment securities of any one obligor or maker held by such bank shall at no time exceed 25% of the capital stock surplus, undivided profits, 100% of the allowance for loan and lease loss, capital notes and debentures and reserve for contingencies of such bank;

(7) to subscribe to, buy, hold and sell stock of:

(A) The federal national mortgage association in accordance with the national housing act;

(B) the federal home loan mortgage corporation in accordance with the federal home loan mortgage corporation act;

(C) the federal agricultural mortgage corporation, provided no bank's investment in such corporation shall exceed 5% of the bank's capital stock, surplus and undivided profits; and

(D) a federal home loan bank. Any bank may also become a member of a federal home loan bank;

(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 acquisition, the aggregate amount of shares in small business investment companies then held by the bank would exceed 5% of the bank's capital and surplus;

(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 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;

(11) to act as escrow agent;

(12) to subscribe to, acquire, hold and dispose of stock of a corporation the purpose of which is to acquire, hold and dispose 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;

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

(14) 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 the purpose of which is to acquire, hold and dispose 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;

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

(16) to subscribe to, buy and own stock in a bankers' bank organized under the laws of the United States, this state or any other state, 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;

(17) to buy, hold and sell shares of an open-end investment company in a manner consistent with the parameters outlined by the office of the comptroller of the currency in banking circular 220, as such circular was issued on November 21, 1986;

(18) subject to the prior approval of the commissioner and subject to such rules and regulations as are adopted by the 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; or

(D) acting as a securities broker-dealer;

(19) 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;

(20) to purchase and hold an interest in life insurance policies and, to the extent applicable, to purchase and hold an annuity in a manner consistent with the parameters outlined in the interagency statement of the purchase and risk management of life insurance, issued by the office of the comptroller of the currency, the board of governors of the federal reserve system, the federal deposit insurance corporation and the office of the thrift supervision on December 7, 2004; and set out in the respective agencies' issuances, including the federal deposit insurance corporation financial institution letter 127-2004, effective December 7, 2004, subject to the following limitations:

(A) The cash surrender value of any life insurance policy or policies underwritten by any one life insurance company shall not at any time exceed 15% of the total of the bank's capital stock, surplus, undivided profits, 100% of the allowance for loan and lease losses, capital notes and debentures and reserve for contingencies, unless the bank has obtained the prior approval of the commissioner;

(B) the cash surrender value of life insurance policies, in the aggregate from all companies, cannot at any time exceed 25% of the total of the bank's capital stock, surplus, undivided profits, 100% of the allowance for loan and lease losses, capital notes and debentures and reserve for contingencies, unless the bank has obtained the prior approval of the state bank commissioner;

(C) the limitations set forth in subparagraphs (A) and (B) shall not apply to any life insurance policy in place prior to July 1, 1993; and

(D) for the purposes of subsections (a)(20)(A) and (a)(20)(B), intangibles, such as goodwill, shall not be included in the calculation of capital;

(21) 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 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;

(22) to make loans to the bank's stockholders or the bank's controlling holding company stockholders on the security of the shares of the bank or the bank's controlling bank holding company, but loans on the security of the shares of the bank may occur only

if the bank would have extended credit to such stockholder on exactly the same terms without the bank shares pledged as collateral;

(23) to make investments in and loans to community and economic development entities as defined in K.S.A. 9-701, and amendments thereto, subject to the limitations prescribed by community reinvestment act pub. l. 95-128, title VIII, 91 Stat. 1147, 12 U.S.C. § 2901 et seq.;

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

(25) with prior approval of the commissioner, to control or hold an interest in a financial subsidiary.

(A) The financial subsidiary may engage in one or more of the following activities:

(i) Lending, exchanging, transferring, investing for others or safeguarding money or securities;

(ii) acting as agent or broker for purposes of insuring, guaranteeing or indemnifying against loss, harm, damage, illness, disability, death or providing annuities as agent or broker subject to the requirements of chapter 40 of the Kansas Statutes Annotated, and amendments thereto;

(iii) issuing or selling instruments representing interests in pools or assets permissible for a bank to hold directly;

(iv) operating a travel agency; and

(v) activities that are financial in nature as determined by the commissioner.

(B) Such activities do not include:

(i) Insuring, guaranteeing or indemnifying against loss, harm, damage, illness, disability, death or providing or issuing annuities the income of which is subject to tax treatment under 26 U.S.C. § 72;

(ii) real estate development or real estate investment, except as otherwise expressly authorized by Kansas law; or

(iii) any activity permitted for financial holding companies under 12 U.S.C. § 1843(k)(4)(H) and (I).

(C) As used in subsection (a)(25), "control" means:

(i) Directly or indirectly owning, controlling or having power to vote 25% or more of any class of the voting shares of a financial subsidiary;

(ii) controlling in any manner the election of a majority of the directors or trustees of the financial subsidiary; or

(iii) otherwise directly or indirectly exercising a controlling influence over the management or policies of the financial subsidiary, as determined by the commissioner;

(26) to maintain and operate a postal substation on banking premises, in accordance with the rules and regulations of the United States postal service. The bank may advertise the services of the substation for the purpose of attracting customers to the bank and receive income therefrom. The bank shall keep the books and records of the substation separate from the records of other banking operations;

(27) with prior approval of the commissioner, to invest in foreign bonds an amount not to exceed 1% of the bank's capital stock and surplus as long as such bonds comply with the form and definition of investment securities;

(28) to act as an agent for any credit life, health and accident insurance, sometimes referred to as credit life and disability insurance, and mortgage life and disability insurance in connection with extensions of credit and only as a source of protection for such extension of credit;

(29) to act as agent for any fire, life or other insurance company authorized to do business in this state at any approved office of the bank which is located in any place the population does not exceed 5,000 inhabitants. Such insurance may be sold to existing and potential customers of the bank regardless of the geographic location of the customers;

(30) to become a stockholder and member of the federal reserve bank of the federal reserve district where such bank is located;

(31) with prior approval of the commissioner, to acquire the stock of, or establish and operate a subsidiary to acquire the stock of, another insured depository institution or the holding company of the insured depository institution provided such acquisition is incidental to a reorganization otherwise authorized by the law of this state and which occurs nearly simultaneously with such acquisition;

(32) with prior approval of the commissioner, to establish and operate a subsidiary for the purpose of owning, holding and managing all or part of the bank's securities portfolio provided the parent bank owns 100% of the stock of the subsidiary and the subsidiary shall not own, hold or manage securities for any party other than the parent bank. The subsidiary shall be subject to:

(A) All banking laws and rules and regulations applicable to the parent bank unless otherwise provided;

(B) consolidation with the parent bank of pertinent book figures for the purpose of applying all applicable statutory limitations including, but not limited to, capital requirements, owning and holding real estate and legal lending limitations;

(C) examination and supervision by the commissioner, the cost and responsibility of which will be attributable to the parent bank; and

(D) any additional terms or conditions required by the commissioner to address any legal or safety and soundness concerns;

(33) with prior approval of the commissioner, to establish or acquire operating subsidiaries for the purpose of engaging in any activity which is part or incidental to the business of banking as long as the parent bank owns at least 50% of the stock of the subsidiary. The subsidiary shall be subject to:

(A) All banking laws and regulations applicable to the parent bank unless otherwise provided;

(B) consolidation with the parent bank of pertinent book figures for the purpose of applying all applicable statutory limitations including, but not limited to, capital requirements, owning and holding real estate and legal lending limitations;

(C) examination and supervision by the commissioner the cost and responsibility of which will be attributable to the parent bank; and

(D) any additional terms or conditions required by the commissioner to address any legal or safety and soundness concerns;

(34) to invest in, without limitation, obligations of or obligations which are insured as to principal and interest by or evidences of indebtedness that are fully collateralized by obligations of the federal home loan banks, the federal national mortgage association, the government national mortgage association, the federal home loan mortgage corporation, the student loan marketing association and the federal farm credit banks;

(35) any bank or trust company may invest in bonds or notes secured by mortgages which in turn are insured or upon which there is a commitment to insure by the federal housing administration, or any successor thereto, in debentures issued by the federal housing administration or any successor, and in obligations of national mortgage associations; and

(36) to buy tax credits for certain historic structure rehabilitation expenditures pursuant to K.S.A. 79-32,211, and amendments thereto. The total amount of such tax credits held by a bank shall at no time exceed 25% of the capital stock, surplus, undivided profits,

100% of the allowance for loan and lease loss, capital notes and debentures and reserve for contingencies of such bank.

(b) Any bank hereby is authorized to exercise by the bank's board of directors or duly authorized officers or agents, subject to approval by the commissioner, any incidental power necessary to carry on the business of banking.

*History:* L. 1947, ch. 102, § 30; L. 1949, ch. 110, § 1; L. 1955, ch. 64, § 1; L. 1957, ch. 70, § 1; L. 1957, ch. 71, § 1; L. 1959, ch. 58, § 1; L. 1961, ch. 63, § 1; L. 1965, ch. 75, § 1; L. 1967, ch. 69, § 1; L. 1969, ch. 61, § 1; L. 1971, ch. 32, § 1; L. 1973, ch. 44, § 1; L. 1973, ch. 45, § 1; L. 1975, ch. 44, § 12; L. 1982, ch. 50, § 1; L. 1983, ch. 46, § 2; L. 1984, ch. 49, § 1; L. 1984, ch. 48, § 4; L. 1985, ch. 56, § 2; L. 1985, ch. 57, § 1; L. 1986, ch. 332, § 9; L. 1987, ch. 54, § 5; L. 1988, ch. 59, § 2; L. 1988, ch. 60, § 1; L. 1988, ch. 61, § 1; L. 1988, ch. 62, § 1; L. 1991, ch. 47, § 2; L. 1993, ch. 31, § 2; L. 1994, ch. 202, § 1; L. 1995, ch. 19, § 4; L. 1995, ch. 250, § 2; L. 1997, ch. 180, § 10; L. 2001, ch. 87, § 5; L. 2003, ch. 57, § 1; L. 2004, ch. 8, § 1; L. 2010, ch. 29, § 1; L. 2015, ch. 38, § 44; L. 2016, ch. 54, § 21; L. 2017, ch. 52, § 1; L. 2018, ch. 75, § 21; July 1.

*Revisor's Note:* This section was also amended by L. 1995, ch. 79, § 14 and L. 1995, ch. 33, § 1, but those versions were repealed by L. 1995, ch. 250, § 3.

**K.S.A. 9-1101a. Issuance of capital notes or debentures, when; limitations.**

Upon approval of the stockholders owning ⅔ 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 commissioner, except that the principal amount of capital notes or debentures outstanding at any time shall not exceed an amount equal to 100% of the bank's paid-in capital stock plus 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.

*History:* L. 1965, ch. 83, § 1; L. 2001, ch. 87, § 6; L. 2015, ch. 38, § 45; July 1.

**K.S.A. 9-1102. Holding of real estate; limitations.**

(a) Any bank or trust company may own, purchase, lease, hold, encumber or convey real property, including any building or buildings necessary for the bank's or trust company's accommodation in the transaction of its business. Real property shall be disposed of or charged off the bank's or trust company's books not later than seven years after the real property's intended use for bank or trust purposes ends. Before the end of the holding period, a bank or trust company may request authorization from the commissioner to hold the real property for an additional year. No bank or trust company shall be granted more than three requests for additional time to hold any one parcel of real property.

(b) Any bank or trust company may own, purchase, lease, hold, encumber or convey certain personal property necessary for the bank's or trust company's accommodation in the transaction of such bank's or trust company's business.

(c) The insurable tangible property of a bank or trust company shall be insured against loss.

(d) Any bank may own all or part of the stock in a single trust company or safe deposit company organized under the laws of the state of Kansas.

(e) Any bank may own all of the stock in a corporation or limited liability company organized under the laws of the state of Kansas, owning real estate, all or a part of which is occupied or to be occupied by the bank or trust company.

(f) A bank's or trust company's total investment or ownership at all times in any one or more of the following shall not exceed 50% of the total of capital stock, surplus, undivided profits, 100% of the allowance for loan and lease loss, capital notes and debentures and reserve for contingencies. For purposes of this subsection, intangibles, such as goodwill, shall not be included in the calculation of capital. Any such excess shall be removed from the bank's or trust company's books unless approval is granted by the commissioner:

(1) The book value of real estate plus all encumbrances thereon;

(2) the book value of furniture and fixtures;

(3) the book value of stock in a safe deposit company;

(4) the book value of stock in a trust company; or

(5) the book value of stock in a corporation organized under the laws of this state owning real estate occupied by the bank or trust company and advances to such corporation acquired or made after July 1, 1973, except that any real estate not necessary for the accommodation of the bank's or trust company's business shall be disposed of or charged off its books according to subsection (a).

(g) Any bank or trust company may acquire or purchase real estate in satisfaction of any debts due such bank or trust company, and may purchase real estate at judicial sales, subject to the following:

(1) No bank or trust company shall bid at any judicial sale a larger amount than is necessary to protect its debts and costs.

(2) No real estate or interest in oil and gas leasehold acquired in the satisfaction of debts or upon judicial sales shall be carried as a book asset of the bank or trust company for more than 10 years.

(3) At the termination of the 10 years such real estate shall be charged off. The commissioner may grant an extension not to exceed four years, if in the commissioner's judgment, carrying the real estate as an asset for such extended period will be to the advantage of the bank or trust company. Any such extensions issued shall be reviewed by the commissioner on an annual basis.

(h) No bank or trust company may buy and sell real estate as a business.

(i) A bank may hold or sell any personal property coming into ownership of the bank in the collection of debts. All such property, except legal investments, shall be sold within one year of acquisition, provided a commercially reasonable sale can occur. If a commercially reasonable sale cannot occur within one year, the commissioner may authorize a bank to carry such property as a book asset for a longer period. The bank shall not carry such property as a nonbook asset.

(j) The time periods for holding real estate or other property shall begin when:

(1) The bank has received title or deed to the property;

(2) the property is in a redemption period following the bank's purchase at a judicial sale; or

(3) the bank has actual control of the property.

(k) With prior notification to the commissioner, any bank may operate a wholly owned subsidiary corporation or limited liability company which holds and manages property acquired through debt previously contracted. The subsidiary shall be subject to:

(1) All banking laws and rules and regulations applicable to the parent bank unless otherwise provided;

(2) consolidation with the parent bank of pertinent book figures for the purpose of applying all applicable statutory limitations including, but not limited to, capital requirements, owning and holding real estate and legal lending limitations;

(3) examination and supervision by the commissioner, the cost and responsibility of which will be attributable to the parent bank; and

(4) any additional terms or conditions required by the commissioner to address any legal or safety and soundness concerns.

(l) (1) With prior approval of the commissioner, any bank may exchange such bank's participation interest in real estate acquired or purchased in satisfaction of any debts previously contracted for an interest in a corporation or limited liability company which will manage, market and dispose of the real property. Prior to the exchange, the bank's directors must:

(A) Find and document that the exchange is in the best interest of the bank and would improve the ability of the bank to recover, or otherwise limit, the bank's loss on real estate acquired through debts previously contracted;

(B) certify that the bank's loss exposure is limited, as a legal and accounting matter, and that the bank does not have open-ended liability for the obligations of the corporation or limited liability company;

(C) certify that the corporation or limited liability company agrees to be subject to the supervision and examination by the commissioner; and

(D) ensure that the corporation or limited liability company complies with this section and K.A.R. 17-11-17, including obtaining a current appraisal of the real estate.

(2) A bank may not further exchange the bank's interest in the corporation or limited liability company for an interest in any other real or personal property.

*History:* L. 1947, ch. 102, § 31; L. 1971, ch. 32, § 2; L. 1973, ch. 45, § 2; L. 1975, ch. 44, § 13; L. 1977, ch. 46, § 1; L. 1986, ch. 56, § 1; L. 1987, ch. 54, § 6; L. 1988, ch. 61, § 2; L. 1989, ch. 48, § 25; L. 1990, ch. 56, § 1; L. 1994, ch. 78, § 1; L. 2000, ch. 45, § 1; L. 2015, ch. 38, § 46; L. 2016, ch. 54, § 22; L. 2017, ch. 52, § 2; July 1.

**K.S.A. 9-1104. Limitation on loans and borrowing; determination of limits; compliance with section; definitions.**

(a) *Definitions.* As used in this section:

(1) "Borrower" means an individual, sole proprietorship, partnership, joint venture, association, trust, estate, business trust, corporation, limited liability company, not-for-profit corporation, state government of the United States or a United States government unit or agency, instrumentality or political subdivision thereof or any similar entity or organization.

(2) "Capital" means the total of capital stock, surplus, undivided profits, 100% of the allowance for loan and lease loss, capital notes and debentures and reserve for contingencies. Intangibles, such as goodwill, shall not be included in the definition of capital when determining lending limits.

(3) "Loan" means:

(A) A bank's direct or indirect advance of funds to or on behalf of a borrower based on an obligation of the borrower to repay the funds;

(B) a contractual commitment to advance funds;

(C) an overdraft;

(D) loans that have been charged off the bank's books in whole or in part, unless the loan is unenforceable by reason of:

(i) Discharge in bankruptcy;

(ii) expiration of the statute of limitations;

(iii) judicial decision; or

(iv) the bank's forgiveness of the debt;

(E) any credit exposure to a borrower arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction or securities borrowing transaction between a bank and that borrower.

(4) "Derivative transaction" means any transaction that is a contract, agreement, swap, warrant, note or option that is based in whole, or in part, on the value of any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices or other assets.

(b) *General lending limit rule.* Subject to the provisions in subsections (d), (e) and (f), loans to one borrower, including any bank officer or employee, shall not exceed 25% of a bank's capital.

(c) *Calculation of the lending limit.*

(1) The bank's lending limit shall be calculated on the date the loan or written commitment is made. The renewal or refinancing of a loan shall not constitute a new lending limit calculation date unless new funds are advanced.

(2) If the bank's lending limit increases subsequent to the origination date, a bank may use the current lending limit to determine compliance when advancing funds. An advance of funds includes the lending of money or the repurchase of any portion of a participation.

(3) If the bank's lending limit decreases subsequent to the origination date, a bank is not prohibited from advancing on a prior commitment that was legal on the date the commitment was made.

(d) *Exemptions.*

(1) Overnight federal funds.

(2) That portion of a loan which is continuously secured on a dollar for dollar basis by any of the following will be exempt from any lending limit:

(A) A guaranty, commitment or agreement to take over or to purchase, made by any federal reserve bank or by any department, bureau, board, commission, agency or establishment of the United States of America, including any corporation wholly owned, directly or indirectly by the United States;

(B) a perfected interest in a segregated deposit account in the lending bank. In the case of a deposit which may be withdrawn in whole or in part, the bank shall establish written internal procedures to prevent the release of the deposit;

(C) a bonded warehouse receipt issued to the borrower by some other person;

(D) treasury bills, certificates of indebtedness or bonds or notes of, or fully guaranteed by, the United States of America or instrumentalities or agencies thereof;

(E) general obligation bonds or notes of the state of Kansas or any other state in the United States of America;

(F) general obligation bonds or notes of any Kansas municipality or quasi-municipality; or

(G) a perfected interest in a repurchase agreement of United States government securities with the lending bank.

(e) *Special rules.*

(1) The total liability of any borrower may exceed the general 25% limit by up to an additional 10% of the bank's capital. To qualify for this expanded limit:

(A) The bank shall have as collateral a recorded first lien or liens on real estate securing a portion of the borrower's total liability equal to at least the amount by which the total liability exceeds the 25% limit;

(B) the appraised value of the real estate shall equal at least twice the amount by which the borrower's total liability exceeds the 25% limit; and

(C) a portion of the borrower's total liability, equal to at least the amount by which the total liability exceeds the 25% limit, shall amortize within 20 years by regularly scheduled installment payments.

(2) That portion of any loan endorsed or guaranteed by a borrower will not be added to that borrower's liability until the endorsed or guaranteed loan is past due 10 days.

(3) If the total liability of any shareholder owning 25% or more of any class of voting shares, officers or directors will exceed $50,000, prior approval from the bank's board of directors shall be noted in the minutes.

(4) To the extent time deposits are insured by the federal deposit insurance corporation, such deposits purchased by a bank from another financial institution shall not be considered a loan to that financial institution and shall not be subject to the bank's lending limit.

(5) Third-party paper purchased by the bank will not be considered a loan to the seller unless and until the bank has the right under the agreement to require the seller to repurchase the paper.

(f) *Combination rules.*

(1) *General rule.* Loans to one borrower will be attributed to another borrower and the borrowers' total liability will be combined:

(A) When proceeds of a loan are to be used for the direct benefit of the other borrower, to the extent of the proceeds so used; or

(B) when a common enterprise is deemed to exist between the borrowers.

(2) *Direct benefit.* The proceeds of a loan to a borrower will be deemed to be used for the direct benefit of another person and will be attributed to the other person when the proceeds, or assets purchased with the proceeds, are transferred to another person, other than in a bona fide arm's length transaction where the proceeds are used to acquire property, goods or services.

(3) *Common enterprise.* A common enterprise will be deemed to exist and loans to separate borrowers will be aggregated:

(A) When the expected source of repayment for each loan or extension of credit is the same for each borrower and neither borrower has another source of income from which the loan, together with the borrower's other obligations, may be fully repaid;

(B) when both of the following circumstances are present:

(i) Loans are made to borrowers that are related directly or indirectly through common control, including where one borrower is directly or indirectly controlled by another borrower. Common control means to own, control or have the power to vote 25% or more of any class of voting securities or voting interests or to control, in any manner, the election of a majority of the directors or to have the power to exercise a controlling influence over the management or policies of another person; and

(ii) substantial financial interdependence exists between or among the borrowers. Substantial financial interdependence is deemed to exist when 50% or more of one borrower's gross receipts or gross expenditures, on an annual basis, are derived from transactions with the other borrower. Gross receipts and expenditures include gross revenues, expenses, intercompany loans, dividends, capital contributions and similar receipts or payments; or

(C) when separate persons borrow from a bank to acquire a business enterprise of which those borrowers will own more than 50% of the voting securities or voting interests, in which case a common enterprise is deemed to exist between the borrowers for purposes of combining the acquisition loan.

(D) An employer will not be treated as a source of repayment for purposes of determining a common enterprise because of wages and salaries paid to an employee.

(4) *Special rules for loans to a corporate group.*

(A) Loans by a bank to a borrower and the borrower's subsidiaries shall not, in the aggregate, exceed 50% of the bank's capital. At no time shall loans to any one borrower or to any one subsidiary exceed the general lending limit of 25%, except as allowed by other provisions of this section. For purposes of this paragraph, a corporation or a limited liability company is a subsidiary of a borrower if the borrower owns or beneficially owns directly or indirectly more than 50% of the voting securities or voting interests of the corporation or company.

(B) Loans to a borrower and a borrower's subsidiaries that do not meet the test contained in subsection (f)(4)(A) will not be combined unless either the direct benefit or the common enterprise test is met.

(5) *Special rules for loans to partnerships, joint ventures and associations.*

(A) As used in this paragraph, the term "partnership" shall include a partnership, joint venture or association. The term partner shall include a partner in a partnership or a member in a joint venture or association.

(B) *General partner.* Loans to a partnership are considered to be loans to a partner if, by the terms of the partnership agreement, that partner is held generally liable for debts or actions of the partnership.

(C) *Limited partner.* If the liability of a partner is limited by the terms of the partnership agreement, the amount of the partnership debt attributable to the partner is in direct proportion to that partner's limited partnership liability.

(D) Notwithstanding the provisions of subsections (f)(5)(B) and (f)(5)(C), if by the terms of the loan agreement the liability of any partner is different than delineated in the partnership agreement, for the purpose of attributing debt to the partner, the loan agreement shall control.

(E) Loans to a partner are not attributed to the partnership unless either the direct benefit or the common enterprise test is met.

(F) Loans to one partner are not attributed to other partners unless either the direct benefit or common enterprise test is met.

(G) When a loan is made to a partner to purchase an interest in a partnership, both the direct benefit and common enterprise tests are deemed to be met, and the loan is attributed to the partnership.

(6) Notwithstanding the provisions of this subsection, the commissioner may determine, based upon an evaluation of the facts and circumstances of a particular transaction, that a loan to one borrower may be attributed to another borrower.

(g) The commissioner may order a bank to correct any loan not in compliance with this section within 60 days. A violation of this section shall be deemed corrected if that portion of the borrower's liability which created the violation could be legally advanced under current lending limits.

*History:* L. 1947, ch. 102, § 33; L. 1949, ch. 110, § 2; L. 1951, ch. 120, § 1; L. 1975, ch. 44, § 14; L. 1976, ch. 56, § 1; L. 1982, ch. 51, § 1; L. 1983, ch. 47, § 1; L. 1986, ch. 56, § 2; L. 1989, ch. 49, § 1; L. 1990, ch. 57, § 1; L. 1994, ch. 50, § 1; L. 1995, ch. 34, § 1; L. 1996, ch. 171, § 1; L. 1997, ch. 180, § 11; L. 2012, ch. 94, § 1; L. 2015, ch. 38, § 47; L. 2016, ch. 54, § 23; L. 2017, ch. 52, § 3; July 1.

**K.S.A. 9-1107. Temporary borrowing by bank; limitation; exceptions.**

(a) Any bank may borrow an amount not to exceed 100% of the bank's capital stock and surplus for temporary purposes. The commissioner may authorize borrowing in excess of such limitation.

(b) Any bank may borrow without limitation upon legal investment securities and rediscount and endorse in good faith any of the bank's negotiable notes without limitation.

(c) Any bank may borrow without limitation for purposes of investing in bonds issued pursuant to K.S.A. 12-5219 et seq., and amendments thereto.

*History:* L. 1947, ch. 102, § 36; L. 1975, ch. 44, § 15; L. 1981, ch. 51, § 1; L. 2015, ch. 38, § 48; July 1.

**K.S.A. 9-1111. Branch banking; remote service units.**

The general business of every bank shall be transacted at the place of business specified in the bank's certificate of authority and at one or more branch banks established and operated as provided in this section. 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 where 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 K.S.A. 9-1101(a)(25), and amendments thereto, or other applicable state or federal law, or is authorized to open accounts or receive deposits under K.S.A. 9-1101(a)(28), 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 where deposits are received, checks paid, money lent or trust authority exercised, if approval has been granted by the commissioner pursuant to K.S.A. 9-1601, and amendments thereto.

(b) To establish a new branch bank or relocate an existing branch bank:

(1) A 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 after first applying for and obtaining the commissioner's approval;

(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 the proposed branch bank, 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:

(A) Doing business in the same city or town; or

(B) within a 15-mile radius of the proposed location, 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. Any bank may request exemption from the commissioner from the provisions of this paragraph;

(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 where 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 within 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. The new branch or relocation shall only be granted 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;

(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 that provided written comments during the specified comment period, may request a hearing with the state banking board. Upon receipt of a timely request, the state banking 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 Kansas judicial review act.

(c) upon the request of any bank proposing to relocate an existing branch less than one mile from the existing location, the commissioner may exempt such bank from the requirements of this section.

(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.

(e) any bank location that has been established and is being maintained by a bank at the time of the bank's merger into or consolidation with another bank or at the time the bank's assets are purchased and the bank's liabilities are assumed by another bank may continue to be operated by the surviving, resulting or purchasing and assuming bank.

(f) any state bank or national banking association may provide and engage in banking transactions by means of remote service units wherever located. Remote service units shall not be considered to be branch banks. Any banking transaction affected by use of a remote service unit shall be deemed to be transacted at a bank and not at a remote service unit.

(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, that desires to operate or enable its customers to utilize a remote service unit shall 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 the use of the remote service unit and the agreement of such bank or banks to share all costs, including a reasonable return on capital expenditures incurred in connection with the remote service unit's 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 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) 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 to a bank and that, 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 or activated by a person upon verifiable personal identification. "Remote service unit" includes online computer terminals that may be equipped with a telephone or televideo device that allows contact with bank personnel and offline automated cash dispensing machines and automated teller machines. Withdrawals by means of offline systems shall not exceed $300 per transaction and shall be restricted to individual not corporate or commercial accounts.

(i) upon providing notice to the commissioner, any state bank may conduct loan production activity at locations other than the place of business specified in the bank's certificate of authority or approved branch banks.

(1) Loan production activity shall consist of the following:

(A) Soliciting, assembling or processing of credit information and loan applications;

(B) approval of loan applications; or

(C) loan closing activities, such as the execution of promissory notes and deeds of trust.

(2) No customer shall be allowed to take actual receipt of the loan funds.

(j) upon providing notice to the commissioner, any state bank may conduct deposit production activity at locations other than the place of business specified in the bank's certificate of authority or approved branch banks provided there is no acceptance of actual deposits in person or by drop box.

(k) upon providing notice to the commissioner, any state bank may provide any of the following at a location other than the place of business specified in the bank's certificate of authority without becoming a branch bank:

(1) Operate safe deposit boxes;

(2) sell travelers checks and saving bonds; and

(3) operate check-cashing services if no actual account withdrawal occurs;

(l) any bank or trust company closing a branch bank, loan production office, deposit production office or other location shall provide notice to the commissioner.

*History:* L. 1947, ch. 102, § 40; L. 1957, ch. 72, § 1; L. 1967, ch. 70, § 1; L. 1973, ch. 46, § 1; L. 1975, ch. 43, § 1; L. 1975, ch. 44, § 16; L. 1978, ch. 45, § 2; L. 1984, ch. 49, § 2; L. 1984, ch. 50, § 1; L. 1984, ch. 48, § 5; L. 1986, ch. 57, § 8; L. 1986, ch. 58, § 1; L. 1987, ch. 53, § 1; L. 1990, ch. 58, § 1; L. 1992, ch. 61, § 1; L. 1994, ch. 51, § 5; L. 1995, ch. 79, § 15; L. 1997, ch. 180, § 12; L. 2001, ch. 87, § 7; L. 2010, ch. 17, § 26; L. 2015, ch. 38, § 49; L. 2016, ch. 54, § 24; 2025 SB 139; July 1.

*Revisor's Note:* Section was also amended by L. 2015, ch. 33, § 8, but that version was repealed by L. 2015, ch. 100, § 17.

**K.S.A. 9-1111b. Applications for branch banks; examinations and investigation fee; disposition and use of fees.**

A bank making application to the commissioner for approval of a branch bank shall pay to the commissioner a fee, in an amount established pursuant to K.S.A. 9-1726, and amendments thereto,

to defray the expenses of the commissioner in the examination and investigation of the application. The commissioner shall remit all amounts received under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the bank investigation fund. The moneys in the bank investigation fund shall be used only to pay the expenses of the board, commissioner or other designees in the examination and investigation of such applications and any unused balance shall be transferred to the bank commissioner fee fund.

*History:* L. 1973, ch. 46, § 3; L. 1975, ch. 44, § 17; L. 1986, ch. 57, § 10; L. 1987, ch. 53, § 3; L. 1992, ch. 62, § 3; L. 2001, ch. 5, § 41; L. 2001, ch. 167, § 1; L. 2015, ch. 38, § 50; July 1.

*Revisor's Note:* Section was also amended by L. 2001, ch. 87, § 8, but that version was repealed by L. 2001, ch. 167, § 16.

**K.S.A. 9-1112. Unlawful transactions.**

(a) No bank or trust company shall buy, sell or trade tangible property as a business or invest in the stock of another bank or corporation, except as specifically authorized.

(b) Unless prior approval of the commissioner is granted, no bank or trust company shall sell, give or purchase any instrument, contract, security or other asset or asset dividend to or from:

(1) Any employee or to an employee's related interest;

(2) any director or to a director's related interest;

(3) the parent company; or

(4) a subsidiary of the parent company.

This paragraph shall not apply to assignment of loans and related security agreements to or from a subsidiary of the bank's parent company.

(c) No bank shall acquire or make a loan on the bank's own shares of stock, or the stock of the bank's parent company or a subsidiary of the bank's parent company, except as otherwise specifically authorized.

(d) No bank shall give any preference to any depositor either by pledging any of the bank's assets as collateral security or in any other manner, except:

(1) As provided under the provisions of K.S.A. 9-1603, and amendments thereto; and

(2) the deposit of public moneys and funds in the custody of the federal court or any of the court's officers may be secured as elsewhere provided in the state banking code or as required by the federal court.

*History:* L. 1947, ch. 102, § 41; L. 1975, ch. 44, § 18; L. 1981, ch. 52, § 1; L. 1985, ch. 56, § 3; L. 1988, ch. 61, § 3; L. 1990, ch. 59, § 1; L. 1993, ch. 31, § 3; L. 2001, ch. 36, § 1; L. 2015, ch. 38, § 51; L. 2016, ch. 54, § 25; July 1.

**K.S.A. 9-1114. Board of directors of bank or trust company; rules and requirements.**

(a) The business of any bank or trust company shall be managed and controlled by such bank's or trust company's board of directors.

(b) The board shall consist of not fewer than five nor more than 25 members who shall be elected by the stockholders at any regular annual meeting that shall be held on the date specified in the bank's or trust company's bylaws. A majority of the directors shall be residents of this state. Minutes shall be made of each stockholders' meeting of a bank or trust company. The minutes shall show any action taken by the stockholders, including the election of all directors.

(c) If for any reason the meeting cannot be held on the date specified in the bylaws, the meeting shall be held on a subsequent day within 60 days of the day fixed, to be designated by the board of directors, or, if the directors fail to fix the day, by the shareholders representing 2/3 of the shares.

(d) In all cases, at least 10 days' notice of the date for the annual meeting shall be given by first-class mail to the shareholders.

(e) Any newly created directorship shall be approved and elected by the shareholders in the manner provided in the general corporation code. A special meeting of the shareholders may be convened at any time for such purpose.

(f) Any vacancy in the board of directors may be filled by the board of directors in the manner provided in the general corporation code.

(g) Any director of any bank or trust company who becomes indebted to such bank or trust company on any judgment or whose indebtedness is charged off or forgiven shall forfeit such person's position as director.

(h) Within 15 days after the annual meeting the president or cashier of every bank and every trust company shall submit to the commissioner a certified list of stockholders and the number of shares owned by each. This list of stockholders shall be kept and maintained in the bank's or trust company's main office and shall be subject to inspection by all stockholders during the business hours of the bank or trust company. The commissioner may require the list to be filed using an electronic means.

(i) Each director shall take and subscribe an oath to administer the affairs of such bank or trust company diligently and honestly and to not knowingly or willfully permit any of the laws relating to banks or trust companies to be violated. A copy of each oath shall be retained by the bank or trust company in the bank's or trust company's records for review by the commissioner's staff during the next examination. Each bank and trust company shall file an oath with the commissioner within 15 days of the election of any officer or director. The commissioner may require the oath to be filed using an electronic means.

(j) Each bank and trust company shall notify the commissioner of any newly appointed chief executive officer, president or directors, prior to the commencement of any such individual's duties, including in such bank's or trust company's report a statement of the past and current business and professional affiliations of the new chief executive officer, president or directors. Each bank and trust company shall notify the commissioner of any chief executive officer, president or director that is voluntarily or involuntarily relieved from the position duties within five business days.

*History:* L. 1947, ch. 102, § 43; L. 1957, ch. 73, § 1; L. 1959, ch. 59, § 1; L. 1975, ch. 44, § 19; L. 1976, ch. 57, § 1; L. 1983, ch. 46, § 3; L. 1989, ch. 48, § 27; L. 1997, ch. 59, § 1; L. 2000, ch. 106, § 4; L. 2002, ch. 7, § 1; L. 2015, ch. 38, § 52; L. 2016, ch. 54, § 26; L. 2017, ch. 52, § 4; 2025 SB 139; July 1.

**K.S.A. 9-1115. Officers of bank or trust company; election; term; bond; forfeiture of office.**

(a) The board of directors may elect a chairperson and shall elect a president from its members and shall elect one or more vice-presidents, a secretary and a cashier. The office of president and cashier shall not be filled by the same person. Such officers shall hold their offices for a term of not to exceed one year and until their successors are elected and qualified.

(b) The board of directors shall require all officers and employees having the care or handling of the funds of the bank or trust company to give a good and sufficient bond to be executed by an approved corporate surety authorized to do business in this state. The amount and form of the bond shall be approved by the board of directors of the bank or trust company. The costs of such bonds shall be paid by the bank or trust company. Proof of current bond coverage shall be provided to the commissioner.

(c) Any officer of any bank or trust company who shall become indebted to such bank or trust company on any judgment or whose indebtedness is charged off or forgiven shall forfeit the office and the board of directors shall fill the vacancy.

*History:* L. 1947, ch. 102, § 44; L. 1961, ch. 64, § 1; L. 1973, ch. 47, § 1; L. 1989, ch. 48, § 28; L. 1992, ch. 33, § 1; L. 1996, ch. 31, § 1; July 1.

**K.S.A. 9-1116. Meetings of board; examination of records, funds and securities; minutes.**

(a) The board of directors shall hold at least four regular meetings each year, at least one of which shall be held during each calendar quarter. Minutes shall be made of each directors' meeting of a bank or trust company and shall show any action taken by the directors.

(b) In addition to other actions the board may take, the board shall take the following actions and note the same in the minutes:

(1) Election of all officers, showing their titles and salaries;

(2) approval of all regular employee compensation;

(3) prior approval of all bonuses to elected officers and employees, if provided;

(4) approval of all loans, including overdrafts. The board may establish a committee with authority to approve loans. The board shall approve a report from the committee summarizing all loans made since the board's last meeting;

(5) review and approval of the directors' examination or audit required under K.S.A. 9-1116, and amendments thereto;

(6) annual approval of all bank policies;

(7) review of all state and federal regulatory examination reports received since the board's last meeting;

(8) annual approval of fidelity bond and bank casualty insurance;

(9) approval of bank income and expenses and securities transactions;

(10) review and ratification of any committee reports; and

(11) approval of dividends and a review that the dividends are in compliance with K.S.A. 9-910, and amendments thereto.

(c) In addition, the board of directors or an auditor selected by the board shall make a thorough examination of the books, records, funds and securities held by the bank or trust company at each of the quarterly meetings and the result of such examination shall be recorded in detail. If the board selects an auditor, the auditor's findings shall be reported directly to the board. In lieu of the required four quarterly examinations, the board of directors may accept one annual audit by a certified public accountant or an independent auditor approved by the commissioner.

*History:* L. 1947, ch. 102, § 45; L. 1967, ch. 71, § 1; L. 1970, ch. 62, § 1; L. 1975, ch. 44, § 20; L. 1983, ch. 46, § 4; L. 1989, ch. 48, § 29; L. 2015, ch. 38, § 53; July 1.

**K.S.A. 9-1119. Certified checks, drafts or orders.**

No officer or employee of any bank shall certify any check, draft or order drawn upon the bank unless the maker or drawer of the instrument has moneys or funds equal to the amount of the check, draft or order on deposit with such bank at the time the check, draft or order is certified. Any check, draft or order so certified by any duly authorized officer or employee of any bank shall be shown immediately upon the books of the bank.

*History:* L. 1947, ch. 102, § 48; L. 1989, ch. 48, § 32; L. 2015, ch. 38, § 54; July 1.

*Revisor's Note:* Similar provisions and penalties, see 9-2008.

**K.S.A. 9-1121. Reproduction of records and papers; evidence.**

Any bank or trust company or savings and loan associations may cause any or all records, files, instruments, documents, or papers of any kind at any time in its custody, possession, or files to be reproduced by a nonerasable optical image reproduction provided that additions, deletions or changes to the original document are not permitted by the technology, or a photostatic, microfilm, microcard, miniature photographic or other photographic process. Any reproduction so made shall have the same force and effect as the original thereof, and shall be admitted in evidence before any court or governmental commission, bureau, agency, or department equally with the original, and without the necessity of proving inability to produce the original thereof.

*History:* L. 1951, ch. 124, § 1; L. 1995, ch. 20, § 1; July 1.

**K.S.A. 9-1122. Closing of banks; business hours; emergencies.**

(a) As used in this section:

(1) "Officers" means the person or persons designated by the board of directors of a bank or trust company to act for the bank or trust company in carrying out the provisions of this act or, in the absence of any such designation or of the officer or officers so designated, the president or any other officer currently in charge of the bank or trust company;

(2) "office" means any place at which a bank transacts business; and

(3) "emergency" means any condition or occurrence which may interfere physically with the conduct of normal business operations at the offices of a bank or trust company or which poses an imminent or existing threat to the safety or security of persons or property, or both. An emergency may arise as a result of and any one or more of the following, but is not limited to, fire, flood, earthquake, hurricane, tornado, wind, rain

or snow storm, labor strike by bank or trust company employees, power failure, transportation failure, interruption of communications facilities, shortage of fuel, housing, food, transportation or labor, robbery or attempted robbery, actual or threatened enemy attack, epidemic or other catastrophe, riot, civil commotion and other acts of lawlessness or violence, actual or threatened.

(b) A bank or trust company may remain closed on any one business day of every week or may make a permanent change in the bank's or trust company's hours of business. The bank or trust company shall post the resolution in a conspicuous place at the main office and all branch locations of the bank or trust company at least 15 days in advance of any closing or change in business hours. If the business day designated in any resolution regarding closing is a legal public holiday, the bank or trust company may close on the business day preceding or following the legal public holiday.

(c) The officers of a bank or trust company may close the bank's or trust company's offices on any day or days designated by proclamation of the president of the United States or the governor or legislature of this state, as a day or days of mourning, rejoicing or other special observance and on such other day or days of local or special observance in the reasonable and proper exercise of their discretion the officers feel the bank or trust company should observe. If the bank or trust company is closed pursuant to this subsection, the bank or trust company shall give reasonable notice of the closing by posting a notice in a conspicuous place at the main office and all branch locations of the bank or trust company and through any other means the bank or trust company deems appropriate, including publication in a newspaper of general circulation in the community, if time allows.

(d) Whenever the officers of a bank or trust company are of the opinion that an emergency exists, or is impending, which affects, or may affect, a bank's or trust company's offices, the officers shall have the authority, in the reasonable and proper exercise of the officers' discretion, to determine not to open such offices on any business or banking day or, if having opened, to close such offices during the continuation of such emergency. The officers shall notify the commissioner of the emergency, the closing, the duration and the subsequent reopening within 48 hours of any such event, if practical. In no case shall such offices remain closed for more than 48 consecutive hours, excluding other legal holidays, without requesting and obtaining the approval of the commissioner.

(e) Every day on which any bank or trust company shall remain closed pursuant to this section shall be deemed a holiday for all of the purposes of chapter 84 of the Kansas Statutes Annotated, and amendments thereto, and with respect to any bank or trust company business of any character. No bank or trust company shall be required to permit access to the bank's or trust company's safe, deposit vault or vaults on any such day. Where the terms of a contract requires the payment of money or the performance of a condition on any such day by, through, with or at any bank or trust company, then the payment may be made or condition performed on the next business day with the same force and effect as if made or performed in accordance with the terms of the contract. No liability or loss of rights of any kind shall result from the delay.

(f) The posting of the notice provided for in this section shall be notice to everyone of the closing or change in hours of the bank or trust company, and thereafter no liability shall be incurred by the bank or trust company by reason of closing or changing the bank hours pursuant to this section.

(g) The provisions of this section shall be construed and applied as being in addition to, and not in substitution for, or limitation of, any other law of this state or of the United States, authorizing the closing of a bank or trust company or excusing the delay by a bank or trust company in the performance of the bank's or trust company's duties and obligations because of emergencies or conditions beyond the bank's or trust company's control or otherwise.

*History:* L. 1951, ch. 125, § 1; L. 1971, ch. 33, § 1; L. 1996, ch. 175, § 13; L. 2015, ch. 38, § 55; L. 2016, ch. 54, § 27; July 1.

**K.S.A. 9-1123. Bank service corporations; definitions.**

For the purposes of K.S.A. 9-1124 through 9-1127c, and amendments thereto:

(a) The term "bank service company" means a corporation or limited liability company organized to perform services authorized by this act, all of the capital stock of which is owned by one or more state or national banks at least one of which is a state bank subject to examination by the bank commissioner.

(b) The term "invest" includes any advance of funds to a bank service company, whether by the purchase of stock, the making of a loan or otherwise, except a payment for rent earned, goods sold and delivered or services rendered prior to the making of such payment.

(c) The term "depository institution" means a state or national bank, savings and loan association, savings bank or credit union.

*History:* L. 1963, ch. 64, § 1; L. 1984, ch. 48, § 10; L. 1989, ch. 48, § 33; L. 2015, ch. 38, § 56; July 1.

**K.S.A. 9-1124. Same; investment by banks; limitations.**

No limitation or prohibition otherwise imposed by any provision of state law exclusively relating to banks shall prevent any state bank or banks from investing not more than 10% of the paid-in and unimpaired capital and unimpaired surplus in a bank service company. No bank shall invest more than 5% of the bank's total assets in bank service companies.

*History:* L. 1963, ch. 64, § 2; L. 1984, ch. 48, § 11; L. 2015, ch. 38, § 57; L. 2016, ch. 54, § 28; July 1.

**K.S.A. 9-1125. Same; unreasonable discrimination in providing services prohibited; exceptions.**

No bank service company shall unreasonably discriminate in the provision of any services authorized under K.S.A. 9-1124 through 9-1127c, and amendments thereto, to any depository institution that does not own stock in the service company on the basis of the fact that the nonstockholding institution is in competition with an institution that owns stock in the bank service company, except:

(a) It shall not be considered unreasonable discrimination for a bank service company to provide services to a nonstockholding institution only at a price that fully reflects all of the costs of offering those services, including the cost of capital and a reasonable return thereon; and

(b) a bank service company may refuse to provide services to a nonstockholding institution if comparable services are available from another source at competitive overall costs or if the providing of services would be beyond the practical capacity of the service company. In any action or proceeding to enforce the duty imposed by this section, or for damages for the breach thereof, the burden shall be upon the bank service company to show such availability or practical capacity.

*History:* L. 1963, ch. 64, § 3; L. 1984, ch. 48, § 12; L. 2015, ch. 38, § 58; July 1.

**K.S.A. 9-1127a. Same; services which may be performed for depository institutions.**

Without regard to the provisions of K.S.A. 9-1127b and 9-1127c, and amendments thereto, a state bank may invest in a bank service company that performs, and a bank service company may perform, the following services only for depository institutions:

(a) Check and deposit sorting and posting, computation and posting of interest and other credits and charges;

(b) preparation and mailing of checks, statements, notices and similar items; or

(c) any other clerical, bookkeeping, accounting, statistical or similar functions performed for a depository institution.

*History:* L. 1984, ch. 48, § 6; L. 2015, ch. 38, § 59; July 1.

**K.S.A. 9-1127b. Same; services which may be provided by corporations; restrictions.**

(a) A bank service company may provide to any person any service authorized by this section, except that a bank service company shall not take deposits.

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

(c) A bank service company 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 company 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 company that has both national bank and state bank shareholders shall perform only those services that may lawfully be performed by both the bank service company's national bank shareholder or shareholders under federal law and the bank service company's 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 the bank service company's 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 company 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.

*History:* L. 1984, ch. 48, § 7; L. 2001, ch. 87, § 9; L. 2015, ch. 38, § 60; July 1.

**K.S.A. 9-1127c. Same; investments in corporations performing certain services under 9-1127b; approval required.**

(a) No state bank shall invest in the capital stock of a bank service company that performs any service under K.S.A. 9-1127b(c), (d) or (e), and amendments thereto, without the prior approval of the commissioner.

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

(c) In determining whether to approve or deny any application for prior approval under K.S.A. 9-1124 through 9-1127c, and amendments thereto, the commissioner is authorized to consider the financial and managerial resources and future prospects of the bank or banks and bank service company involved, including the financial capability of the bank to make a proposed investment under this act, and possible adverse affects [effects] such as undue concentration of resources, unfair or decreased competition, conflicts of interest or unsafe or unsound banking practices.

(d) In the event the commissioner fails to act on any application under this section within 90 days of the submission of a complete application, the application shall be deemed approved.

*History:* L. 1984, ch. 48, § 8; L. 2001, ch. 87, § 10; L. 2015, ch. 38, § 61; L. 2016, ch. 54, § 29; July 1.

**K.S.A. 9-1127d. Same; services performed for bank or subsidiary or affiliate; regulation and examination by commissioner; rules and regulations.**

(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, with the approval of the state banking board, is authorized to adopt such rules and regulations as may be necessary to administer and carry out the purpose of this act and to prevent evasions thereof.

*History:* L. 1984, ch. 48, § 9; L. 2001, ch. 87, § 11; July 1.

**K.S.A. 9-1127e. Same; investments by savings and loan associations and savings banks.**

(a) No savings and loan association or savings bank may make any investment under this section if the association's aggregate outstanding investment in a service corporation would exceed 3% of the association's assets. Not less than 1/2 of the investment permitted under this section that exceeds 1% of the association's assets shall be used primarily for community, inner city, and community-development purposes.

(b) This section shall be a part of and supplemental to the state banking code.

*History:* L. 2018, ch. 75, § 2; July 1.

**K.S.A. 9-1127f. Same; new activities with savings and loan associations; prior approval required.**

(a) A savings and loan association shall apply to the commissioner for approval at least 30 days prior to acquiring, establishing or commencing new activity with an existing service corporation and shall not engage in activity with the service corporation without the commissioner's approval. The application shall include:

(1) A complete description of the saving [savings] and loan association's investment in the service corporation;

(2) the proposed activities of the service corporation;

(3) the organizational structure and management of the service corporation;

(4) the relationship between the savings and loan association and the service corporation; and

(5) any other information that the commissioner deems necessary to describe the proposal.

(b) A service corporation shall:

(1) Be operated in a manner that demonstrates to the public that it maintains a separate corporate identity from the applicant; and

(2) not commingle business transactions, accounts and records with a savings and loan association.

(c) In considering an application, the commissioner may:

(1) Limit a savings and loan association's investment in a service corporation; or

(2) refuse to permit any activity of a service corporation for supervisory, legal or safety and soundness reasons.

(d) This section shall be a part of and supplemental to the state banking code.

*History:* L. 2018, ch. 75, § 3; July 1.

**K.S.A. 9-1127g. Same; permitted activities.**

(a) A service corporation may engage in any activity that a savings and loan association may conduct directly.

(b) A service corporation shall be subject to the commissioner's supervision as the savings and loan association would be if it had conducted the activity itself.

(c) If a service corporation fails to meet any of the requirements of this section, the savings and loan association shall notify the commissioner. If the service corporation is unable to comply with the requirements of this section within 90 days of its initial failure to meet such requirements, the savings and loan association shall dispose of its investment in the service corporation.

(d) After a savings and loan association has received approval from the commissioner, a service corporation may engage in the following:

(1) Business activities, when such activities are limited to financial documents, financial clients or are generally financially related to:

(A) Accounting or internal or other auditing;

(B) advertising, market research and other marketing;

(C) clerical;

(D) consulting;

(E) courier;

(F) data processing;

(G) data storage facilities operation and related services;

(H) personnel benefit program development or administration;

(I) printing and selling forms that require magnetic ink character recognition (MICR) encoding;

(J) purchasing and distribution of office supplies, furniture and equipment;

(K) relocation of personnel;

(L) research studies and surveys;

(M) software development and systems integration; and

(N) remote service unit operation, leasing, ownership or establishment;

(2) credit-related activities:

(A) Abstracting;

(B) acquiring and leasing personal property;

(C) appraising;

(D) collections;

(E) credit analysis;

(F) check or credit card guaranty and verification;

(G) acting as an escrow agent or trustee, under deeds of trust, including executing and delivery of conveyances, reconveyances and transfers of title; and

(H) loan inspection;

(3) consumer services activities:

(A) Financial advice or consulting;

(B) foreign currency exchange;

(C) home ownership counseling;

(D) income tax return preparation;

(E) providing postal services;

(F) sales of stored value instruments;

(G) welfare benefit distribution;

(H) check printing and related services; and

(I) remote service unit operation, leasing, ownership or establishment;

(4) real estate-related service activities:

(A) Acquiring real estate for:

(i) Prompt development or subdivision;

(ii) construction of improvements;

(iii) resale or leasing to others for such construction of improvements; or

(iv) use as manufactured home sites, in accordance with a prudent program of property development;

(B) acquiring improved real estate or manufactured homes to be held for:

(i) Rental or resale;

(ii) remodeling, renovating or demolishing and rebuilding for resale or rental; or

(iii) offices and related facilities of a stockholder of the service corporation;

(C) maintaining and managing real estate; and

(D) real estate brokerage for property owned by a savings and loan association or savings bank that owns capital stock of the service corporation or in which the service corporation otherwise invests;

(5) securities, liquidity management and coin purchase activities:

(A) Execution of transactions in securities on an agency or riskless principal basis solely upon the order and for the account of customers or the provision of investment advice. The service corporation must register with the securities and exchange commission and office of the securities commissioner, as required by applicable state and federal law and rules and regulations;

(B) liquidity management;

(C) issuing notes, bonds, debentures or other obligations of securities; and

(D) purchase or sale of coins issued by the United States treasury;

(6) investments in:

(A) Tax-exempt bonds used to finance residential real property for family units;

(B) tax-exempt obligations of public housing agencies used to finance housing projects with rental assistance subsidies;

(C) small business investment companies and new market venture capital companies licensed by the United States small business administration;

(D) rural business investment companies licensed by the U.S. department of agriculture; and

(E) savings accounts of an investing savings and loan association;

(7) community and economic development or public welfare investment activities that are permissible under federal law;

(8) establishing or acquiring a corporation that is recognized by the internal revenue service as organized for charitable purposes under 26 U.S.C. § 501(c)(3) of the internal revenue code and making a reasonable contribution to capitalize it, provided that the corporation engages exclusively in activities designed to promote the well-being of communities in which the owners of the service corporation operate;

(9) acting as an agent for or engaging in activities conducted on behalf of a customer, other than on an as-principal basis; and

(10) any activity reasonably incident to those listed in this subsection if the service corporation engages in those activities.

(e) This section shall be a part of and supplemental to the state banking code.

*History:* L. 2018, ch. 75, § 4; July 1.

**K.S.A. 9-1127h. Savings and loan service corporations; definitions.**

As used in K.S.A. 9-1127e through 9-1127h, and amendments thereto:

(a) "Invest" means any investment in the capital stock, obligations or other securities, and any advance of funds to a service corporation, including the purchase of stock, the making of a loan or other such advance of funds. "Invest" does not include a payment for rent earned, goods sold and delivered or services rendered prior to the making of such payment.

(b) "Savings and loan service corporation" or "service corporation" means a corporation or limited liability company organized under the laws of Kansas. The entirety of the capital stock of a savings and loan service corporation shall be available for purchase only by Kansas-chartered savings and loan associations, Kansas-chartered savings banks and federally chartered savings and loan associations with home offices in Kansas. Kansas-chartered and federally chartered savings and loan associations and Kansas-chartered and federally chartered savings banks investing in a savings and loan service corporation shall designate the savings and loan service corporation as a service corporation.

(c) This section shall be a part of and supplemental to the state banking code.

*History:* L. 2018, ch. 75, § 5; July 1.

**K.S.A. 9-1128. Deposits by banks or trust companies acting as fiduciaries or custodians for fiduciaries of certain securities guaranteed by the United States or agencies thereof; rules and regulations; records of ownership; certifications of deposit.**

Notwithstanding any other provision of law, any bank or trust company when acting as fiduciary, and any bank or trust company when holding securities as custodian for a fiduciary, is authorized to deposit, or arrange for the deposit, with the federal reserve bank in its district of any securities the principal and interest of which the United States or any department, agency or instrumentality thereof has agreed to pay, or has guaranteed payment, to be credited to one or more accounts on the books of said federal reserve bank in the name of such bank or trust company, to be designated fiduciary or safekeeping accounts, to which account other similar securities may be credited. A bank or trust company so depositing securities with a federal reserve bank shall be subject to such rules and regulations with respect to the making and maintenance of such deposit as, in the case of a state bank incorporated under the laws of this state, the state bank commissioner, and, in the case of national banking associations, the comptroller of the currency, may from time to time adopt and promulgate. Any such rules and regulations of the state bank commissioner shall be adopted and promulgated in the manner provided by K.S.A. 9-1713, and amendments thereto. The records of such bank or trust company shall at all times show the ownership of the securities held in such account. Ownership of, and other interests in, the securities credited to such account may be transferred by entries on the books of said federal reserve bank without physical delivery of any securities. A bank or trust company acting as custodian for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities so deposited by such bank or trust company with such federal reserve bank for the account of such fiduciary. A fiduciary shall, on demand by any party to its accounting or on demand by the attorney for such party, certify in writing to such party the securities deposited by such fiduciary with such federal reserve bank for its account as such fiduciary.

*History:* L. 1974, ch. 43, § 1; July 1.

**K.S.A. 9-1129. Same; application of act.**

This act shall apply to all banks and trust companies acting as fiduciaries, and as custodians for fiduciaries, on the effective date of this act or which thereafter may so act regardless of the date of the instrument or court order by which they are appointed.

*History:* L. 1974, ch. 43, § 2; July 1.

**K.S.A. 9-1130. Retention of books and records; rules and regulations; destruction; photographic reproduction; electronic recordation; confidentiality of records unaffected.**

(a) Every bank and trust company shall retain such bank's and trust company's business records for such periods as are or may be prescribed by or in accordance with the provisions of this section.

(b) Each bank and trust company shall retain permanently such bank's or trust company's:

(1) Minute books of the stockholders and directors;

(2) capital stock ledger and capital stock certificate ledger or stubs;

(3) general ledger or the record kept in lieu thereof;

(4) daily statements of condition; and

(5) all records which the commissioner shall, in accordance with the provisions of this section, require to be retained permanently.

(c) All other records of a bank or trust company shall be retained for such periods as the commissioner shall prescribe, in accordance with the provisions of this section.

(d) The commissioner shall, in accordance with the provisions of K.S.A. 9-1713, and amendments thereto, adopt and promulgate rules and regulations classifying all records kept by banks and trust companies, prescribing the period for which records of each class shall be retained, and requiring to be kept such record of destruction of records as the commissioner deems advisable. Such periods may be permanent or for a term of years. Prior to the adoption, amendment or revocation of such rules and regulations the commissioner shall consider:

(1) Actions and administrative proceedings in which the production of bank or trust company records might be necessary or desirable;

(2) state and federal statutes of limitation applicable to such actions or proceedings;

(3) the availability of information contained in bank and trust company records from other sources; and

(4) such other matters as the commissioner shall deem pertinent to the interest of customers and shareholders of banks and trust companies and of the people of this state having such records available.

(e) Any bank or trust company may destroy any record which has been retained for the period prescribed, in accordance with the terms of this section for retention of records of such

bank's or trust company's class, and shall, after destroying such record, thereafter be under no duty to produce such record.

(f) In lieu of retention of the original records with the exception of the document or documents creating the fiduciary relationship, any bank or trust company may cause any, or all, of such bank's or trust company's records, and records at any time in the custody of such bank or trust company, including those held by it as a fiduciary, to be photographed or otherwise reproduced to permanent form. Any such photograph or reproduction shall have the same force and effect as the original thereof and be admitted in evidence equally with the original.

(g) Any bank or trust company may cause any, or all, transactions, information and data occurring in the regular course of such bank's or trust company's operations to be recorded and maintained by electronic means. When the electronic records of such transactions, information and data are converted to writing, such writings shall constitute the original records of such transactions, information and data and shall have the force and effect thereof.

(h) To the extent that the provisions of this section are not in contravention of any statute of the United States or regulations promulgated thereunder, the provisions of this section shall apply to all banks and trust companies doing business in this state.

(i) Nothing in this section shall be construed to affect any duty of a bank or trust company to preserve the confidentiality of their records.

*History:* L. 1975, ch. 44, § 3; L. 2015, ch. 38, § 62; L. 2016, ch. 54, § 30; July 1.

**K.S.A. 9-1131. Repurchase agreements with pooled money investment board.**

Each state bank, national bank and trust company located and doing business within the state of Kansas is hereby authorized to enter into repurchase agreements with the pooled money investment board under any statute authorizing the board to enter into such agreements.

*History:* L. 1982, ch. 339, § 1; April 29.

**K.S.A. 9-1132. Personal liability of officers and directors, exceptions.**

Except for persons who are executive officers, an officer or director of a bank or national banking association shall have no personal liability to the bank, association or the bank's or association's stockholders for monetary damages for breach of duty as an officer or director, except that such liability shall not be eliminated for:

(a) Any breach of the officer's or director's duty of loyalty to the bank, association or the bank's or association's stockholders;

(b) acts or omissions which constitute willful or gross and wanton negligent breach of the officer's or director's duty of care;

(c) acts in violation of K.S.A. 9-910, 9-911 or 9-912, and amendments thereto; or

(d) any transaction from which the officer or director derived an improper personal benefit.

*History:* L. 1993, ch. 288, § 1; L. 2015, ch. 38, § 63; July 1.

**K.S.A. 9-1133. Liability of officers and directors; actions; certain provisions applicable.**

The provisions of K.S.A. 17-2268 and 17-5831, and amendments thereto, apply to an action brought against a director or officer of an insured depository institution, regardless of whether the action was filed before, on, or after May 20, 1993, unless the action was finally adjudicated before May 20, 1993. The provisions of this section shall not apply to executive officers as defined in K.S.A. 9-701 and 17-2268 and 17-5831, and amendments thereto.

*History:* L. 1994, ch. 334, § 1; L. 2015, ch. 38, § 64; July 1.

**K.S.A. 9-1134. Liability of officers and directors; severability.**

If any provision of K.S.A. 9-1132 or 9-1133, or 17-2268 and 17-5831 and amendments thereto or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of such statutes which can be given effect without the invalid provision or application, and to this end the provisions of such statutes are declared to be severable.

*History:* L. 1994, ch. 334, § 2; May 19.

**K.S.A. 9-1136. Powers; authority to lease certain personal property; definitions.**

In addition to powers and limitations conferred or imposed on any bank by K.S.A. 9-1101 and amendments thereto, any bank is hereby 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 or convenient to do what is authorized by this section:

(a) (1) A bank may become the legal or beneficial owner of tangible personal property for the purpose of leasing such property;

(2) to obtain an assignment of a lessor's interest in a lease of such property; or

(3) to incur obligations incidental to its position as the legal or beneficial owner and lessor of the leased property;

so long as each lease entered into by the bank is a net, full-payout lease

(b) A bank may acquire specific property to be leased only after the bank has entered into either:

(1) A legally binding written agreement to lease the property on terms which comply with this section; or

(2) a legally binding written agreement which indemnifies the bank against loss in connection with its acquisition of the property.

(c) In the event of the lessee's default, early termination of a lease or at the expiration of the lease, the bank's interest in the property shall be liquidated or re-leased in accordance with this section as soon as practicable, but in no case shall the off-lease property be carried on the bank's books for a period exceeding one year.

(d) Each lease financing transaction entered into by the bank pursuant to this section shall be considered a loan for the purposes of applying all legal lending limitations and prior approval requirements contained in K.S.A. 9-1104 and amendments thereto.

(e) For purposes of this section:

(1) (A) "Net lease" means a lease under which the bank will not, directly or indirectly, provide or be obligated to provide for:

(i) The servicing, repair or maintenance of the leased property during the lease term;

(ii) the purchasing of parts and accessories for the leased property, except that improvements and additions to the leased property may be leased to the lessee upon such lessee's request in accordance with the full-payout requirements of this section;

(iii) the loan of replacement or substitute property while the leased property is being serviced;

(iv) the purchasing of insurance for the lessee, except where the lessee has failed to discharge a contractual obligation to purchase or maintain insurance; or

(v) the renewal of any license, registration or filing for the property unless such action by the bank is necessary to protect the bank's interest as an owner or financier of the property;

(B) if, in good faith, a bank believes there has been an unanticipated change in conditions which threaten its financial position by significantly increasing its exposure to loss, the provisions of (e)(1)(A) shall not prevent the bank:

(i) As the owner and lessor under a net, full-payout lease, from taking reasonable and appropriate action to salvage or protect the value of the property of its interest arising under the lease;

(ii) as the assignee of a lessor's interest in a lease, from becoming the owner and lessor of the leased property pursuant to its contractual right, or from taking any reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease; or

(iii) from including any provisions in a lease, or from making any additional agreements, to protect its financial position or investment in the circumstances set forth in provisions (i) or (ii).

(2) (A) "Full-payout lease" means a lease from which the lessor can reasonably expect to realize a return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease, from rentals, estimated tax benefits and the estimated residual value of the property at the expiration of the initial term of the lease.

(B) Except as provided in subsection (f), the estimated residual value of the property shall not exceed 25% of the original cost of the property to the lessor unless the estimated residual value is guaranteed by a manufacturer, a lessee or a third party not an affiliate of the bank and the bank properly documents that the guarantor has the resources to meet the guarantee. In all cases both the estimated residual value of the property and that portion of the estimated residual value relied upon by the lessor to satisfy the requirements of a full-payout lease must be reasonable in light of the nature of the leased property and all relevant circumstances so that realization of the bank's full investment plus the cost of financing the property depends primarily on the creditworthiness of the lessee and of any guarantor of the residual value, and not on the residual market value of the leased property.

(f) Notwithstanding the limit on residual value contained in (e)(2)(B), the bank may enter into lease financing transactions in which the residual value relied upon for realization of a return of its full investment plus costs of financing exceeds 25% of the original cost of the property provided:

(1) The lease financing transaction conforms with all other requirements of this section;

(2) the lease financing transaction has a term in excess of 90 days;

(3) the records relating to lease financing transactions entered into pursuant to this provision are clearly segregated and specifically identified to distinguish them from the records relating to lease financing transactions entered into pursuant to the other provisions; and

(4) the aggregate book value of all tangible personal property held for lease pursuant to this subsection does not exceed 10% of the consolidated assets of the bank.

(g) This section shall not apply to any leases executed by a bank prior to the effective date of this act. Any lease which was entered into in good faith prior to the effective date of this act that does not comply with the provisions of this section may be renewed only if there is a binding agreement in the expiring lease which requires the bank to renew the lease at the lessee's option, and the bank cannot otherwise reasonably or properly avoid its commitment to renew. Except for those leases renewed pursuant to such a binding agreement, any prior lease renewed after the effective date of this act shall be included for purposes of determining compliance with the legal lending limitations contained in K.S.A. 9-1104 and amendments thereto and subsection (d).

*History:* L. 1995, ch. 19, § 3; March 9.

**K.S.A. 9-1137. Compliance review committees; functions; confidentiality of certain documents; definitions; exceptions.**

(a) For the purposes of this section:

(1) "Bank" means a state chartered or federally chartered bank, trust company or bank holding company as defined in K.S.A. 9-519, and amendments thereto, located in this state;

(2) "compliance review committee" means:

(A) An audit, loan review or compliance committee appointed by the board of directors of a bank that functions to evaluate and seeks to improve loan underwriting standards, asset quality, financial reporting to federal or state regulatory agencies or compliance with federal or state statutory or regulatory requirements; or

(B) any other person to the extent the person acts in an investigatory capacity at the direction of a compliance review committee;

(3) "compliance review documents" means documents prepared for or created by a compliance review committee;

(4) "loan review committee" means a person or group of persons who, on behalf of a bank, reviews loans held by the institution for the purpose of assessing the credit quality of the loans, compliance with the institution's loan policies and compliance with applicable laws and regulations; or

(5) "person" means an individual, group of individuals, board, committee, partnership, firm, association, corporation or other entity.

(b) Except as provided in subsection (c):

(1) Compliance review documents are confidential and are not discoverable or admissible in evidence in any civil action arising out of matters evaluated by the compliance review committee; and

(2) compliance review documents delivered to a federal or state governmental agency remain confidential and are not discoverable or admissible in evidence in any civil action arising out of matters evaluated by the compliance review committee.

(c) Subsection (b) does not apply to any information required by statute or rules and regulations to be maintained by or provided to a governmental agency while the information is in the possession of the governmental agency to the extent applicable law expressly authorizes disclosure of such information.

(d) This section may not be construed to limit the discovery or admissibility in any civil action of any documents that are not compliance review documents.

*History:* L. 1995, ch. 35, § 1; L. 2015, ch. 38, § 65; L. 2016, ch. 54, § 31; July 1.

**K.S.A. 9-1138. School savings deposit program; requirements; definitions.**

(a) As used in this section:

(1) "Accredited school" means any school operated by a public school district organized under the laws of this state and any nonpublic school accredited by the state board of education.

(2) "Board" means the board of education of a school district and the governing authority of an accredited nonpublic school.

(b) In order to encourage savings among school children, a bank may enter into a written agreement with a board of an accredited elementary or secondary school to establish a school savings deposit program. Such program shall be limited to the opening of accounts and the periodic collection, by bank employees or school personnel, of deposits from school children for deposit in such bank accounts.

(c) No such program shall be implemented until the executed agreement and any information deemed necessary has been submitted to the commissioner. If the commissioner determines the agreement and proposed program primarily promote educational objectives and the purpose of this section, the commissioner shall provide the bank with written approval to implement the program.

(d) Any bank participating in such school savings deposit program shall have the bank's main or branch office located in the same county as the participating school, or if no bank in the county wants to participate in such program, then banks in any contiguous county may participate.

*History:* L. 1997, ch. 180, § 9; L. 2015, ch. 38, § 66; July 1.

**K.S.A. 9-1140. Prohibiting branch banks in certain locations.**

(a) No bank shall establish or maintain a branch in this state on the premises or property of an affiliate if the affiliate engages in commercial activities.

(b) As used in this section:

(1) "Affiliate" means any company that controls, is controlled by, or is under common control with another company.

(2) "Bank" shall have the meaning stated in 12 U.S.C. § 1813(a)(1).

(3) "Branch" means any office, 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 appropriate federal or state supervisory agency.

(4) "Commercial activities" means activities in which a bank holding company, a financial holding company, a national bank or a national bank financial subsidiary may not engage under federal or state law.

(5) "Control" means the power directly or indirectly to direct the management or policies of a bank or to vote 25% or more of any class of voting shares of a bank.

*History:* L. 2007, ch. 78, § 2; L. 2015, ch. 38, § 67; July 1.

**K.S.A. 9-1141. Securing deposits for federally recognized Indian tribe.**

Banks are hereby authorized to give security for the safekeeping and prompt payment of funds deposited by any federally recognized Indian tribe.

*History:* L. 2015, ch. 38, § 13; July 1.

**K.S.A. 9-1142. Savings promotion; requirements; rules and regulations.**

(a) A bank, savings bank, savings and loan association or credit union may conduct a savings promotion in which promotion participants deposit money into a savings account or other savings program in order to obtain entries and participate in the promotion, provided that the bank, savings bank, savings and loan association or credit union:

(1) Conducts the promotion in a manner so as to ensure that each entry has an equal chance of winning the designated prize;

(2) fully discloses the terms and conditions of the promotion to each of its account holders;

(3) maintains records sufficient to facilitate an audit of the promotion;

(4) ensures that only account holders 18 years of age and older are permitted to participate in the promotion;

(5) does not require any consideration; and

(6) offers an interest rate and charges fees on any promotion-qualifying account that are approximately the same as those on a comparable account that does not qualify for the promotion.

(b) (1) The state bank commissioner is authorized to promulgate rules and regulations as necessary to effectuate the provisions of this section pertaining to banks, savings banks and savings and loan associations. Such rules and regulations shall be promulgated by July 1, 2017.

(2) The credit union administrator is authorized to promulgate rules and regulations as necessary to effectuate the provisions of this section pertaining to credit unions. Such rules and regulations shall be promulgated by July 1, 2017.

(3) The state bank commissioner and credit union administrator shall collaborate in order to promulgate rules and regulations affecting account holders that are consistent, other than the type of institution to which they apply.

*History:* L. 2016, ch. 54, § 65; July 1.

## Article 12 – BANKING CODE; TRANSACTIONS

### K.S.A. 9-1201. Application.

All of the provisions contained within article 12 of chapter 9 of the Kansas Statutes Annotated, and amendments thereto, shall extend and apply to any national or state chartered bank that has a main office or branch in this state.

*History:* L. 1947, ch. 102, § 50; L. 1975, ch. 44, § 22; L. 1989, ch. 48, § 34; L. 2015, ch. 38, § 68; July 1.

### K.S.A. 9-1204. Methods to withdraw deposits; deposits of minors; safe deposit box lease.

(a) Any person, regardless of age, may become a depositor in any bank and shall be subject to the same duties and liabilities respecting such person's deposits. Whenever a deposit is accepted by any bank in the name of any person, regardless of age, the deposit may be withdrawn by the depositor by any of the following methods:

(1) Check or other instrument in writing. The check or other instrument in writing constitutes a receipt or acquittance if the check or other instrument in writing is signed by the depositor and constitutes a valid release and discharge to the bank for all payments made; or

(2) electronic means through:

(A) Preauthorized direct withdrawal;

(B) an automatic teller machine;

(C) a debit card;

(D) a transfer by telephone;

(E) a network, including the internet; or

(F) any electronic terminal, computer, magnetic tape or other electronic means.

(b) Any bank that accepts deposits from minors 16 years of age or older in the custody of the secretary for children and families, a federally recognized Indian tribe in this state or the secretary of corrections shall not require a cosigner or the funds to be deposited with the consent of the custodian. Such minor shall be responsible for banking costs or penalties associated with such deposits. The secretary, or their designee, or any foster or biological parent shall not be responsible for banking costs or penalties associated with such deposits.

(c) Any person, regardless of age, individually or with others may enter into an agreement with a bank for the lease of a safe deposit box and shall be bound by the terms of such agreement.

(d) This section shall not be construed to affect the rights, liabilities or responsibilities of participants in an electronic fund transfer under the federal electronic fund transfer act, 15 U.S.C. § 1693 *et seq*., as in effect on July 1, 2024, and shall not affect the legal relationship between a minor and any person other than the bank.

*History:* L. 1947, ch. 102, § 53; L. 2015, ch. 38, § 69; L. 2024 ch. 64, § 61; July 1.

**K.S.A. 9-1205. Joint accounts.**

Deposits may be made in the names of two or more persons, including minors, and funds on deposit may be paid to any or all of the joint owners under the terms of the deposit contract. Payment to a joint owner in accordance with the terms of the deposit contract shall be valid and sufficient release and discharge to the bank for any payment so made.

*History:* L. 1947, ch. 102, § 54; L. 2015, ch. 38, § 70; July 1.

**K.S.A. 9-1206. Set off.**

Any bank shall have the right to set off any obligation or claim which it has, when the same is matured against any depositor.

*History:* L. 1947, ch. 102, § 55; June 30.

**K.S.A. 9-1207. Adverse claim to deposit.**

An adverse claim to a bank deposit does not need to be paid out by the bank, unless and until either the:

(a) Person making the claim supplies indemnity deemed adequate by the bank; or

(b) bank is served with process or order issued by a court of competent jurisdiction in an action in which the adverse claimant and the person or persons nominally entitled to the deposit are parties.

*History:* L. 1947, ch. 102, § 56; L. 1965, ch. 564, § 400; L. 2015, ch. 38, § 71; July 1.

**K.S.A. 9-1213. Payment of drafts of failed or closed banks.**

When any drawee bank shall be presented with a draft drawn on the drawee bank in the usual course of business by a drawer bank that has failed or been closed by operation of law or legal action, the drawee bank shall accept and pay such draft regardless of having received notice, constructive or otherwise, of the failure or closing of the drawer bank if the:

(a) Draft was issued prior to the failure or closing of the drawer bank;

(b) drawee bank has, on deposit to the credit of the failed or closed drawer bank, sufficient funds to pay the draft; and

(c) drawee bank has received proof that the draft represents payment of cash letters covering checks that had been charged to the individual accounts of the failed or closed drawer bank prior to the failure or closing of the drawer bank.

*History:* L. 1955, ch. 66, § 1; L. 2015, ch. 38, § 72; L. 2016, ch. 54, § 32; July 1.

**K.S.A. 9-1214. Payment of drafts of failed or closed banks; release from liability.**

Any drawee bank paying a draft under the circumstances set out in K.S.A. 9-1213, and amendments thereto, shall be released from any further liability thereon, and shall be fully protected and held harmless from any claim made by the receiver or other liquidating agent of the failed or closed drawer bank for sums representing payments made on the draft.

*History:* L. 1955, ch. 66, § 2; L. 2015, ch. 38, § 73; July 1.

**K.S.A. 9-1215. Payable on death accounts.**

(a) Subject to the provisions of this section, an individual owner of an account may enter into a written contract with any bank located in this state that provides that at the time of the owner's death, the balance of the owner's legal share of the account shall be paid to one or more beneficiaries. If a beneficiary has predeceased the owner, that beneficiary's share shall be divided equally among the remaining beneficiaries unless the contract provides otherwise.

(b) If any beneficiary is a minor at the time funds become payable to the beneficiary pursuant to this section, the bank shall pay out in accordance with K.S.A. 59-3053, and amendments thereto.

(c) During the owner's lifetime, the owner has the right to both withdraw funds on deposit in the account in the manner provided in the contract, in whole or in part, as though no beneficiary has been named, and to change the designation of beneficiary. No change in the

designation of the beneficiary shall be valid unless executed in the form and manner prescribed by the bank and delivered to the bank prior to the death of the owner.

(d) The interest of the beneficiary shall not vest until the death of the owner. Vesting of the beneficiary's interest is subject to the following if, prior to the owner's death or payment to the beneficiary, the bank has received written notice:

(1) From the department for children and families of a claim pursuant to K.S.A. 39-709, and amendments thereto, the balance of the owner's share shall be paid to the department for children and families to the extent of medical assistance expended on the deceased owner, with the beneficiary then receiving the balance of the owner's share, if any remains; or

(2) of the owner's surviving spouse's intent to claim an elective share under K.S.A. 59-6a214, and amendments thereto, the balance of the owner's share shall be paid to the court having jurisdiction as provided in K.S.A. 59-6a214, and amendments thereto, to the extent of the owner's surviving spouse's elective share, with the beneficiary then receiving the balance of the owner's share, if any remains.

(e) Transfers pursuant to this section shall not be considered testamentary or be invalidated due to nonconformity with the provisions of chapter 59 of the Kansas Statutes Annotated, and amendments thereto.

(f) Payment by the bank of the owner's deposit account pursuant to the provisions of this section shall release and discharge the bank from further liability for the payment.

(g) For the purposes of this section:

(1) The balance of the owner's deposit account or the balance of the owner's legal share of a deposit account shall be construed to not include any portion of the account which under the law of joint tenancy is the property of another joint tenant of the account upon the death of the owner; and

(2) where multiple owners exist, such owners will be presumed to own equal shares of the deposit account unless the deposit contract with the bank specifies a different percentage of ownership for the owners.

*History:* L. 1979, ch. 177, § 1; L. 1980, ch. 166, § 2; L. 1982, ch. 104, § 1; L. 1984, ch. 51, § 1; L. 1989, ch. 48, § 35; L. 1992, ch. 150, § 1; L. 2002, ch. 114, § 47; L. 2015, ch. 38, § 74; July 1.

*Revisor's Note:* Section was also amended by L. 2015, ch. 42, § 1, but that version was repealed by L. 2015, ch. 100, § 17.

## Article 13 – BANKING CODE; DEPOSIT INSURANCE AND BONDS

### K.S.A. 9-1301. Deposit insurance; surety bond.

Every bank operating under the provisions of the state banking code and authorized to receive deposits of money shall insure the deposits of each depositor with the federal deposit insurance corporation, or its successor. State banks may purchase surety bond coverage for the purpose of insuring deposits in excess of the federal deposit insurance corporation's coverage limit.

*History:* L. 1947, ch. 102, § 59; L. 1959, ch. 60, § 1; L. 1975, ch. 45, § 2; L. 1981, ch. 54, § 1; L. 1981, ch. 324, § 6; L. 1988, ch. 356, § 38; L. 1989, ch. 48, § 37; L. 2015, ch. 38, § 75; July 1.

### K.S.A. 9-1302. Subrogation upon payment by insurer of deposits.

When the federal deposit insurance corporation or its successor or other insurer insuring the deposits of any bank shall pay, or make available for payment, the insured deposit liabilities of any bank the insurance company shall be and become subrogated to the extent of its payments, by operation of law, to all rights of each owner of a claim for deposit against such closed bank to the extent now or hereafter necessary to enable the federal deposit insurance corporation, or its successor or such other insurer, under law to make insurance payments available to depositors of closed insured banks.

*History:* L. 1947, ch. 102, § 60; L. 1975, ch. 45, § 4; L. 1989, ch. 48, § 39; July 1.

### K.S.A. 9-1304. Closed banks may borrow from or sell to federal insurance corporation.

(a) Upon the approval of the commissioner, the receiver or liquidator or the board of directors of any bank which may be closed because of the bank's inability to meet the demands of its depositors may borrow from the federal deposit insurance corporation or its successor, and pledge any part or all of the bank's assets as security.

(b) The assets, or any portion thereof, of any bank which may close because of the bank's inability to meet the demands of its depositors may be sold to the federal deposit insurance corporation or its successor upon such terms and conditions as the commissioner shall approve. Nothing contained in this section shall limit the power of any bank, the commissioner or receiver or liquidator thereof to pledge or sell any assets in accordance with other provisions of the state banking code and existing laws.

*History:* L. 1947, ch. 102, § 62; L. 1989, ch. 48, § 40; L. 2015, ch. 38, § 76; L. 2016, ch. 54, § 33; July 1.

## Article 14 – BANKING CODE; DEPOSIT OF PUBLIC MONEYS

**K.S.A. 9-1401. Designation of depositories for public funds; duty of public officers; agreements.**

(a) The governing body of any municipal corporation or quasi-municipal corporation shall designate by official action recorded upon the governing body's minutes the banks, savings and loan associations and savings banks which shall serve as depositories of the governing body's funds and the officer and official having the custody of such funds shall not deposit such funds other than at such designated banks, savings and loan associations and savings banks. The banks, savings and loan associations and savings banks which have main or branch offices in the county or counties in which all or part of such municipal corporation or quasi-municipal corporation is located shall be designated as such official depositories if the municipal or quasi-municipal corporation can obtain satisfactory security therefor.

(b) Every officer or person depositing public funds shall deposit all such public funds coming into the officer's or person's possession in their name and official title as such officer. If the governing body of the municipal corporation or quasi-municipal corporation fails to designate an official depository or depositories, the officer thereof having custody of the governing body's funds shall deposit such funds with one or more banks, savings and loan associations or savings banks which have main or branch offices in the county or counties in which all or part of such municipal corporation or quasi-municipal corporation is located if satisfactory security can be obtained therefor. If the officer having custody is unable to obtain satisfactory security at a depository within the county or counties where the governing body is located, then the officer may deposit funds elsewhere. If the governing body's funds are deposited elsewhere, the officer shall serve notice in writing on the governing body showing the names and locations of the banks, savings and loan associations and savings banks where the funds are deposited, and upon so doing the officer having custody of the funds shall not be liable for the loss of any portion thereof except for official misconduct or for the misappropriation of such funds by such officer.

(c) If eligible banks, savings and loan associations or savings banks under subsections [subsection] (a) or (b) cannot or will not provide an acceptable bid, which shall include services, for the depositing of public funds under this section, then banks, savings and loan associations or savings banks which have main or branch offices in an adjoining county to the county in which all or part of such municipal or quasi-municipal corporation is located may receive deposits of such municipal corporation or quasi-municipal corporation, if such banks, savings and loan associations or savings banks have been designated as official depositories under subsection (a) and the municipal corporation or quasi-municipal corporation can obtain satisfactory security therefor.

(d) The depository bank, savings and loan association or savings bank and any agent, trustee, wholly owned subsidiary or affiliate having identical ownership granting a security interest shall enter into a written agreement with the municipal corporation or quasi-municipal corporation which so designates the bank as a depository for the municipal corporation or quasi-municipal corporation's public moneys.

(1) The agreement shall secure the public moneys of the municipal corporation or quasi-municipal corporation by granting a security interest in securities held by the depository bank, savings and loan association or savings bank and any agent, trustee, wholly owned subsidiary or affiliate having identical ownership pursuant to K.S.A. 9-1402, and amendments thereto.

(2) The depository bank, savings and loan association or savings bank and any agent, trustee, wholly owned subsidiary or affiliate having identical ownership shall perfect the security interest causing control to be given to the municipal corporation or quasi-municipal corporation in accordance with the Kansas uniform commercial code.

(3) The security agreement shall be in writing, executed by all parties thereto, maintained as part of the parties' official records, and except for the municipal corporations or quasi-municipal corporations, approved by the boards of directors or loan committees, which approvals shall be reflected in the minutes of the boards or committees.

*History:* L. 1947, ch. 102, § 63; L. 1957, ch. 74, § 2; L. 1967, ch. 447, § 30; L. 1972, ch. 35, § 1; L. 1982, ch. 52, § 1; L. 1983, ch. 47, § 2; L. 1986, ch. 76, § 1; L. 1989, ch. 48, § 41; L. 1997, ch. 180, § 3; L. 2006, ch. 57, § 1; L. 2015, ch. 38, § 77; L. 2016, ch. 54, § 34; July 1.

**K.S.A. 9-1402. Securing the deposits of public funds.**

(a) Before any deposit of public moneys or funds shall be made by any governmental unit of the state of Kansas with any bank, savings and loan association or savings bank, such governmental unit shall obtain security for such deposit in one of the following manners prescribed by this section..

(b) Such bank, savings and loan association or savings bank may give a corporate surety bond of some surety corporation authorized to do business in this state. Such bond shall be in an amount equal to the public moneys or funds on deposit at any given time less the amount of such public moneys or funds that is insured by the federal deposit insurance corporation or its successor and such bond shall be conditioned that such deposit shall be paid promptly on the order of the governmental unit making such deposits.

(c) Such bank, savings and loan association or savings bank may deposit, maintain, pledge, assign and grant a security interest in, or cause its agent, trustee, wholly owned subsidiary or affiliate having identical ownership to deposit, maintain, pledge, assign and grant a security interest in, for the benefit of the governing body of the governmental unit in the manner provided in this section, securities, security entitlements, financial assets and securities accounts owned by the depository institution directly or indirectly through the institution's agent or trustee holding securities on the institution's behalf, or owned by the depository institutions wholly owned subsidiary or by such affiliate, the market value of which is equal to 100% of the total deposits at any given time, and such securities, security entitlements, financial assets and securities accounts, may be accepted or rejected by the

governing body of the governmental unit and shall consist of the following and security entitlements thereto:

(1) Direct obligations of, or obligations that are insured as to principal and interest by, the United States of America or any agency thereof and obligations, including, but not limited to, letters of credit and securities of United States-sponsored corporations that under federal law may be accepted as security for public funds;

(2) bonds of any governmental unit of the state of Kansas that have been refunded in advance of the bonds' maturity and are fully secured as to payment of principal and interest thereon by deposit in trust, under escrow agreement with a bank, of direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America;

(3) bonds of the state of Kansas;

(4) general obligation bonds of any governmental unit of the state of Kansas;

(5) revenue bonds of any governmental unit of the state of Kansas if approved by the commissioner;

(6) temporary notes of any governmental unit of the state of Kansas that are general obligations of the governmental unit issuing such temporary notes;

(7) warrants of any governmental unit of the state of Kansas the issuance of which is authorized by the state board of tax appeals and that are payable from the proceeds of a mandatory tax levy;

(8) bonds of either a Kansas not-for-profit corporation or of a local housing authority that are rated at least Aa by Moody's investors service or AA by Standard & Poor's corp.;

(9) bonds issued pursuant to K.S.A. 12-1740 et seq., and amendments thereto, that are rated at least MIG-1 or Aa by Moody's investors service or AA by Standard & Poor's corp.;

(10) notes of a Kansas not-for-profit corporation that are issued to provide only the interim funds for a mortgage loan that is insured by the federal housing administration;

(11) bonds issued pursuant to K.S.A. 74-8901 through 74-8916, and amendments thereto;

(12) bonds issued pursuant to K.S.A. 68-2319 through 68-2330, and amendments thereto;

(13) commercial paper that does not exceed 270 days to maturity and has received one of the two highest commercial paper credit ratings by a nationally recognized investment rating firm; or

(14) (A) negotiable promissory notes together with first lien mortgages on one to four family residential real estate located in Kansas securing payment of such notes when such notes or mortgages:

(i) Are underwritten by the federal national mortgage association, the federal home loan mortgage corporation, the federal housing administration or the veterans administration standards;

(ii) have been in existence with the same borrower for at least two years and with no history of any installment being unpaid for 30 days or more; and

(iii) are valued at not to exceed 50% of the lesser of the following three values: Outstanding mortgage balance, current appraised value of the real estate or discounted present value based upon current federal national mortgage association or government national mortgage association interest rates quoted for conventional, federal housing administration or veterans administration mortgage loans.

(B) Securities under subparagraph (A) shall be taken at their value for not more than 50% of the security required under the provisions of this section.

(C) Securities under subparagraph (A) shall be withdrawn immediately from the collateral pool if any installment is unpaid for 30 days or more.

(D) A status report on all such loans shall be provided to the investing governmental entity by the financial institution on a quarterly basis.

(d) Such bank, savings and loan association or savings bank shall secure the deposit of public moneys of one or more governmental units through the public moneys pooled method pursuant to section 1, and amendments thereto, for the benefit of the governmental unit having public moneys with such bank, savings and loan association or savings bank as provided in section 1, and amendments thereto.

(e) No such bank, savings and loan association or savings bank may deposit and maintain for the benefit of the governing body of a governmental unit of the state of Kansas, any securities that consist of:

(1) Bonds secured by revenues of a utility that has been in operation for less than three years; or

(2) bonds issued under K.S.A. 12-1740 et seq., and amendments thereto, unless such bonds have been refunded in advance of their maturity as provided in subsection (c) or such bonds are rated at least Aa by Moody's investors service or AA by Standard & Poor's corp.

(f) Any applicant requesting approval of a revenue bond pursuant to subsection (c)(5) shall pay to the commissioner a fee in an amount established pursuant to K.S.A. 9-1726, and amendments thereto, to defray the expenses of the commissioner in the examination and investigation of the application. The commissioner shall remit all amounts received under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the bank investigation fund. The moneys in the bank investigation fund shall be used to pay the expenses of the commissioner in the examination and investigation of such applications and any unused balance shall be transferred to the bank commissioner fee fund.

(g) For purposes of this section, "governmental unit" means the state or any county, municipality or other political subdivision of the state.

*History:* L. 1947, ch. 102, § 64; L. 1965, ch. 76, § 1; L. 1968, ch. 236, § 1; L. 1970, ch. 63, § 1; L. 1973, ch. 48, § 1; L. 1976, ch. 79, § 1; L. 1978, ch. 45, § 1; L. 1980, ch. 47, § 1; L. 1982, ch. 52, § 2; L. 1983, ch. 49, § 17; L. 1983, ch. 47, § 3; L. 1983, ch. 49, § 18; L. 1985, ch. 58, § 1; L. 1985, ch. 58, § 2; L. 1986, ch. 76, § 2; L. 1986, ch. 76, § 3; L. 1987, ch. 56, § 1; L. 1989, ch. 48, § 42; L. 1989, ch. 209, § 18; L. 1992, ch. 146, § 25; L. 1994, ch. 74, § 1; L. 1997, ch. 180, § 4; L. 2008, ch. 109, § 22; L. 2014, ch. 141, § 16; L. 2015, ch. 38, § 78; L. 2016, ch. 54, § 35; 2025 HB 2152; July 1.

*Revisor's Note:* Section was amended twice in 1987 session, see also 9-1402a. [History of 9-1402a (now repealed) includes all the same session laws up through "L. 1986, ch. 76, § 3, " but then ends with "L. 1987, ch. 57, § 17; Repealed, L. 1989, ch. 209, § 65; July 1. "]

**K.S.A. 9-1403. Securities for deposits of public funds; exemption during peak deposits.**

(a) During the periods of peak deposits occurring at tax paying time and tax distributing time and continuing for a period of not to exceed 60 continuous days at any given time and not to exceed 120 days in any calendar year the amount of security for the deposits of municipal corporations or quasi-municipal corporations as required under K.S.A. 9-1402, and amendments thereto, may be reduced by up to 50% of the amount on deposit during the peak period.

(b) If the custodian of the funds of each municipal corporation or quasi-municipal corporation together with an officer of the depository bank, savings and loan association or savings bank agree to reduce the amount of security as provided in subsection (a), then the parties shall enter into an agreement which designates in writing the beginning and end of each such period, and a copy thereof, fully executed, shall be kept on file in the office of the governing body of such municipal corporation or quasi-municipal corporation and in the files of such bank, savings and loan association or savings bank.

*History:* L. 1947, ch. 102, § 65; L. 1982, ch. 52, § 3; L. 1983, ch. 47, § 4; L. 1986, ch. 76, § 4; L. 1989, ch. 48, § 43; L. 1997, ch. 180, § 5; L. 2015, ch. 38, § 79; July 1.

**K.S.A. 9-1405. Deposit of securities, security entitlements and financial assets in securities account; written custodial agreement; receipt.**

(a) All bonds and securities given by any bank, savings and loan association or savings bank to secure public moneys of the United States or any board, commission or agency thereof, shall be deposited as required by the United States government or any designated federal agencies.

(b) All securities, security entitlements and financial assets securing the deposits of any municipal corporation or quasi-municipal corporation shall be deposited as described in subsection (c) or (d) or in a securities account with one of the following custodial banks or trust companies:

(1) A Kansas state bank;

(2) a Kansas national bank;

(3) a state bank organized in another state and which has a branch office in this state;

(4) a trust company incorporated under the laws of this state or another state; or

(5) the federal home loan bank of Topeka

(c) Securities, security entitlements and financial assets securing the deposits of any municipal corporation or quasi-municipal corporation may be deposited with the state treasurer pursuant to a written custodial agreement and a receipt issued with one copy going to the municipal corporation or quasi-municipal corporation making the public deposit and one copy going to the bank, savings and loan association or savings bank which has secured such public deposits. The receipt shall identify the securities, security entitlements and financial assets which are subject to a security interest to secure payment of the deposits of the municipal corporation or quasi-municipal corporation.

(d) Securities, security entitlements and financial assets securing the deposits of any municipal corporation or quasi-municipal corporation may be deposited with the federal reserve bank of Kansas City to be there held in such manner, under regulations and operating letters of the federal reserve bank of Kansas City, as to secure payment of the deposits of the municipal corporation or quasi-municipal corporation in the depository institution.

(e) This section shall not prohibit any custodial bank or trust company from depositing securities, security entitlements and financial assets in the custodial bank or trust company's account if:

(1) The custodial bank or trust company's account is located at a bank or trust company organized under the laws of any state, the United States or any centralized securities depository wherever located within the United States; and

(2) the custodial bank or trust company issues a receipt which identifies the securities, security entitlements and financial assets on deposit at the custodial bank or trust company.

(f) No securities, security entitlements and financial assets securing public deposits shall be deposited in any custodial bank or trust company which has the following commonalities with the depository bank, savings and loan association or savings bank:

(1) Direct or indirect ownership by any parent corporation;

(2) common controlling shareholders;

(3) common majority of the board of directors; or

(4) common directors with the ability to control or influence directly or indirectly the acts or policies of the depository bank, savings and loan association or savings bank securing such public deposits.

(g) When securities, security entitlements and financial assets are deposited with the state treasurer as authorized by this section, the state treasurer shall make a charge for such service which is equivalent to the reasonable and customary charge made therefor.

(h) The custodial agreement shall be in writing, executed by all parties thereto, maintained as part of the parties' official records, and except for the municipal corporations [corporation] or quasi-municipal corporation, approved by the boards of directors or loan committees, which approvals shall be reflected in the minutes of the boards or committees.

(i) A bank, savings and loan association or savings bank which fails to pay any deposit of public moneys of any municipal or quasi-municipal corporation according to the terms of the security agreement shall immediately take action to enable bonds and securities pledged to secure the deposit to be sold to satisfy the bank's or association's obligation to the municipal or quasi-municipal corporation.

*History:* L. 1947, ch. 102, § 67; L. 1975, ch. 44, § 24; L. 1976, ch. 58, § 1; L. 1982, ch. 52, § 4; L. 1983, ch. 47, § 5; L. 1985, ch. 58, § 4; L. 1986, ch. 76, § 5; L. 1989, ch. 48, § 44; L. 1990, ch. 60, § 1; L. 1993, ch. 207, § 1; L. 1994, ch. 105, § 1; L. 1997, ch. 180, § 6; L. 2015, ch. 38, § 80; L. 2016, ch. 54, § 36; July 1.

**K.S.A. 9-1406. Exemption from liability for loss by official depository.**

No public officer nor the sureties upon such officer's bond shall be liable for any loss sustained by the failure or default of any designated depository or depositories after a deposit or deposits have been made in an officially designated bank, savings and loan association or savings bank as provided in this act. This exemption from liability shall apply even though other statutes shall require the furnishing of a bond or other securities by the designated depositories of public moneys. This exemption shall also apply whenever a public officer, municipal corporation or quasi-municipal corporation has acted in good faith to comply with the provisions of this act.

*History:* L. 1947, ch. 102, § 68; L. 1983, ch. 47, § 6; L. 1986, ch. 76, § 6; L. 1989, ch. 48, § 45; L. 1997, ch. 180, § 7; L. 2000, ch. 71, § 1; July 1.

**K.S.A. 9-1407. Exemption of security for insured portion of public deposits; reciprocal deposit programs.**

(a) That portion of any deposit of public moneys or funds which is insured by the federal deposit insurance corporation, or its successor, need not be secured as provided in article 14 of chapter 9 of the Kansas Statutes Annotated, and amendments thereto.

(b) Public moneys or funds deposited by a municipal corporation or quasi-municipal corporation in a selected bank, savings and loan association or savings bank which are part of a reciprocal deposit program shall not be treated as securities and need not be secured as provided in article 14 of chapter 9 of the Kansas Statutes Annotated, and amendments thereto, if the:

(1) Bank, savings and loan association or savings bank receives reciprocal deposits from other participating institutions located in the United States in an amount equal to the amount of funds deposited by the municipal corporation or quasi-municipal corporation; and

(2) total cumulative amount of each deposit does not exceed the maximum deposit insurance amount for one depositor at one financial institution as determined by the federal deposit insurance corporation.

*History:* L. 1947, ch. 102, § 69; L. 1982, ch. 52, § 5; L. 1997, ch. 180, § 8; L. 2009, ch. 49, § 1; L. 2015, ch. 38, § 81; July 1.

**K.S.A. 9-1408. Definitions.**

As used in article 14 of chapter 9 of the Kansas Statutes Annotated, and amendments thereto:

(a) "Branch" means any office within this state or another state, other than the main office, that is approved as a branch by a federal or state supervisory agency and at which deposits are

received, checks paid or money lent. Branch does not include an automated teller machine, remote service unit or similar device, a loan production office or a deposit production office;

(b) "centralized securities depository" means a clearing agency registered with the securities and exchange commission which provides safekeeping and book-entry settlement services to the agency's participants;

(c) "government unit" means any state, county, municipality or other political subdivision thereof;

(d) "Kansas national bank" means a federally chartered bank which has a main office or branch located in this state;

(e) "Kansas state bank" means a Kansas state chartered bank;

(f) "main office" means the place of business specified in the articles of association, certificate of authority or similar document where the business of the institution is carried on and which is not a branch;

(g) "municipal corporation" or "quasi-municipal corporation" includes each investing governmental unit under K.S.A. 12-1675, and amendments thereto;

(h) "savings and loan association" means any savings and loan association incorporated under the laws of this state or any other state or organized under the laws of the United States and which has a main or branch office in this state;

(i) "savings bank" means any savings bank organized under the laws of the United States and which has a main or branch office in this state; and

(j) "securities," "security entitlements," "financial assets," "securities account, " "security agreement," "security interest," "perfection" and "control" shall have the meanings given such terms under the Kansas uniform commercial code.

*History:* L. 1997, ch. 180, § 2; L. 2006, ch. 57, § 2; L. 2015, ch. 38, § 82; L. 2016, ch. 54, § 37; July 1.

**K.S.A. 9-1409. Securing deposits of public moneys of out-of-state governmental units; when.**

A Kansas state bank may pledge any of the bank's assets as collateral or otherwise secure the deposits of public money for governmental units located in another state where the Kansas state bank has a branch location, so long as such security is given in accordance with the laws of that state.

*History:* L. 2015, ch. 38, § 1; July 1.

## Article 15 – BANKING CODE; SAFE DEPOSIT BOX RENTAL

### K.S.A. 9-1501. Authority to keep and maintain safe deposit boxes.

Any bank, trust company or safe deposit corporation may maintain safe deposit boxes and rent the same for consideration. The bank, trust company or safe deposit corporation shall prescribe the hours of entry into its safe deposit vault and may also retain and require the use of a preparation or guard key for the protection of the bank, trust company or deposit corporation and the user of such box

*History:* L. 1947, ch. 102, § 70; L. 2015, ch. 38, § 83; July 1.

### K.S.A. 9-1502. Legal relationship between renter and bank.

The relationship between any such bank, trust company or safe deposit company having and maintaining safe deposit boxes for public use and the user or users of such boxes shall be that of lessor and lessee, respectively. In the absence of a written contract to the contrary, the lessee shall be deemed by law to be in possession of such box and the contents thereof. The lessor shall not be charged with knowledge of the contents of any such box. The lessor may limit its liability to the lessee by provisions contained within a lease agreement, but the lessor shall be liable for the acts of its officers and employees for failure to exercise ordinary care.

*History:* L. 1947, ch. 102, § 71; L. 2015, ch. 38, § 84; July 1.

### K.S.A. 9-1503. Joint tenancy of safe deposit box; liability.

Joint tenancy in and to a safe deposit box may be created by contract, with two or more persons named as lessees. The terms of the contract may provide that any one or more of the lessees, or the survivor or survivors of such lessee or lessees, shall have access and entry to the safe deposit box and the right to remove the contents from such box whether the other lessee or lessees be living, incompetent or dead. If the contents are removed as provided by the contract, the lessor shall not be liable for the removal of the contents.

*History:* L. 1947, ch. 102, § 72; L. 2015, ch. 38, § 85; July 1.

### K.S.A. 9-1504. Death of lessee or lessees in joint tenancy; opening of box; disposition of contents.

(a) In the event the sole lessee or all lessees in joint tenancy named in the lease agreement covering a safe deposit box rental shall die, the safe deposit box may be opened, forcibly if necessary, at any time thereafter, in the presence of persons holding a legal or beneficial interest relating to the lessee, by two employees of the lessor, one of whom shall be an officer of the lessor. The contents shall be disposed of as follows:

(1) Instruments of a testamentary nature may be removed by the named executor. If no executor is named or if the named executor fails to act within 60 days after the date of death of the lessee, such employees may remove all instruments of a testamentary nature and deposit the same with the district court.

(2) The employees in their discretion may deliver life insurance policies therein contained to the beneficiaries named in such policies, and any deed to a cemetery lot and any burial instructions found therein to the appropriate parties.

(3) Any and all other contents of such box so opened shall be kept and retained by the bank, trust company or safe deposit company and shall be delivered only to the parties legally entitled to the same.

(b) In the event no person claims to be interested in the contents of such box within 60 days after the death of the lessee, the lessor may open the box by forcible entry and remove all instruments of a testamentary nature and deposit the same with the district court, subject to payment of rentals, expenses and repairs. Any and all other contents of such box so opened shall be kept and retained by the bank or trust company and shall be delivered only to the parties legally entitled to the same.

*History:* L. 1947, ch. 102, § 73; L. 1975, ch. 44, § 25; L. 1976, ch. 145, § 35; L. 1994, ch. 192, § 1; L. 1997, ch. 7, § 1; L. 2015, ch. 38, § 86; L. 2016, ch. 54, § 38; July 1.

**K.S.A. 9-1505. Lessor to give information to public authority.**

Upon the death of any lessee of a safe deposit box and upon the request of the district court or the county clerk or the director of taxation for the state of Kansas, the lessor shall disclose whether a designated person was the lessee of a safe deposit box at the time of death.

*History:* L. 1947, ch. 102, § 74; L. 1976, ch. 145, § 36; L. 2015, ch. 38, § 87; July 1.

**K.S.A. 9-1506. Default of lessee; notice; disposition of contents.**

(a) The lessor shall have a lien upon the contents of any safe deposit box for the rental thereon.

(b) The lessor may, after giving not less than 60 days' written notice to the lessee of such lessor's intention to enter the box, remove the contents and sell the same for the payment of rent due or other expenses incurred by the bank in keeping the contents, open the box forcibly and remove the contents in the presence of two of the lessor's employees, one of whom shall be an officer, when:

(1) The lessee has not paid the rent within 30 days after the same is due; or

(2) the lessee has failed to surrender possession of any box within 30 days from the date of the termination of the lease.

(c) The lessor shall retain such contents for at least 90 days after opening the box. The lessor then may sell any part or all of the contents at public sale pursuant to the requirements for a commercially reasonable sale under article 9 of the Kansas uniform commercial code and retain from the proceeds of sale the rent due, the costs of opening and repairing the box, the costs of sale and any other amounts due to the lessor.

(d) Any article, item or document without apparent market value may be destroyed after two years from the date of giving or mailing the required notice.

(e) Any notice required by this section shall be delivered either personally or by registered or certified mail, or electronically pursuant to the uniform electronic transactions act, K.S.A. 16-1601 *et seq.*, and amendments thereto, delivered to the latest address shown on the safe deposit records of the lessor.

*History:* L. 1947, ch. 102, § 75; L. 1975, ch. 44, § 26; L. 2015, ch. 38, § 88; L. 2016, ch. 54, § 39; L. 2019, ch. 25, § 4; July 1.

## Article 16 – BANKING CODE; TRUST AUTHORITY

### K.S.A. 9-1601. Application and authority to act as trust company; exemptions.

(a) Any bank, upon the affirmative vote of at least 2/3 of the voting stock, may apply to the commissioner for approval to conduct trust business. If approval is granted by the commissioner, a special permit shall be issued and the bank shall be authorized, subject to such conditions as the commissioner may require, to exercise all powers necessary or incidental to carrying on a trust business and also may exercise the following powers to:

(1) Receive for safekeeping personal property of every description;

(2) accept and execute any trust agreement and perform any trustee duties as required by such trust agreement;

(3) act as agent, trustee, executor, administrator, registrar of stocks and bonds, conservator, assignee, receiver, custodian, corporate trustee or attorney-in-fact in any agreed-upon capacity;

(4) accept and execute all trusts and to perform any fiduciary duties as may be committed or transferred to the bank by order, judgment or decree of any court of record of competent jurisdiction;

(5) act as executor or trustee under the last will and testament, or as administrator, with or without the will annexed to the letters of administration, of the estate of any deceased person;

(6) be a conservator for any minor, incapacitated person or trustee for any convict under the appointment of any court of competent jurisdiction;

(7) receive money in trust for investment in real or personal property of every kind and nature and to reinvest the proceeds thereof;

(8) act as either an originating trustee or as a contracting trustee pursuant to K.S.A. 9-2107, and amendments thereto;

(9) buy and sell foreign or domestic exchange, gold, silver, coin or bullion;

(10) act in any fiduciary capacity and to perform any act as a fiduciary which trust companies incorporated under the laws of this state may perform under any provision of the banking or insurance laws of this state, including, without limitation, acting as a successor fiduciary to any trust company upon liquidation pursuant to K.S.A. 9-2107, and amendments thereto; and

(11) to perform or purchase trust services for or from a bank or service corporation through a trust service agency agreement provided the commissioner is notified 30 days after

contracting for the service. Such notification shall include the trust services provided, the name of the servicer and the date the service will commence.

(b) (1) The commissioner has the discretion to grant or reject the application of any bank to acquire trust authority. In making such determination, the commissioner shall take into consideration:

(A) The reasonable probability of usefulness and success of the bank having trust authority;

(B) the financial history and condition of the bank and the character, qualifications and experience of the trust officers and personnel; and

(C) any other facts and circumstances that the commissioner deems appropriate.

(2) If the commissioner denies an application, the applicant shall have the right to a hearing to be conducted in accordance with the Kansas administrative procedure act. Any final order of the commissioner pursuant to this section is subject to review in accordance with the Kansas judicial review act.

(c) (1) If the governing instrument limits investment of funds to deposit in time or savings deposits in the bank, any bank may act as trustee or custodian for any of the following without being issued a special permit:

(A) Individual retirement accounts established pursuant to 26 U.S.C. § 408;

(B) trusts established pursuant to 26 U.S.C. § 401; and

(C) medical savings accounts established pursuant to 26 U.S.C. § 220.

(2) If the governing instrument limits investment of funds to deposit in time, savings or demand deposits in the bank, any bank may act as a trustee or custodian for any health savings accounts established pursuant to 26 U.S.C. § 223, without being issued a special permit pursuant to subsection (a).

(d) Any state bank having been granted trust authority by the commissioner may add "and trust company" to its corporate name.

(e) A bank making application to the commissioner for approval to conduct trust business shall pay to the commissioner a fee, in an amount established pursuant to K.S.A. 9-1726, and amendments thereto, to defray the expenses of the commissioner in the examination and investigation of the application. The commissioner shall remit all moneys received under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the bank investigation fund. The moneys in the bank investigation fund shall be used to pay the expenses of the commissioner

in the examination and investigation of such applications and any unused balance shall be transferred to the bank commissioner fee fund.

*History:* L. 1947, ch. 102, § 77; L. 1965, ch. 77, § 1; L. 1967, ch. 72, § 2; L. 1975, ch. 44, § 28; L. 2005, ch. 20, § 1; L. 2005, ch. 133, § 2; L. 2015, ch. 38, § 89; L. 2016, ch. 54, § 40; July 1.

**K.S.A. 9-1602. Revoking trust authority.**

(a) The commissioner may revoke trust authority for any bank or trust company upon finding a failure to adhere to sound fiduciary practices.

(b) If the commissioner revokes the trust authority of a bank, the bank shall have the right to a hearing to be conducted in accordance with the Kansas administrative procedure act. Any final order of the commissioner pursuant to this section is subject to review in accordance with the Kansas judicial review act.

*History:* L. 1947, ch. 102, § 78; L. 1990, ch. 61, § 1; L. 2015, ch. 38, § 90; July 1.

**K.S.A. 9-1603. Assets held in fiduciary capacity segregated; records; security of funds.**

(a) As soon as any bank shall exercise any trust authority, it shall segregate all assets held in any fiduciary capacity and shall keep a separate set of books and records showing in proper detail all fiduciary transactions. Such books and records shall at all times be subject to inspection and supervision of the commissioner.

(b) Funds held by such bank in trust that are awaiting investment or distribution, less the amount which is insured by the federal deposit insurance corporation, shall have United States bonds or other securities approved by the commissioner pledged to such funds in an equal sum.

*History:* L. 1947, ch. 102, § 79; L. 1963, ch. 63, § 1; L. 2015, ch. 38, § 91; July 1.

**K.S.A. 9-1604. Liquidation, termination of trust business.**

Upon the affirmative vote of a majority of the outstanding voting stock, any bank having trust authority may terminate the bank's trust business. The termination of trust services shall be done in accordance with the Kansas uniform trust code and with the contracting trustee provisions of K.S.A. 9-2107, and amendments thereto. Any bank terminating the bank's trust business may surrender such bank's special permit for trust authority or be granted inactive status pursuant to K.S.A. 9-1703, and amendments thereto.

*History:* L. 1947, ch. 102, § 80; L. 1951, ch. 120, § 3; L. 1996, ch. 175, § 16; L. 2015, ch. 38, § 92; July 1.

**K.S.A. 9-1607. Appointment of nominee when acting as fiduciary; records.**

(a) Any bank or trust company, when acting as a fiduciary or a co-fiduciary with others and with the consent of its co-fiduciary or co-fiduciaries, if any, that are hereby authorized to give such consent, may cause any investment held in any such capacity to be registered and held in the name of a nominee or nominees of such bank or trust company. Such bank or trust company shall be liable for the acts of any such nominee with respect to any investment so registered.

(b) The records of the bank or trust company shall at all times show the ownership of any investment registered and held in the name of a nominee, which investment shall be in the control of the bank or trust company and be kept separate and apart from the assets of the bank or trust company.

*History:* L. 1951, ch. 122, § 1; L. 2015, ch. 38, § 93; L. 2016, ch. 54, § 41; July 1.

**K.S.A. 9-1609. Fiduciary may establish collective investment funds.**

(a) Any bank or trust company authorized to act as fiduciary may establish collective investment funds for the purpose of furnishing investments to:

(1) Such bank or trust company as fiduciary;

(2) such bank or trust company and others, as co-fiduciaries;

(3) another state or national bank or trust company, as fiduciary, which is a subsidiary of the same bank holding company of which the bank or trust company is a subsidiary, as such terms are defined in K.S.A. 9-519, and amendments thereto; or

(4) another state or national bank or trust company with which the bank or trust company is affiliated through common control, as defined in K.S.A. 9-1612, and amendments thereto.

(b) Any bank or trust company authorized to act as fiduciary may, as such fiduciary or co-fiduciary, invest funds which it lawfully holds for investment in interests in such collective investment funds, if such investment is not prohibited by the instrument, judgment, decree or order creating such fiduciary relationship, and if, in the case of co-fiduciaries, the bank or trust company procures the consent of its co-fiduciaries to such investment.

*History:* L. 1951, ch. 123, § 1; L. 1986, ch. 56, § 3; L. 2015, ch. 38, § 94; L. 2016, ch. 54, § 42; L. 2018, ch. 4, § 1; July 1.

*Revisor's Note:* This section and 9-1610 are referred to as the uniform common trust fund act. For list of states where act adopted and notes, see Uniform Laws Annotated, Vol. 9. [Section 9-1610 was repealed in 2015.]

**K.S.A. 9-1611. Bank or trust company acting as fiduciary may deal in manner authorized by instrument with company having control of bank or trust company.**

Whenever the governing instrument of any trust authorizes a bank or trust company acting as fiduciary to engage in any of the following activities, such instrument shall also be deemed to authorize the bank or trust company to engage in the following activities, with any company which has or acquires control of such bank or trust company:

(a) Hold as a trust investment the bank's or trust company's own stock or obligations, or property acquired from the bank or trust company; or

(b) sell or transfer, by loan or otherwise, property held as fiduciary to the bank or trust company; or

(c) purchase for investment the stock or obligations of, or property from, the bank or trust company.

*History:* L. 1973, ch. 49, § 1; L. 2015, ch. 38, § 95; L. 2016, ch. 54, § 43; July 1.

**K.S.A. 9-1612. Company having control over a bank or trust company defined.**

For the purposes of K.S.A. 9-1601 through 9-1611, and amendments thereto, any company has control over a bank or trust company if the company directly or indirectly, or acting through one or more persons:

(a) Owns, controls or has power to vote 25% or more of any class of voting securities of the bank or trust company;

(b) controls, in any manner, the election of a majority of the directors or trustees of the bank or trust company; or

(c) has the power to direct the management or policies of the bank or trust company.

*History:* L. 1973, ch. 49, § 2; L. 2015, ch. 38, § 96; July 1.

## Article 17 – BANKING CODE; SUPERVISION; COMMISSIONER

### K.S.A. 9-1701. Examination of banks and trust companies; other reports.

(a) The commissioner or the commissioner's staff shall visit each bank and trust company at least once every 18 months, and may visit any bank or trust company at any time the commissioner deems necessary for the purpose of making an examination or inquiry into the condition of the affairs of such bank or trust company. For such purpose, the commissioner and the commissioner's staff are authorized to administer oaths and to examine under oath the directors, officers, employees and agents of any bank or trust company.

(b) The results of any examination pursuant to this section shall be reduced to writing by the commissioner or the commissioner's staff. The commissioner shall provide to the board of directors of the bank or trust company a copy of the examination report. No person shall personally examine a bank or trust company if that person is a stockholder of, indebted to or otherwise financially interested in that bank or trust company.

(c) The examination team may conduct an exit review meeting with the board of directors of a bank or trust company following the examination of such bank or trust company as provided in subsection (a).

(d) The commissioner is hereby authorized to accept any examination report or any other report on a state bank or trust company made by the:

(1) Federal deposit insurance corporation or its successor;

(2) federal reserve bank; or

(3) consumer financial protection bureau.

*History:* L. 1947, ch. 102, § 87; L. 1965, ch. 78, § 1; L. 1975, ch. 44, § 29; L. 1976, ch. 59, § 1; L. 1984, ch. 48, § 13; L. 1991, ch. 47, § 1; L. 2015, ch. 38, § 97; July 1.

### K.S.A. 9-1702. Examination of fiduciaries and affiliated organizations and their officers and employees.

(a) The commissioner or the commissioner's staff is hereby authorized to examine the fiduciary affairs of any officer or employee of any bank or trust company when such officer or employee is serving in any fiduciary capacity that may affect the safety and soundness of such bank or trust company.

(b) The commissioner or the commissioner's staff is hereby authorized to examine any investment company, holding company, 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.

(c) For the purposes of this section, "affiliate" shall have the meaning ascribed to it in section 2 of the bank holding act of 1956, 12 U.S.C. § 1841.

*History:* L. 1947, ch. 102, § 88; L. 1975, ch. 44, § 30; L. 2005, ch. 6, § 1; L. 2015, ch. 38, § 98; July 1.

**K.S.A. 9-1703. Examination and administrative expenses; annual assessment, due dates for payments, delinquency penalty; disposition of receipts; bank commissioner fee fund.**

(a) The expense of every regular examination, together with the expense of administering the banking and savings and loan laws, including salaries, travel expenses, supplies and equipment shall be paid by the banks and savings and loan associations of the state. Prior to the beginning of each fiscal year, the commissioner shall make an estimate of the expenses to be incurred by the department during such fiscal year. From this total amount, the commissioner shall deduct the estimated amount of the anticipated annual income to the fund from all sources other than bank and savings and loan association assessments. The commissioner shall allocate and assess the remainder to the banks and savings and loan associations in the state on the basis of their total assets, as reflected in the last March 31 report called for by the federal deposit insurance corporation under the provisions of section 7 of the federal deposit insurance act, 12 U.S.C. § 1817 or K.S.A. 17-5610, and amendments thereto, except that the annual assessment will not be less than $1,000 for any bank or savings and loan association.

(b) (1) The expense of every regular trust examination, together with the expense of administering trust laws, including salaries, travel expenses, supplies and equipment, shall be paid by the trust companies and trust departments of banks of this state. Prior to the beginning of each fiscal year, the commissioner shall make an estimate of the trust expenses to be incurred by the department during such fiscal year. The commissioner shall allocate and assess the trust departments in the state on the basis of their total fiduciary assets, as reflected in the last December 31 report called for by the federal deposit insurance corporation under the provisions of section 7 of the federal deposit insurance act, 12 U.S.C. § 1817 or K.S.A. 17-5610, and amendments thereto, except that the annual assessment shall not be less than $1,000 for any active trust department. The commissioner shall allocate and assess the trust companies in the state on the basis of their fiduciary assets as reflected in the last December 31 report filed with the commissioner pursuant to K.S.A. 9-1704, and amendments thereto, except that the annual assessment will not be less than $1,000 for any active trust company. A trust department or trust company which has no fiduciary assets, as reflected in the last December 31 report called for by the federal deposit insurance corporation under the provisions of section 7 of the federal deposit insurance act, 12

U.S.C. § 1817 or K.S.A. 17-5610, and amendments thereto, may be granted inactive status by the commissioner and the annual assessment shall not be more than $100 for the inactive trust department.

(2) No inactive trust department or trust company shall accept any fiduciary assets or exercise any part of or all of its trust authority until such time as it has applied for and received prior written approval of the commissioner to reactivate its trust authority.

(c) (1) A statement of each assessment made under the provisions of subsection (a) or (b) shall be sent by the commissioner on July 1 or the next business day thereafter, to each bank, savings and loan association, trust department and trust company that exists as a corporate entity with the secretary of state's office and is authorized by the commissioner to conduct banking, savings and loan or trust business. The assessment may be collected by the commissioner as needed and in such installment periods as the commissioner deems appropriate, but no more frequently than monthly. When the commissioner issues an invoice to collect the assessment, payment shall be due within 15 days of the date of the invoice. The commissioner may impose a penalty upon any bank, savings and loan association, trust department or trust company which fails to pay its annual assessment when it is 15 days or more past due. The penalty shall be assessed in the amount of $50 for each day the assessment is past due.

(2) The commissioner shall remit all moneys received from such examination fees to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury and credit 10% of each deposit to the state general fund with the balance transferred to the bank commissioner fee fund. All expenditures from the bank commissioner fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the commissioner or by a person or persons designated by the commissioner.

(d) The amount of expenses incurred and the cost of service performed on account of any bank, trust department or trust company or other corporation which are outside the normal expenses of an examination required under the provisions of K.S.A. 9-1701 or 17-5612, and amendments thereto, shall be charged to and paid by the bank, trust department, trust company or corporation for which such expenses were incurred or cost of services performed.

(e) As used in this section, "savings and loan association" means a Kansas state-chartered savings and loan association.

(f) (1) In the event a bank, savings and loan association or trust company is merged into, consolidated with or the assets and liabilities of which are purchased and assumed by another bank, savings and loan association or trust company between the preceding March 31 and June 30, for banks and savings and loan associations, or the preceding December 31 and June 30, for trust companies, the surviving or acquiring bank,

savings and loan association or trust company is obligated to pay the assessment based on the value of the assets of all institutions involved with the merger, consolidation or assumption for the following fiscal year commencing July 1.

(2) In the event a bank, savings and loan association or trust company is merged into, consolidated with or the assets and liabilities of which are purchased and assumed by another bank, savings and loan association or trust company after July 1, the surviving entity shall be obligated to pay the unpaid portion of the assessment for the remainder of the fiscal year commencing July 1 which would have been due of the institution being merged, consolidated or assumed.

*History:* L. 1947, ch. 102, § 89; L. 1949, ch. 110, § 3; L. 1955, ch. 65, § 1; L. 1959, ch. 61, § 1; L. 1965, ch. 79, § 1; L. 1969, ch. 62, § 1; L. 1973, ch. 50, § 2; L. 1975, ch. 44, § 31; L. 1981, ch. 55, § 1; L. 1985, ch. 57, § 2; L. 1992, ch. 49, § 1; L. 1993, ch. 30, § 1; L. 1994, ch. 33, § 1; L. 1995, ch. 25, § 1; L. 1996, ch. 39, § 1; L. 2000, ch. 12, § 1; L. 2001, ch. 5, § 43; L. 2006, ch. 89, § 3; L. 2010, ch. 99, § 1; L. 2011, ch. 36, § 1; L. 2011, ch. 91, § 5; L. 2015, ch. 38, § 99; July 1.

**K.S.A. 9-1704. Reports to commissioner; publication, when.**

(a) Each bank or trust company shall be required to make a report to the commissioner at any time upon the commissioner's request. Such reports shall be in a form and manner prescribed by the commissioner and shall be verified by the president, chief executive officer or cashier and attested to by at least three directors of the bank or trust company, none of whom shall have verified the report. The report shall show in detail the assets and liabilities of the bank or trust company at the close of business upon the date determined by the commissioner. The commissioner may require a copy of the report, or a portion thereof, to be published in a newspaper, published in or having a general circulation in the place where the bank or trust company is located, within 10 days after the report is forwarded to the commissioner. The expense of publication shall be paid by the bank or trust company.

(b) Each trust company shall report to the commissioner all assets held by the trust company in a fiduciary capacity as of December 31 of each year. The report shall be in the form and manner prescribed by the commissioner and shall be filed with the commissioner by January 30 of each year. The commissioner may require the report to be filed using an electronic means.

(c) Each trust department of a bank shall report to the commissioner all assets held by the trust department in a fiduciary capacity at any time upon the commissioner's request. The report shall be in the form prescribed by the commissioner. The commissioner may require the report to be filed using an electronic means.

(d) A request for information made pursuant to this section shall be made in writing and mailed to each bank and trust company. The request shall be deemed to be legal notice to each bank

and trust company. The request may include the requirement for the filing of information by the bank or trust company using electronic means.

*History:* L. 1947, ch. 102, § 90; L. 1975, ch. 44, § 32; L. 1984, ch. 48, § 14; L. 1995, ch. 158, § 1; L. 2006, ch. 89, § 4; L. 2015, ch. 38, § 100; L. 2016, ch. 54, § 44; July 1.

**K.S.A. 9-1708. Refusal to be examined; remedy.**

No officer, director, employee or agent of any bank or trust company shall refuse the examination and inspection of the bank or trust company by the commissioner or in any manner obstruct or interfere with the examination and investigation of such bank or trust company or refuse to be examined under oath concerning any of the affairs of such bank or trust company. The commissioner may take such action as available pursuant to K.S.A. 9-1714, 9-1805, 9-1807 or 9-1809, and amendments thereto, to remedy any violation of the provisions of this section.

*History:* L. 1947, ch. 102, § 95; L. 2015, ch. 38, § 101; July 1.

**K.S.A. 9-1709. Failure to respond to a lawful request of the commissioner.**

(a) No bank or trust company shall refuse or neglect for more than 60 days to comply with or respond to a written, lawful request of the commissioner. If the bank or trust company does not comply with or respond to any such request, the commissioner may issue an order notifying the bank or trust company that continued failure to comply with the request shall result in the forfeiture of the authority to transact business. Any bank or trust company receiving notice of such order shall have the right to a hearing to be conducted in accordance with the Kansas administrative procedure act. Any final order of the commissioner is subject to review in accordance with the Kansas judicial review act.

(b) If any request or requirement made pursuant to an order issued under subsection (a) remains unsatisfied after a period of time as provided in the order, the commissioner shall appoint a receiver pursuant to article 19 of chapter 9 of the Kansas Statutes Annotated, and amendments thereto. The order appointing the receiver shall not be subject to the Kansas administrative procedure act or the Kansas judicial review act.

(c) The commissioner may take such additional action as available pursuant to K.S.A. 9-1714, 9-1805, 9-1807 or 9-1809, and amendments thereto, to protect the depositors and creditors of the bank or trust company.

*History:* L. 1947, ch. 102, § 96; L. 1981, ch. 324, § 7; L. 2015, ch. 38, § 102; July 1.

**K.S.A. 9-1712. Examination of records and investigative materials of commissioner, confidential; disclosure.**

(a) All information the state bank commissioner generates in making an investigation or examination of a state bank or trust company shall be confidential information.

(b) All confidential information shall be the property of the state of Kansas and shall not be disclosed except upon the written approval of the commissioner.

(c) Except for disclosure pursuant to subsection (e) and K.S.A. 9-2014, and amendments thereto, the commissioner shall give 10 days prior written notice to the affected bank or trust company of intent to disclose confidential information.

(d) Any bank or trust company receiving notice of the intent to disclose confidential information may object to the disclosure of the confidential information and shall be afforded the right to a hearing in accordance with the provisions of the Kansas administrative procedure act.

(e) (1) The commissioner may furnish to the federal deposit insurance corporation, or to any officer or examiner thereof, a copy of any or all examination reports made by the commissioner, or the commissioner's examiners, of any bank or trust company insured by such corporation. The commissioner may disclose to the federal deposit insurance corporation, or any official or examiner thereof, any and all information contained in the commissioner's office concerning the condition of any bank or trust company insured by such corporation.

(2) The commissioner may disclose any and all information contained in the commissioner's office concerning the condition of any bank or trust company to the:

(A) Federal reserve bank;

(B) office of the comptroller of currency;

(C) federal home loan bank;

(D) office of thrift supervision;

(E) financial crimes enforcement network; or

(F) consumer financial protection bureau.

(3) The commissioner may furnish to the state treasurer a copy of any or all examination information relating specifically to apparent violations of the uniform unclaimed property act, K.S.A. 58-3934 through 58-3978, and amendments thereto.

(4) To reduce the potential for duplicative and burdensome filings, examinations and other regulatory activities, the commissioner, by agreement, may establish an information

sharing and exchange program with any regulatory agency of this state, another state or the United States concerning activities that are financial in nature, incidental to financial activities, or complementary to financial activities, as those terms are used in 15 U.S.C. § 6801 et seq. on the effective date of this act. Each agency that is party to such an agreement shall agree to maintain confidentiality of information that is confidential under applicable state or federal law and to take all reasonable steps to oppose any effort to secure disclosure of the information by such agency.

(5) Disclosure of information by or to the commissioner pursuant to this section shall not constitute a waiver of or otherwise affect or diminish a privilege to which the information is otherwise subject, whether or not the disclosure is governed by a confidentiality agreement. "Privilege" includes any work product, attorney-client or other privilege recognized under federal or state law.

(6) Nothing in this section shall be construed to limit the powers of the commissioner with reference to examinations and reports required by the state banking code.

(f) As used in this section, "information" means, but is not limited to, all documents, oral and written communication and all electronic data.

(g) Any person that violates this section, upon conviction, shall be guilty of a class C misdemeanor.

(h) The commissioner may provide any person with a letter of good standing upon request. Any person requesting a letter of good standing shall pay to the commissioner a fee in an amount established pursuant to K.S.A. 9-1726, and amendments thereto, to defray the expenses of the commissioner in investigating and complying with the request. The commissioner shall remit all moneys received under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the bank investigation fund. The moneys in the bank investigation fund shall be used to pay the expenses of the commissioner in the examination and investigation of such applications and any unused balance shall be transferred to the bank commissioner fee fund.

*History:* L. 1947, ch. 102, § 99; L. 1987, ch. 54, § 8; L. 1990, ch. 62, § 1; L. 2015, ch. 38, § 103; L. 2016, ch. 54, § 45; July 1.

**K.S.A. 9-1713. Adoption of rules and regulations; approval of board.**

Except as otherwise provided by law, in order to promote safe and sound practices for entities regulated by the commissioner, the commissioner shall promulgate such rules and regulations as shall be necessary to implement the provisions of K.S.A. 9-542, and amendments thereto, commonly known as the state banking code. All rules and regulations shall first be submitted to the state banking board for the state banking board's approval and upon approval shall be filed as provided by article 4 of chapter 77 of the Kansas Statutes Annotated, and amendments thereto.

*History:* L. 1965, ch. 81, § 1; L. 1984, ch. 48, § 15; L. 2000, ch. 106, § 3; L. 2003, ch. 57, § 2; L. 2015, ch. 38, § 104; July 1.

**K.S.A. 9-1714. Appointment of special deputy bank commissioner.**

(a) Whenever the commissioner shall determine that the business of any bank or trust company is being conducted in an unlawful or unsound manner, the 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 resolving any unlawful or unsound condition or operation.

(b) 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 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.

(c) After such appointment, any such bank or trust company shall have the right to a hearing to be conducted in accordance with the Kansas administrative procedure act. Any final order of the commissioner pursuant to this section is subject to review in accordance with the Kansas judicial review act.

*History:* L. 1965, ch. 82, § 1; L. 1975, ch. 44, § 35; L. 1988, ch. 356, § 40; L. 2001, ch. 87, § 12; L. 2015, ch. 38, § 105; July 1.

**K.S.A. 9-1715. Special orders; procedures.**

(a) (1) Notwithstanding any provision of law to the contrary, the commissioner shall have the power to authorize any or all banks to engage in any activity in which any other bank, savings and loan association or a savings bank, organized under the laws of the United States, this state or any other state with deposits insured by the United States government is lawfully authorized to engage in at the time authority is granted.

(2) The commissioner shall have the power to authorize any or all Kansas trust companies, trust departments or both to engage in any trust-related activity in which any trust company or trust department, organized under the laws of the United States, this state or any other state, is lawfully authorized to engage in at the time authority is granted.

(b) (1) The commissioner shall exercise the power granted in subsection (a) by the issuance of a special order if the commissioner deems such action is reasonably required to:

(A) Preserve and protect the welfare of a particular institution; or

(B) preserve the welfare of all state banks or trust companies and to promote competitive equality of state and other insured depository institutions.

Such special order shall provide for the effective date thereof and upon and after such date shall be in full force and effect until amended or revoked by the commissioner. Promptly following issuance, the commissioner shall mail a copy of each special order to all state banks and trust companies and [such order] shall be published in the Kansas register.

(c) The commissioner, at the time of issuing any special order pursuant to this section, shall prepare a written report, which shall include a description of the special order and a copy of the special order and submit the written report to:

(1) The president and the minority leader of the senate;

(2) the chairperson and ranking minority member of the senate standing committee on financial institutions and insurance;

(3) the speaker and the minority leader of the house of representatives;

(4) the chairperson and ranking minority member of the house of representatives standing committee on financial institutions; and

(5) the governor.

(d) Within two weeks of the beginning of each legislative session, the commissioner shall submit to the senate committee on financial institutions and insurance and the house of representatives committee on financial institutions, a written summary of each special order issued during the preceding year. Upon request of the chair of the senate standing committee on financial institutions and insurance or the chair of the house standing committee on financial institutions, the commissioner, or the commissioner's designee, shall appear before the committee to discuss any special order issued during the preceding year. If the committee desires information concerning the economic impact of any special order, the committee chair or ranking minority member may request assistance from the division of budget.

(e) The issuance of special orders under this section shall not be subject to the provisions of article 4 of chapter 77 of the Kansas Statutes Annotated, and amendments thereto.

(f) The powers contained in this section shall be in addition to any and all other powers granted to the commissioner.

*History:* L. 1967, ch. 74, § 1; L. 1975, ch. 44, § 36; L. 1980, ch. 48, § 1; L. 1986, ch. 57, § 11; L. 1995, ch. 74, § 1; L. 1999, ch. 12, § 1; L. 2000, ch. 19, § 1; L. 2001, ch. 33, § 1; L. 2015, ch. 38, § 106; L. 2016, ch. 54, § 46; July 1.

**K.S.A. 9-1716. Powers of commissioner; order restricting declaration and payment of dividends.**

If the commissioner shall determine that the condition of any bank is such that dividends should not be declared and paid from capital or that such dividends should be declared and paid only subject to certain conditions, the commissioner shall render an order prohibiting or limiting the declaration and payment of dividends. Upon receiving notice of the order, the bank shall have the right to a hearing to be conducted in accordance with the Kansas administrative procedure act. Any final order of the commissioner pursuant to this section is subject to review in accordance with the Kansas judicial review act.

*History:* L. 1975, ch. 44, § 2; L. 1988, ch. 356, § 41; L. 2015, ch. 38, § 107; July 1.

**K.S.A. 9-1717. Prohibition against felon from serving as director, officer or employee.**

(a) Except with the written consent of the commissioner, no person shall serve as a director, officer or employee of a state bank or state trust company who has been convicted, or who is hereafter convicted, of any felony or any crime involving dishonesty or a breach of trust.

(b) Any state bank or state trust company that willfully violates subsection (a), shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of $1,000 for each day the violation continues.

*History:* L. 1984, ch. 48, § 1; L. 2015, ch. 38, § 108; L. 2021, ch. 78, § 4; July 1.

**K.S.A. 9-1719. Change of control; definitions.**

As used in K.S.A. 9-1719 to 9-1722, inclusive, and amendments thereto:

(a) "Applicant " means a person who has submitted a change of control application pursuant to K.S.A. 9-1721, and amendments thereto.

(b) "Control" means the power to:

(1) Vote 25% or more of any class of voting shares;

(2) direct, in any manner, the election of a majority of the directors; or

(3) direct or exercise a controlling influence over the management or policies.

(c) "Person" means an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization or any other form of entity not specifically listed in this subsection.

*History:* L. 1984, ch. 47, § 1; L. 1987, ch. 54, § 9; L. 2015, ch. 38, § 109; L. 2024 ch 15, § 14; July 1.

**K.S.A. 9-1720. Change of control; approval.**

(a) Except with the prior written approval of the commissioner, or as otherwise permitted by the state banking code, it shall be unlawful for:

(1) A person acting directly, indirectly or in concert with one or more persons, either directly or indirectly, to engage in any activity that may result or results in acquiring control of any bank, bank holding company as defined in K.S.A. 9-519, and amendments thereto, or trust company without notifying the commissioner at least 30 days prior to acquiring control. The commissioner may determine if an activity may result or results in a change of control under this paragraph;

(2) a bank to merge or consolidate with any bank or institution, or either directly or indirectly acquire the assets of, or assume the liability to pay any deposit made in any other bank or institution, referred to hereinafter as a merger transaction; or

(3) a trust company to merge or consolidate with any trust company, or either directly or indirectly acquire the assets of any other trust company, referred to hereinafter as a merger transaction.

(b) The board of directors of any privately held bank, bank holding company or trust company shall notify the commissioner of any change of control of the bank, bank holding company or trust company at least 30 days prior to the date the change of control becomes effective.

(c) A trust company may merge or consolidate with a trust company, with the prior written approval of the commissioner chartered by:

(1) The comptroller of the currency; or

(2) another state. An application filed pursuant to this subsection shall be subject to the provisions of K.S.A. 9-1721, 9-1722 and 9-1724, and amendments thereto.

*History:* L. 1984, ch. 47, § 2; L. 2015, ch. 38, § 110; L. 2016, ch. 54, § 47; L. 2018, ch. 4, § 2; March 8.

**K.S.A. 9-1721. Application process; approval factors and criteria; time frame.**

(a) The person proposing to acquire control or a bank or trust company undertaking a merger transaction, hereinafter referred to as the applicant, shall file a complete application with the commissioner at least 60 days prior to the proposed change of control or merger transaction. If the commissioner does not act on the complete application within the 60-day

time period, and the applicant has received approval from all other applicable federal and state agencies, the application shall stand approved. The commissioner may, for any reason, extend the time period to act on an application for an additional 30 days. The time period to act on an application may be further extended if the commissioner determines that the applicant has not furnished all the information required under K.S.A. 9-1722, and amendments thereto, or that, in the commissioner's judgment, any material information submitted is substantially inaccurate. The commissioner may waive the 60-day prior notice requirement if the acquired bank or trust company is under a formal corrective action.

(b) Upon the filing of an application, the commissioner shall make an investigation of the applicant for the change of control or merger transaction. The commissioner may deny the application if the commissioner finds the:

(1) Proposed change of control or merger transaction would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or attempt to monopolize the business of banking or trust services in any part of this state;

(2) financial condition of the applicant might jeopardize the financial stability of the bank or trust company or prejudice the interests of the depositors of a bank;

(3) competence, experience or integrity of the applicant or of any of the proposed management personnel of the bank or trust company or resulting bank or trust company indicates it would not be in the interest of the depositors of the bank, the clients of trust services, or in the interest of the public; or

(4) applicant neglects, fails or refuses to furnish the commissioner with all of the information required by the commissioner.

(c) Upon service of an order denying an application, the applicant shall have the right to a hearing to be conducted in accordance with the Kansas administrative procedure act before the state banking board. Any final order of the commissioner pursuant to this section is subject to review in accordance with the Kansas judicial review act.

*History:* L. 1984, ch. 47, § 3; L. 1986, ch. 318, § 17; L. 1988, ch. 356, § 42; L. 2010, ch. 17, § 28; L. 2015, ch. 38, § 111; L. 2016, ch. 54, § 48; L. 2018, ch. 4, § 3; L. 2024 ch. 64 § 62; July 1.

**K.S.A. 9-1722. Application requirements; fingerprint fees.**

(a) A change of control application filed pursuant to K.S.A. 9-1721, and amendments thereto, shall contain the following information:

(1) The identity, personal history, business background and experience of each person by or for whom the change of control is to be made, including the material business activities and affiliations during the past five years and a description of any material

pending legal or administrative proceedings in which the person is a party and any criminal indictment or conviction of such person by a state or federal court;

(2) a statement of the assets and liabilities of each person by or for whom the change of control is to be made, along with any related statements of income and source and application of funds, as of a date not more than 90 days prior to the date of the application. Individuals who own 10% or more shares in a bank holding company, as defined in K.S.A. 9-519, and amendments thereto, shall file the financial information required by this paragraph;

(3) the terms and conditions of the proposed change of control and the manner in which such change of control is to be made;

(4) the identity, source and amount of the funds or other considerations used or to be used in making the change of control and, if any part of these funds or other considerations has been or is to be borrowed or otherwise obtained for such purpose, a description of the transaction, the names of the parties, and any arrangements, agreements or understandings with such persons;

(5) any plans or proposals which any applicant may have to liquidate the bank or trust company or to make any other major change in the bank's or trust company's business or corporate structure or management;

(6) the identification of any person employed, retained or to be compensated by any party or by any person on such person's behalf to make solicitations or recommendations to stockholders for the purpose of assisting in the change of control and a brief description of the terms of such employment, retainer or arrangement for compensation;

(7) copies of all invitations or tenders or advertisements making a tender offer to stockholders for purchase of their stock to be used in connection with the proposed change of control;

(8) when applicable, the certified copies of the stockholder proceedings showing a majority of the outstanding voting stock was voted in favor of the change of control; and

(9) any additional relevant information in the form and manner prescribed by the commissioner.

(b) A merger transaction application filed pursuant to K.S.A. 9-1721, and amendments thereto, shall contain the following information:

(1) The structure, terms and conditions and financing arrangements of the proposed merger transaction;

(2) a complete and final copy of the merger transaction agreement;

(3) certified copies of the stockholder proceedings showing a majority of the outstanding voting stock of the banks or trust companies in the merger transaction was voted in favor of the merger transaction;

(4) a list of directors and senior executive officers of the resulting bank or trust company;

(5) one year pro forma statements of financial conditions and future prospects of the resulting bank or trust company, including capital positions;

(6) how the merger transaction will meet the convenience and needs of the community; and

(7) any other relevant information in the form and manner prescribed by the commissioner.

(c) With regard to any trust company which files a notice pursuant to this section, the commissioner may require fingerprinting of an applicant in accordance with K.S.A. 2024 Supp. 22-4714, and amendments thereto.

(d) The commissioner may accept an application filed with the federal reserve bank or federal deposit insurance corporation in lieu of an application filed pursuant to subsection (a). The commissioner may, in addition to such application, request additional relevant information.

(e) At the time of filing an application pursuant to K.S.A. 9-1721, and amendments thereto, or an application filed pursuant to subsection (d), the applicant shall pay to the commissioner a fee in an amount established pursuant to K.S.A. 9-1726, and amendments thereto, to defray the expenses of the commissioner in the examination and investigation of the application. The commissioner shall remit all moneys received under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the bank investigation fund. The moneys in the bank investigation fund shall be used to pay the expenses of the commissioner in the examination and investigation of such applications and any unused balance shall be transferred to the bank commissioner fee fund.

*History:* L. 1984, ch. 47, § 4; L. 1986, ch. 55, § 3; L. 1992, ch. 62, § 4; L. 2012, ch. 161, § 12; L. 2015, ch. 38, § 112; L. 2016, ch. 54, § 49; L. 2024, ch. 15 § 15; July 1.

**K.S.A. 9-1724. Exception for mergers resulting in a national bank.**

(a) The provisions of K.S.A. 9-1720 through 9-1724, and amendments thereto, shall not apply to the merger transaction of a bank or trust company when the surviving entity is a national banking association or other state or federally chartered financial institution or a trust company, except that the bank or trust company shall provide written notification to the

commissioner of such a merger, consolidation or transfer of assets and liabilities at least 10 days prior to the consummation of any such transaction.

(b) Any bank or trust company that will cease to exist following the consummation of any approved merger transaction shall have its charter deemed void on the next business day immediately following the merger consummation date. Not more than 15 days following any merger transaction, any bank or trust company that will cease to exist shall surrender such bank's or trust company's state certificate of authority or charter and shall certify in writing that the proper instruments have been executed and filed in accordance with K.S.A. 17-6003, and amendments thereto.

(c) Notice of the merger transaction shall be published twice in a newspaper of general circulation in each city or county where the bank or trust company is located, or the newspaper nearest such city or county and a certified copy of each notice shall be filed with the commissioner. The first publication shall be not later than five days after an application is filed. The second publication shall be on the 14th day after the date of the first publication or, if the newspaper does not publish on the 14th day, then the date that is the closest to the 14th day. The notice shall be in the form prescribed by the commissioner and shall provide for a comment period of not less than 10 days after the date of the second publication.

*History:* L. 1984, ch. 47, § 6; L. 1987, ch. 54, § 10; L. 1992, ch. 62, § 5; L. 1993, ch. 156, § 1; L. 1994, ch. 28, § 1; L. 1995, ch. 19, § 2; L. 2015, ch. 38, § 113; L. 2016, ch. 54, § 50; 2025 SB 139; July 1.

**K.S.A. 9-1725. Powers of the commissioner during existence of an emergency.**

(a) Whenever the commissioner is of the opinion that an emergency, as defined by K.S.A. 9-1122, and amendments thereto, exists or is impending in this state which affects, or may affect, a particular bank, trust company, multiple banks or multiple trust companies, the commissioner may, by proclamation, temporarily close the particular institutions located in the affected area. The banks or trust companies so closed shall remain closed until the commissioner proclaims that the emergency has ended.

(b) The commissioner may approve a request for an emergency temporary closing and subsequent reopening of a particular bank or trust company by the officers of such bank or trust company pursuant to K.S.A. 9-1122, and amendments thereto.

(c) Whenever the commissioner is of the opinion that an emergency, as defined by K.S.A. 9-1122, and amendments thereto, affects, or may affect, a particular bank, branch bank, trust company or trust service office, the commissioner may approve a temporary relocation of the bank, branch bank, trust company or trust service office. The temporary relocation shall be as close as the commissioner determines is safely possible to the bank, branch bank, trust company or trust service office's approved place of business.

(d) Every day that any bank, branch bank, trust company, or trust service office thereof, remains closed pursuant to this section shall be deemed a holiday for all of the purposes of chapter 84 of the Kansas Statutes Annotated, and amendments thereto, and with respect to any banking business of any character. No bank, branch bank, trust company or trust service office shall be required to permit access to such bank's, branch bank's or trust company's safe deposit vault or vaults on any such day. If the terms of a contract require the payment of money or the performance of a condition on any such day by, through, with or at any bank, branch bank, trust company or trust service office, then the payment may be made or condition performed on the next business day with the same force and effect as if made or performed in accordance with the terms of the contract. No liability or loss of rights of any kind shall result from the delay.

(e) Any bank, branch bank, trust company or trust service office temporarily closed or relocated pursuant to this section shall post notice of such closing in a conspicuous place at each closed location. Such notice shall serve as official notification to everyone of the temporary closing or relocation of the bank, branch bank, trust company or trust service office and thereafter no liability shall be incurred by the bank or trust company by reason of the temporary closing or relocation pursuant to this section.

*History:* L. 2015, ch. 38, § 2; July 1.

**K.S.A. 9-1726. Fees; rules and regulations.**

(a) Except as provided in subsection (b), at the time of filing any application described below, the applicant shall remit to the commissioner a nonrefundable fee in the amount of:

(1) Bank or trust company charter .....$2,500

(2) New branck [branch] bank .....750

(3) Relocation of a branch bank or main office .....750

(4) Merger, consolidation or transfer of assets and liabilities .....1,000

(5) Change of control:

(A) General.....1,000

(B) Bona fide gift of [or] inheritance .....500

(C) Formation of one-bank holding company and associated exchange of stock .....500

(6) Conversion to state charter .....500

(7) Fiduciary activities:

(A) Trust authority .....500

(B) Trust branch .....500

(C) Trust service office .....500

(D) Contracting trustee agreement .....500

(E) Out of state trust facility .....500

(8) Change of name .....250

(9) Revenue bond pledgibility .....200

(10) Letter of good standing .....50

(b) The commissioner may adopt rules and regulations to change the amount of the fees established in subsection (a) to an amount not to exceed 150% of any such fee established in subsection (a).

(c) The commissioner may waive any fee established by this section.

(d) Any applicant may be required by the commissioner to pay any additional cost associated with any examination or investigation if the commissioner determines that an on-site examination of the financial institutions or trust companies that are parties to the application is necessary.

(e) Within two weeks of the beginning of each legislative session, the commissioner shall submit to the senate committee on ways and means, the appropriate senate budget subcommittee, the house of representatives committee on appropriations and the appropriate house of representatives budget committee, a written summary of any rules and regulations adopted to establish fees pursuant to subsection (b) during the preceding year.

(f) The commissioner may adopt rules and regulations necessary to administer the provisions of this section.

*History:* L. 2015, ch. 38, § 12; July 1.

## Article 18 – BANKING CODE; SUPERVISION; BOARD

### K.S.A. 9-1805. Removal of officer or director; hearing; judicial review.

(a) If the state banking board finds that any current or former officer or director of any bank or trust company has been dishonest, reckless or incompetent in performing duties as such officer or director or willfully or continuously fails to observe any legally made order of the commissioner or the state banking board, the state banking board may take one or more of the following actions:

(1) Remove such officer or director; and

(2) prohibit such officer's or director's further participation in any manner in the conduct of the affairs of any state bank or trust company in Kansas.

(b) The officer or director shall have the right to a hearing before the state banking board to be conducted in accordance with the Kansas administrative procedure act. Any action of the state banking board pursuant to this section is subject to review in accordance with the Kansas judicial review act.

(c) If upon the conclusion of such hearing, the state banking board determines that the officer or director has been dishonest, reckless or incompetent in performing duties as such an officer or director or has willfully or continuously failed to comply with any legally made order of the commissioner or state banking board, the state banking board may order the officer or director to vacate the office and prohibit such officer's or director's further participation in the conduct of the affairs of any state bank or trust company in Kansas. The state banking board shall mail a copy of its removal order to the bank or trust company where such officer or director was serving.

*History:* L. 1947, ch. 102, § 107; L. 1975, ch. 44, § 40; L. 1976, ch. 145, § 37; L. 1986, ch. 318, § 18; L. 1988, ch. 356, § 43; L. 2005, ch. 29, § 1; L. 2010, ch. 17, § 30; L. 2015, ch. 38, § 114; July 1.

### K.S.A. 9-1807. Cease and desist orders; institution of proceedings by commissioner; hearing by board; issuance; temporary orders of commissioner.

(a) If the commissioner finds that any bank or trust company is engaging, has engaged or is about to engage in an unsafe or unsound practice or if the commissioner finds that any bank or trust company is violating, has violated or is about to violate a law, rule and regulation or order of the commissioner or state banking board, the commissioner may issue and serve upon the bank or trust company a notice of charges. The notice of charges shall contain a statement of the facts that forms the basis for a proposed cease and desist order and shall state the time and place that a hearing will be held by the state banking board to determine whether an order to cease and desist therefrom should be issued by the state banking board against the bank or trust company. Such hearing shall be fixed for a date not earlier than 30

days nor later than 60 days after service of such notice and shall be held in accordance with the Kansas administrative procedure act.

(b) Unless the bank or trust company appears at the hearing, such bank or trust company shall be deemed to have consented to the issuance of the cease and desist order. In the event of such consent, or if upon the record made at any such hearing, the state banking board finds that any unsafe or unsound practice or violation specified in the notice of charges has been established, the state banking board may issue and serve upon the bank or trust company an order to cease and desist from any such practice or violation. Such order may require the bank or trust company and such bank's or trust company's directors, officers, employees or agents to cease and desist or to take affirmative action to correct the conditions resulting from any such practice or violation. A cease and desist order shall become effective at the time specified therein and shall remain effective and enforceable as provided therein, except to such extent as it is stayed, modified or terminated by the state banking board.

(c) Whenever the commissioner finds that a bank's or trust company's unsafe or unsound practice or violation, or the continuation thereof, is likely to cause insolvency, substantial dissipation of assets or earnings or is likely to seriously prejudice the interests of the bank's depositors or trust company's clients, the commissioner may issue a temporary order requiring the bank or trust company to cease and desist from any such practice or violation. The order shall contain a notice of charges with a statement of the facts that forms the basis for a proposed temporary cease and desist order. Such order shall be effective upon service on the bank or trust company and shall remain effective and enforceable pending the completion of the proceedings pursuant to such notice and until such time as the state banking board dismisses the charges specified in such notice, or if a cease and desist order is issued against the bank or trust company, until the effective date of any such order.

*History:* L. 1975, ch. 44, § 1; L. 2015, ch. 38, § 115; L. 2016, ch. 54, § 51; 2025 SB 139; July 1.

**K.S.A. 9-1809. Civil penalties.**

(a) After providing a notice and an opportunity for a public hearing in accordance with the Kansas administrative procedure act, the commissioner may, with the approval of the state banking board, assess against and collect a civil money penalty from any bank or trust company that, or any executive officer, director, employee, agent, or other person participating in the conduct of the affairs of such bank or trust company who:

(1) Engages or participates in any unsafe or unsound practice in connection with a bank or trust company; or

(2) violates or knowingly permits any person to violate any of the provisions of:

(A) The state banking code;

(B) any rule or regulation promulgated pursuant to the state banking code; or

(C) any lawful order of the commissioner or the state banking board.

(b) The civil money penalty shall not exceed $1,000 per day for each day such violation continues. No civil money penalty shall be assessed for the same act or practice if another government agency has taken similar action against the bank, trust company or person to be assessed such civil money penalty. In determining the amount of the civil money penalty to be assessed, the commissioner shall consider:

(1) The good faith of the bank, trust company or person to be assessed with such civil money penalty;

(2) the gravity of the violation;

(3) any previous violations by the bank, trust company or person to be assessed with such civil money penalty;

(4) the nature and extent of any past violations; and

(5) such other matters as the commissioner may deem appropriate.

(c) Upon waiver by the respondent of the right to a public hearing concerning an assessment of a civil money penalty, the hearing or portions thereof may be closed to the public when concern arises about prompt withdrawal of moneys from or the safety and soundness of the bank or trust company.

(d) For the purposes of this section, a violation shall include, but is not limited to, any action, by any person alone or with another person, that causes, brings about, or results in the participation in, counseling of, or aiding or abetting of a violation.

(e) The commissioner, with approval of the state banking board, may modify or set aside any order assessing a civil money penalty. Any civil money penalty collected pursuant to this section shall be transmitted to the state treasurer, who shall credit it to the bank commissioner fee fund.

(f) Notwithstanding any other provision of law, no bank or trust company shall indemnify or insure any executive officer, director, employee, agent or person participating in the conduct of affairs of such bank or trust company against civil money penalties.

*History:* L. 2005, ch. 7, § 1; July 1.

**K.S.A. 9-1810. Informal agreements with commissioner; when; confidentiality.**

(a) The commissioner may enter into any informal agreement with any bank or trust company for a plan of action to address possible safety or soundness concerns, violations of law or

any weakness displayed by the bank or trust company if the commissioner determines that the bank or trust company displays:

(1) Possible safety and soundness concerns or is violating, has violated or is about to violate any law, rule and regulation or order of the commissioner or the state banking board resulting in a less than satisfactory condition, but not to a degree requiring formal administrative action; or

(2) any weakness that if not properly addressed and corrected would reasonably be expected to result in future safety and soundness concerns, violations of applicable laws, rules and regulations and further deterioration in the condition of the bank or trust company.

(b) The adoption of an informal agreement authorized by this section shall not be subject to the provisions of K.S.A. 77-501 et seq., and amendments thereto, or K.S.A. 77-601 et seq., and amendments thereto. Any informal agreement authorized by this section shall not be considered an order or other agency action and shall be considered confidential examination material pursuant to K.S.A. 9-1712, and amendments thereto.

*History:* L. 2015, ch. 38, § 3; L. 2020, ch. 12, § 1; July 1.

**K.S.A. 9-1811. Consent orders; when.**

The commissioner may enter into a consent order at any time with a bank, trust company, any executive officer, director, employee, agent or other person to resolve a matter arising under the state banking code, rules and regulations adopted thereto or an order issued pursuant to the state banking code.

*History:* L. 2015, ch. 38, § 4; July 1.

## Article 19 – BANKING CODE; DISSOLUTION; INSOLVENCY

### K.S.A. 9-1901. Dissolution.

Any corporation that is not insolvent or critically undercapitalized and otherwise transacting business under the state banking code may be dissolved by its board of directors in accordance with K.S.A. 17-6801 et seq., and amendments thereto, provided the bank has completed a liquidation to the satisfaction of the commissioner pursuant to K.S.A. 9-1919, and amendments thereto.

*History:* L. 1947, ch. 102, § 109; L. 2015, ch. 38, § 116; July 1.

### K.S.A. 9-1902. Definition of insolvency.

A bank or trust company shall be deemed to be insolvent when:

(a) The actual cash market value of a bank's or trust company's assets is insufficient to pay such bank's or trust company's creditor liabilities, except that for this purpose unconditional evidence of indebtedness of the United States of America may be valued, at the discretion of the commissioner, at par or cost whichever is the lesser; or

(b) the bank or trust company is unable to meet the demands of its creditors in the usual and customary manner.

*History:* L. 1947, ch. 102, § 110; L. 1980, ch. 49, § 2; L. 2015, ch. 38, § 117; L. 2016, ch. 54, § 52; July 1.

### K.S.A. 9-1902a. Critical undercapitalization.

A bank or trust company is critically undercapitalized when the ratio of its capital to total assets is equal to or less than 2.0%. For the purposes of this section, capital shall be the total of the institution's common stock, surplus, undivided profits, capital reserves, noncumulative perpetual preferred stock and outstanding cumulative perpetual preferred stock, including related surplus, but intangibles, such as goodwill, shall not be included in the capital calculation.

*History:* L. 1993, ch. 7, § 1; L. 2015, ch. 38, § 118; July 1.

### K.S.A. 9-1903. Undercapitalized and insolvent banks and trust companies; commissioner to take charge, when.

If it shall appear upon the examination of any bank or trust company or from any report made to the commissioner that any bank or trust company is:

(a) Critically undercapitalized, the commissioner may:

(1) Enter an informal memorandum pursuant to K.S.A. 9-1810, and amendments thereto, to notify the bank or trust company of the unsafe and unsound condition and require the bank or trust company to correct the condition within the time prescribed by the commissioner; or

(2) take charge of such bank or trust company and all of its property and assets. In taking charge of a critically undercapitalized bank or trust company, the commissioner may:

(A) Appoint a special deputy commissioner to take charge temporarily of the affairs of the bank or trust company; or

(B) appoint a receiver if it shall appear at any time that the bank or trust company cannot sufficiently recapitalize, resume business or liquidate the bank's or trust company's indebtedness to the satisfaction of the depositors and creditors of such bank or trust company.

(b) Insolvent, the commissioner shall take charge of the bank or trust company and all property and assets of such bank or trust company. In taking charge of an insolvent bank or trust company, the commissioner shall:

(1) Appoint a special deputy commissioner to take charge temporarily of the affairs of the bank or trust company; or

(2) appoint a receiver if it shall appear at any time that the bank or trust company cannot sufficiently recapitalize, resume business or liquidate its indebtedness to the satisfaction of the depositors and creditors of such bank or trust company.

*History:* L. 1947, ch. 102, § 111; L. 1993, ch. 7, § 3; L. 2015, ch. 38, § 119; July 1.

**K.S.A. 9-1905. Receiver for insolvent and undercapitalized bank or trust company.**

(a) In the event the commissioner appoints a receiver for any bank or trust company, the commissioner shall appoint:

(1) The federal deposit insurance corporation; or

(2) any individual, partnership, association, limited liability company, corporation or any other business entity which shall have accounting, regulatory, legal or other relevant experience in the field of banking or trust as shall be determined by the commissioner.

(b) Any receiver other than the federal deposit insurance corporation shall give such bond as the commissioner deems proper and immediately file in the district court of the county where the bank or trust company is located for liquidation, disposition and dissolution

pursuant to the state banking code, the Kansas general corporation code, and as may be ordered by the court.

(1) The receiver shall be entitled to reasonable compensation subject to the approval of the district court.

(2) Upon written application made within 30 days after the filing in district court, the court may appoint as receiver any person that the holders of more than 60% in amount of the claims against such bank or trust company shall agree upon in writing. The creditors so agreeing may also agree upon the compensation and charges to be paid such receiver. Each receiver so appointed shall make a complete report to the commissioner covering the receiver's acts and proceedings as such.

(c) The bank or trust company shall have the right to petition for review of the commissioner's order taking charge, appointment of a special deputy or appointment of a receiver. Such review shall not be subject to the provisions of K.S.A. 77-501 et seq., and amendments thereto. A petition for review shall be filed within 10 days of the commissioner's action. Notwithstanding any provision of law to the contrary, or by order of the court, review shall proceed as expeditiously as possible pursuant to the provisions of K.S.A. 77-601 et seq., and amendments thereto. Notwithstanding any provision of law to the contrary, the decision of the district court may be appealed only to the supreme court of Kansas. The time within which an appeal may be taken shall be 10 days from final disposition of the district court.

*History:* L. 1947, ch. 102, § 113; L. 1993, ch. 7, § 5; L. 2015, ch. 38, § 120; L. 2016, ch. 54, § 53; July 1.

**K.S.A. 9-1906. Receiver to take charge of assets; order of payment.**

(a) A receiver appointed pursuant to K.S.A. 9-1905, and amendments thereto, other than the federal deposit insurance corporation, shall take charge of any bank or trust company and all of the bank's or trust company's assets and property, and liquidate the affairs and business thereof for the benefit of the depositors, creditors and stockholders of the bank or trust company. The receiver may sell all the property of the bank or trust company upon such terms as the district court of the county where the bank or trust company is located shall approve. The receiver shall pay over all moneys received to the creditors and depositors of such bank or trust company.

(b) In distributing assets of the bank or trust company in payment of its liabilities, the order of payment, in the event its assets are insufficient to pay in full all of its liabilities, shall be by category as follows:

(1) The costs and expenses of the receivership and real and personal property taxes assessed against the bank or trust company pursuant to applicable law;

(2) claims which are secured or given priority by applicable law;

(3) claims of unsecured depositors;

(4) all other claims exclusive of claims on capital notes and debentures; and

(5) claims on capital notes and debentures.

Should the assets be insufficient for the payment in full of all claims within a category, such claims shall be paid in the order provided by other applicable law or, in the absence of such applicable law, pro rata.

*History:* L. 1947, ch. 102, § 114; L. 1985, ch. 59, § 1; L. 1988, ch. 63, § 1; L. 1993, ch. 7, § 6; L. 2015, ch. 38, § 121; L. 2016, ch. 54, § 54; July 1.

**K.S.A. 9-1907. Powers of federal deposit insurance corporation or its successor.**

The federal deposit insurance corporation or any successor, hereby is authorized and empowered to be and act without bond as receiver of any bank, the deposits in which are to any extent insured by such corporation. If the federal deposit insurance corporation, or any successor, accepts the appointment, then the federal deposit insurance corporation, or any successor, shall succeed to all the rights, titles, powers and privileges of the bank and of any stockholder, member, account holder, depositor, officer or director of the bank with respect to the bank.

*History:* L. 1947, ch. 102, § 115; L. 1989, ch. 48, § 50; L. 1993, ch. 7, § 7; L. 2015, ch. 38, § 122; L. 2016, ch. 54, § 55; July 1.

**K.S.A. 9-1908. Title to all assets to vest in insurance corporation.**

Whenever the federal deposit insurance corporation, or any successor, shall accept the appointment as receiver for any bank the possession of and title to all of the assets, business and property of every kind of such bank shall pass to and vest in the federal deposit insurance corporation, or any successor, as receiver without the execution of any instruments of assignment, endorsement, transfer or conveyance.

*History:* L. 1947, ch. 102, § 116; L. 1989, ch. 48, § 51; L. 2015, ch. 38, § 123; L. 2016, ch. 54, § 56; July 1.

**K.S.A. 9-1909. Claims to be filed within one year.**

All claims of depositors and other creditors must be filed with the receiver within one year after the date of the receiver's appointment, and if any claim is not filed, then the claim shall be barred from participation in the estate and assets of any such bank or trust company.

*History:* L. 1947, ch. 102, § 117; L. 2015, ch. 38, § 124; L. 2016, ch. 54, § 57; July 1.

**K.S.A. 9-1910. Surrender control to commissioner.**

Upon the affirmative vote of 2/3 of the outstanding voting stock, the shareholders of a bank or trust company may transfer all of the bank's or trust company's assets and property of whatever nature and any rights thereto to the possession and control of the commissioner and waive any right to the Kansas administrative procedure act, the Kansas judicial review act or any other lawful right to challenge the commissioner's authority without the execution of any instruments of assignment, endorsement, transfer or conveyance. Such action shall operate as a bar to any attachment proceedings.

*History:* L. 1947, ch. 102, § 118; L. 2015, ch. 38, § 125; L. 2016, ch. 54, § 58; July 1.

**K.S.A. 9-1911. Receiver may borrow money.**

The receiver of any insolvent bank or trust company may borrow money and pledge the assets of such insolvent bank or trust company but only upon prior written approval of the commissioner.

*History:* L. 1947, ch. 102, § 119; June 30.

**K.S.A. 9-1915. Deposits or debts while insolvent; liability.**

It shall be unlawful for the president, director, managing officer, cashier or any other officer of any bank to agree to accept deposits, in an amount that would create an excess above the federal deposit insurance corporation insured deposit amount, after such person has knowledge of the fact that such bank is insolvent or in failing circumstances. It hereby is made the duty of every such officer or managing officer to examine into the affairs of every such bank and know its condition if possible. Upon failure to discharge such duty such person shall be held to have had knowledge of the insolvency of such bank or that the bank was in failing circumstances, for the purposes of this section. Every person that violates the provisions of this section shall be responsible individually for such deposits so received, except that any director or officer who may have paid more than such person's share of the liabilities mentioned in this section shall have the proper remedy at law against such other persons as shall not have paid their full share of such liabilities.

*History:* L. 1947, ch. 102, § 123; L. 1989, ch. 48, § 52; L. 2015, ch. 38, § 126; L. 2016, ch. 54, § 59; July 1.

*Revisor's Note:* Similar provisions and penalties, see 9-2010.

**K.S.A. 9-1916. Same; action to enforce liability; evidence.**

In all actions brought for the recovery of any deposits received, in an amount that would create an excess above the federal deposit insurance corporation insured deposit amount, while any bank was insolvent or in failing circumstances, all officers, agents, and directors of such bank may be joined as defendants or proceeded against severally. The fact that any bank was insolvent or in failing circumstances at the time of the reception of the deposit shall be prima facie evidence of such knowledge in accepting the deposit on the part of such officer, agent or director so charged therewith. This liability may be enforced by and against executors and administrators of any deceased officer, director or agent.

*History:* L. 1947, ch. 102, § 124; L. 1989, ch. 48, § 53; L. 2015, ch. 38, § 127; July 1.

**K.S.A. 9-1917. Undelivered funds due creditors, depositors and shareholders of defunct bank or trust company; duties of commissioner and state treasurer; undistributed assets of defunct institutions fund.**

On and after July 1, 1972, and in every case occurring heretofore and hereafter, in which funds due to creditors, depositors and shareholders on liquidation of institutions under the jurisdiction of the state bank commissioner under K.S.A. 9-1901 et seq., and amendments thereto, are undelivered, they shall, together with accrued interest, if any, be paid to the state bank commissioner, who shall remit all such payments to the state treasurer, in accordance with the provisions of K.S.A. 75-4215, and amendments thereto, and credit such individual creditors, depositors or shareholders account in the undistributed assets of defunct institution fund ledger. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the undistributed assets of defunct institutions fund which is hereby created. Such fund shall be used only for refunds and payments of amounts due creditors, depositors and shareholders on claims filed with and approved by the state bank commissioner. Any balance remaining in the fund from any single defunct institution five years, during which time no person entitled thereto shall have appeared to claim such funds, shall be transferred by the state bank commissioner to the state general fund and appropriate entries made in the individual creditors, depositors or shareholders record, showing the date and disposition of the funds and shall further recite that they were transferred by reason of this statute of limitation.

*History:* L. 1972, ch. 36, § 1; L. 2001, ch. 5, § 46; July 1.

**K.S.A. 9-1918. Escheat and disposition of certain property in custody of commissioner; escheat.**

Whenever the state bank commissioner shall determine that property or assets held in the commissioner's custody and received as a result of the liquidation of any institution under the jurisdiction of the commissioner has remained in the commissioner's custody for a period of more than 10 years, and no claim has been filed during such period by any creditor, depositor or shareholder of such institution, such property shall escheat to the state. The commissioner shall

notify the director of purchases of the property or assets so held and the director of purchases shall authorize and provide for the sales of such property or assets in the manner provided by law for the sale of obsolete or unused property of the state. All proceeds from the sale of any such property or assets shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund and appropriate entries made in the records of the state bank commissioner showing the disposition of the property or assets, the amount received therefor and the disposition thereof

*History:* L. 1976, ch. 361, § 1; L. 2001, ch. 5, § 47; July 1.

**K.S.A. 9-1919. Voluntary liquidation.**

(a) Upon the affirmative vote of a majority of the outstanding voting stock and approval of a liquidation plan by the commissioner, any bank may liquidate by paying in full all of the bank's depositors and creditors. Any bank desiring to voluntarily liquidate shall file a plan for liquidation with the commissioner.

(b) The commissioner may examine the bank or compel the bank to file reports with the commissioner during the time the bank is being liquidated. If the commissioner finds at any time during the liquidation period that the bank is not adhering to the approved liquidation plan, the commissioner may take action as authorized by article 18 of chapter 9 of the Kansas Statutes Annotated, and amendments thereto. If the commissioner finds that any deviation from the liquidation plan may be harmful to the depositors and creditors of the institution, the commissioner may appoint a receiver in accordance with procedures provided in article 19 of chapter 9 of the Kansas Statutes Annotated, and amendments thereto.

(c) Upon the completion of the liquidation, the bank shall immediately surrender the bank's certificate of authority to transact a banking business, remove all advertising signs, and notify and make the necessary filings with the secretary of state. The commissioner shall make a final examination to determine that all depositors and creditors have been paid before any distribution is made to stockholders.

*History:* L. 2015, ch. 38, § 5; July 1.

**K.S.A. 9-1920. Borrowing by liquidating bank.**

Upon the approval of the commissioner, the board of directors of any bank in the process of voluntary liquidation may borrow an amount not in excess of 100% of the bank's total deposit liabilities and may pledge the bank's assets.

*History:* L. 2015, ch. 38, § 6; July 1.

**K.S.A. 9-1921. Sale of bank's assets as part of liquidation.**

As part of the liquidation plan as approved by the commissioner, any bank, for the purpose of liquidation, may sell all or any part of the bank's assets to any other bank, either state or national, and may receive in payment cash or its equivalent, shares of stock in the purchasing bank, or both.

*History:* L. 2015, ch. 38, § 7; July 1.

## Article 20 – BANKING CODE; CRIMES AND PUNISHMENTS

### K.S.A. 9-2001. Failing to perform duty; penalty.

Every officer, employee, director or agent of any bank or trust company who shall neglect to perform any duty required by the state banking code, or who shall fail to conform to any lawful requirement made by the commissioner, upon conviction shall be guilty of a class A, nonperson misdemeanor.

*History:* L. 1947, ch. 102, § 125; L. 1989, ch. 48, § 54; L. 2015, ch. 38, § 128; July 1.

### K.S.A. 9-2002. Making false report, statement or entry in the books; penalty.

Every officer, director, agent or employee of any bank or trust company doing business in the state of Kansas who willfully and knowingly subscribes to or makes any false report or any false statement or entry in the books of such bank or trust company, or knowingly subscribes or exhibits any false writing, paper or electronic equivalent, with the intent to deceive any person as to the condition of such bank or trust company, upon conviction shall be guilty of a severity level 8, nonperson felony.

*History:* L. 1947, ch. 102, § 126; L. 1989, ch. 48, § 55; L. 1994, ch. 291, § 4; L. 2015, ch. 38, § 129; July 1.

### K.S.A. 9-2004. Swear or affirm falsely as perjury; penalty.

Every officer, director, agent or employee of a bank or trust company required by the state banking code to take an oath or affirmation, who shall willfully swear or affirm falsely, shall be guilty of perjury, and upon conviction shall be punished as provided by K.S.A. 21-5903, and amendments thereto.

*History:* L. 1947, ch. 102, § 128; L. 1989, ch. 48, § 57; L. 1994, ch. 291, § 5; L. 2011, ch. 30, § 99; L. 2015, ch. 38, § 130; July 1.

### K.S.A. 9-2005. Neglect of commissioner or deputy; penalty.

Any bank commissioner or deputy bank commissioner who shall willfully neglect to perform any duty provided for by the state banking code, or who shall knowingly and willfully permit the violation of any of the provisions of the state banking code for a period of 90 days by any bank or trust company doing business under the state banking code, or who shall knowingly or willfully make any false statement concerning any bank or trust company or who shall be guilty of any misconduct or corruption in office, upon conviction shall be deemed guilty of a class A, nonperson misdemeanor and shall be removed from office by the governor.

*History:* L. 1947, ch. 102, § 129; L. 2015, ch. 38, § 131; July 1.

**K.S.A. 9-2006. Receiving deposits after authority revoked; penalty.**

Any officer, director, employee or agent of any bank whose authority to transact a banking business has been revoked pursuant to the provisions of the state banking code, who shall receive or cause to be received any deposit of whatever nature after such revocation, upon conviction shall be guilty of a severity level 8, nonperson felony.

*History:* L. 1947, ch. 102, § 130; L. 2015, ch. 38, § 132; July 1.

**K.S.A. 9-2007. Violations by receiver; penalties.**

Any receiver of an insolvent bank or trust company, other than the federal deposit insurance corporation, or any successor, that fails to comply with the provisions of the state banking code, upon conviction shall be guilty of a class A, nonperson misdemeanor.

*History:* L. 1947, ch. 102, § 131; L. 1986, ch. 59, § 2; L. 1989, ch. 48, § 58; L. 2015, ch. 38, § 133; L. 2016, ch. 54, § 60; July 1.

*Revisor's Note:* Similar provisions, see 9-1912. [9-1912 was repealed in 2015.]

**K.S.A. 9-2008. Certified checks, drafts or orders in excess of amount on deposit.**

It shall be unlawful for any officer, director, employee or agent of any bank doing business pursuant to the provisions of the state banking code to certify any check, draft or order drawn upon the bank unless the person, firm or corporation drawing such check, draft or order has on deposit with the bank, at the time such check, draft or order is certified, an amount of money equal to the amount specified in such check, draft or order. Any check, draft or order so certified by the authorized officer, director, employee or agent shall be a good and valid obligation against such bank. Any officer, director, employee or agent of any bank violating the provisions of this section, upon conviction shall be deemed guilty of a class A, nonperson misdemeanor.

*History:* L. 1947, ch. 102, § 132; L. 2015, ch. 38, § 134; July 1.

*Revisor's Note:* Similar provisions, see 9-1119.

**K.S.A. 9-2010. Insolvent bank receiving deposits; penalty.**

No bank shall accept or receive on deposit, with or without interest, any money, bank bills or notes or United States treasury notes, gold or silver certificates or currency or other notes, bills, checks or drafts, when such bank is insolvent. Any officer, director, employee or agent of any bank, who

shall knowingly violate the provisions of this section or be accessory to or permit or connive at the receiving or accepting on deposit of any such deposit, upon conviction shall be guilty of a severity level 8, nonperson felony.

*History:* L. 1947, ch. 102, § 134; L. 1990, ch. 309, § 5; L. 2015, ch. 38, § 135; July 1.

*Revisor's Note:* Similar provisions, see 9-1915.

**K.S.A. 9-2011. Unlawfully engaging in the banking or trust company business; penalty.**

(a) It shall be unlawful for any individual, firm or corporation to advertise, publish or otherwise promulgate that such individual, firm or corporation is engaged in the banking business without first having obtained authority from the commissioner, unless its deposits are federally insured and either chartered in Kansas, another state or the federal government.

(b) It shall be unlawful for any individual, firm or corporation to advertise, publish or otherwise communicate that such individual, firm or corporation is engaged in the trust business without first having obtained authority from the commissioner, unless the entity is a federally insured bank or credit union and has authorization from another state or the federal government to engage in trust business in Kansas.

(c) Any such individual or member of any such firm or officer of any such corporation violating this section, upon conviction, shall be guilty of a class A, nonperson misdemeanor.

*History:* L. 1947, ch. 102, § 135; L. 1989, ch. 48, § 60; L. 1994, ch. 51, § 7; L. 2015, ch. 38, § 136; L. 2016, ch. 54, § 61; 2025 SB 139; July 1.

**K.S.A. 9-2012. Intent to injure or defraud; penalty.**

(a) It shall be unlawful for any shareholder, director, officer, employee or agent of any bank or trust company, with the intent to injure, defraud or deceive a bank or trust company, any agent appointed to examine the affairs of such bank or trust company, the commissioner or the commissioner's staff or any other person to:

(1) Issue or put forth any certificate of deposit, draw any draft or bill of exchange, make any acceptance, assign any note, bond, draft or bill of exchange; or

(2) to make use of the name of the bank or trust company in any manner.

(b) It shall be unlawful for any person to aid or abet any shareholder, director, officer, employee or agent in violation of this section. Any person violating the provisions of this section, upon conviction shall be guilty of a severity level 7, nonperson felony.

*History:* L. 1947, ch. 102, § 136; L. 1989, ch. 48, § 61; L. 1994, ch. 291, § 6; L. 2015, ch. 38, § 137; July 1.

**K.S.A. 9-2013. Unlawful to offer or solicit anything of value; penalty.**

(a) Except as provided in subsection (c), it shall be unlawful for:

(1) Any person or corporation to give, offer or promise anything of value to any person, with the intent to influence or reward an officer, director, employee, agent or attorney of any state bank or trust company in connection with any business or transaction of such bank or trust company; or

(2) any shareholder, officer, director, employee, agent or attorney of any state bank or trust company to solicit or demand for the benefit of any person or to accept or agree to accept anything of value from any person intending to influence or reward in connection with any business or transaction of such bank or trust company.

(b) Any person or corporation violating the provisions of subsection (a), upon conviction, shall be guilty of a class A, nonperson misdemeanor.

(c) This section shall not apply to bona fide salary, wages, fees or other compensation paid or expenses paid or reimbursed in the ordinary course of business.

*History:* L. 1947, ch. 102, § 137; L. 1992, ch. 136, § 1; L. 2015, ch. 38, § 138; July 1.

**K.S.A. 9-2014. Violation of act; commissioner or deputy to inform county or district attorney.**

It shall be the duty of the commissioner to inform the county or district attorney of the county in which the bank or trust company is located of any violation of any of the provisions of the state banking code, which constitute a misdemeanor or felony, by the shareholders, officers, directors, agents or employees of any bank or trust company, which shall come to the notice of the commissioner.

*History:* L. 1947, ch. 102, § 138; L. 1987, ch. 54, § 11; L. 1989, ch. 48, § 62; L. 2015, ch. 38, § 139; July 1.

**K.S.A. 9-2016. Unlawfully transacting banking or trust business; penalty.**

It shall be unlawful to transact a banking business or trust business without having first received a certificate from the commissioner. Any person violating the provisions of this section, either individually or as an interested party, in any association or corporation upon conviction shall be guilty of a class B, nonperson misdemeanor.

*History:* L. 1947, ch. 102, § 140; L. 1989, ch. 48, § 63; L. 2015, ch. 38, § 140; July 1.

**K.S.A. 9-2018. Severability.**

If any provision of the state banking code, or the application thereof, to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the state banking code that can be given effect without the invalid provision or application, and to this end the provisions of the state banking code are declared to be severable.

*History:* L. 1947, ch. 102, § 142; L. 2015, ch. 38, § 141; July 1.

**K.S.A. 9-2019. Unlawful to obstruct examination; penalty.**

It shall be unlawful for any director, officer, employee or agent of a bank or trust company to alter, destroy, shred, mutilate, conceal, cover up or falsify any record with the intent to impede, obstruct, impair or influence any examination, investigation or proceeding by the commissioner. Any director, officer, employee or agent of a bank or trust company who violates this section, upon conviction shall be guilty of a severity level 8, nonperson felony.

*History:* L. 2015, ch. 38, § 8; July 1.

## Article 21 – TRUST COMPANIES

### K.S.A. 9-2102. Applicability of act.

All trust companies, regardless of when incorporated, shall be organized and governed pursuant to the state banking code.

*History:* L. 1989, ch. 48, § 2; L. 2015, ch. 38, § 143; July 1.

### K.S.A. 9-2103. Powers of trust companies; limited purpose trust companies.

(a) A trust company may exercise all powers necessary or incidental to carrying on a trust business, including, without limitation, all powers conferred upon a business corporation by the Kansas corporation code of 1972, and also may exercise the following powers:

(1) To receive for safekeeping personal property of every description;

(2) to accept and execute any trust agreement and perform any trustee duties as required by such trust agreement;

(3) to act as agent, trustee, executor, administrator, registrar of stocks and bonds, conservator, assignee, receiver, custodian, corporate trustee or attorney in fact in any agreed upon capacity;

(4) to accept and execute all trusts and to perform any fiduciary duties as may be committed or transferred to it by order, judgment or decree of any court of record of competent jurisdiction;

(5) to act as executor or trustee under the last will and testament, or as administrator, with or without the will annexed to the letters of administration, of the estate of any deceased person;

(6) to be a conservator for any minor, incapacitated person or trustee for any convict under the appointment of any court of competent jurisdiction;

(7) to receive money in trust for investment in real or personal property of every kind and nature and to reinvest the proceeds thereof;

(8) to act in any fiduciary capacity and to perform any act as a fiduciary which a Kansas state bank may perform under any provision of the banking or insurance laws of this state, including, without limitation, acting as a successor fiduciary to any bank upon liquidation of its trust department through the transfer of its fiduciary assets pursuant to K.S.A. 9-1604, and amendments thereto, which liquidation may be effected in the manner provided in K.S.A. 9-2107, and amendments thereto, or otherwise;

(9) to act as either an originating trustee or as a contracting trustee pursuant to K.S.A. 9-2107, and amendments thereto;

(10) to exercise any other power expressly conferred upon trust companies by any other provision of the laws of this state;

(11) to buy and sell foreign or domestic exchange, gold, silver, coin or bullion; and

(12) to perform or purchase trust services for, or from, a bank or service corporation through a trust service agency agreement, provided that the commissioner is notified 30 days after contracting for the service and such notification includes the trust services provided, the name of the servicer and the date the service will commence.

(b) Pursuant to K.S.A. 9-1713, and amendments thereto, the commissioner may adopt rules and regulations clarifying any of the above enumerated powers and duties extended to trust companies.

(c) A trust company may be formed for a limited purpose to exercise any one or more of the enumerated powers in subsection (a). The articles of incorporation of such a trust company shall contain a list of the specific powers that the trust company chooses and is authorized to exercise.

*History:* L. 1989, ch. 48, § 3; L. 1990, ch. 60, § 2; L. 1993, ch. 81, § 4; L. 1994, ch. 51, § 8; L. 2001, ch. 27, § 1; L. 2015, ch. 38, § 144; 2025 SB 139; July 1.

**K.S.A. 9-2104. Liability of holder of stock in a trust company.**

(a) No executor, administrator, conservator or trustee holding trust company stock shall be personally subject to any liability as stockholders in such trust company.

(b) No person holding trust company stock as collateral security shall be personally subject to any liability as stockholders in such trust company.

(c) The person owning the stock or the person pledging such stock shall be deemed the person liable as a stockholder in the trust company.

(d) Any executor, administrator, conservator or trustee holding trust company stock shall be liable in the normal course of acting and carrying out the fiduciary duties of an executor, administrator, conservator or trustee.

(e) (1) Any executor, administrator, conservator or trustee holding shares of stock may vote as a shareholder.

(2) Any person that has pledged such person's stock as collateral security may represent the same at all meetings and may vote accordingly as a shareholder.

*History:* L. 1989, ch. 48, § 4; L. 2015, ch. 38, § 145; L. 2016, ch. 54, § 62; July 1.

**K.S.A. 9-2107. Allowing for the contracting for trust services; definitions; notice filing; authority of commissioner; fees; examination; branches.**

(a) As used in this section:

(1) "Contracting trustee" means any trust company, as defined in K.S.A. 9-701, and amendments thereto, any bank that has been granted trust authority by the commissioner under K.S.A. 9-1601, and amendments thereto, any national bank chartered to do business in Kansas that has been granted trust authority by the comptroller of the currency under 12 U.S.C. § 92a, any bank that has been granted trust authority or any trust company, regardless of where such bank or trust company is located, that is controlled, as defined in K.S.A. 9-1612, and amendments thereto, by the same bank holding company as any trust company, state bank or national bank chartered to do business in Kansas, that accepts or succeeds to any fiduciary responsibility as provided in this section;

(2) "originating trustee" means any trust company, bank, national banking association, savings and loan association or savings bank that has trust powers and places or transfers any fiduciary responsibility to a contracting trustee as provided in this section; and

(3) "financial institution" means any bank, national banking association, savings and loan association or savings bank that has its principal place of business in this state but that does not have trust powers.

(b) Any contracting trustee and any originating trustee may enter into an agreement by which the contracting trustee, without any further authorization of any kind, succeeds and is substituted for the originating trustee as to all fiduciary powers, rights, duties, privileges and liabilities with respect to all accounts that the originating trustee serves in any fiduciary capacity, except as may be provided otherwise in the agreement. Notwithstanding the provisions of this section, either the contracting trustee or the originating trustee shall have its principal place of business in this state.

(c) Unless the agreement expressly provides otherwise, upon the effective date of the substitution:

(1) The contracting trustee shall be deemed to be named as the fiduciary in all writings, including, without limitation, trust agreements, wills and court orders that pertain to the affected fiduciary accounts; and

(2) the originating trustee is absolved from all fiduciary duties and obligations arising from such writings and shall discontinue the exercise of any fiduciary duties with respect to

such writings, except that the originating trustee is not absolved or discharged from any duty to account required by K.S.A. 59-1709, and amendments thereto, or any other applicable statute, rule of law, rules and regulations or court order, nor shall the originating trustee be absolved from any breach of fiduciary duty or obligation occurring prior to the effective date of the agreement.

(d) The agreement may authorize the contracting trustee:

(1) To establish a trust service desk at any office of the originating trustee at which the contracting trustee may conduct any trust business and any business incidental thereto and which the contracting trustee may otherwise conduct at its principal place of business; and

(2) to engage the originating trustee as the agent of the contracting trustee, on a disclosed basis to customers, for the purposes of providing administrative, advertising and safekeeping services incident to the fiduciary services provided by the contracting trustee.

(e) Any contracting trustee may enter into an agreement with a financial institution providing that the contracting trustee may establish a trust service desk as authorized by subsection (d) in the offices of such financial institution and that such financial institution, on a disclosed basis to customers, may act as the agent of contracting trustee for purposes of providing administrative services and advertising incident to the fiduciary services to be performed by the contracting trustee.

(f) No activity authorized by subsections (b) through (e) shall be conducted by any contracting trustee, originating trustee or financial institution until an application for such authority has been submitted to and approved by the commissioner. The application shall be in the form and contain the information required by the commissioner and shall at a minimum include certified copies of the following documents:

(1) The agreement;

(2) all other required regulatory approvals; and

(3) a certification by the parties to the agreement that written notice of the proposed substitution was sent by first-class mail to each co-fiduciary, each surviving settlor of a trust, each ward of a guardianship, each person that has sole or shared power to remove the originating trustee as fiduciary and each adult beneficiary currently receiving or entitled to receive a distribution of principle or income from a fiduciary account affected by the agreement, and that such notice was sent to each such person's address as shown in the originating trustee's records. An unintentional failure to give such notice shall not impair the validity or effect of any such agreement, except that an intentional failure to give such notice shall render the agreement null and void as to the party not receiving the notice of substitution.

(g) If the originating trustee or financial institution is transferring more than 50% of the financial institution's total fiduciary accounts, the commissioner shall require the following certified copies in addition to the requirements described in subsection (f):

(1) The written action taken by the board of directors of the originating trustee or financial institution approving the agreement; and

(2) proof of publication of notice that the applicant intends to file or has filed an application pursuant to this section. The notice shall be published in a newspaper of general circulation in the county where the principal office of the originating trustee or financial institution is located. The notice shall be in the form prescribed by the commissioner and shall contain the name of the applicant contracting trustee and the originating trustee and a solicitation for written comments. The notice shall be published on the same day and every day thereafter for two consecutive weeks and provide for a comment period of not less than 10 days after the date of the second publication.

(h) A contracting trustee making application to the commissioner for approval of any agreement pursuant to this section shall pay to the commissioner a fee, in an amount established pursuant to K.S.A. 9-1726, and amendments thereto, to defray the expenses of the commissioner in the examination and investigation of the application. The commissioner shall remit all moneys received under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the bank investigation fund. The moneys in the bank investigation fund shall be used to pay the expenses of the commissioner, or designee, in the examination and investigation of such applications and any unused balance shall be transferred to the bank commissioner fee fund.

(i) Upon the filing of a complete application with the commissioner, the commissioner shall make or cause to be made, a careful examination and investigation of the proposed agreement. If the commissioner finds any of the following matters unfavorably, the commissioner may deny the application:

(1) The reasonable probability of usefulness and success of the contracting trustee; and

(2) the financial history and condition of the contracting trustee including the character, qualifications and experience of the officers employed by the contracting trustee.

(j) The commissioner shall render approval or disapproval of the application within 90 days of receiving a complete application.

(k) Upon service of an order denying an application, the applicant shall have the right to a hearing to be conducted in accordance with the Kansas administrative procedure act before the state banking board. Any final order of the commissioner pursuant to this section is subject to review in accordance with the Kansas judicial review act.

(l) When the commissioner determines that any contracting trustee domiciled in this state has entered into a contracting agreement in violation of the laws governing the operation of such contracting trustee, the commissioner may take such action as available under K.S.A. 9-1714, 9-1805, 9-1807 or 9-1809, and amendments thereto, to remedy such violation.

(m) Any party entitled to receive a notice under subsection (f)(5) may file a petition in the court having jurisdiction over the fiduciary relationship, or if none, in the district court in the county where the originating trustee has its principal office, seeking to remove any contracting trustee substituted or about to be substituted as fiduciary pursuant to this section. Unless the contracting trustee files a written consent to its removal or a written declination to act subsequent to the filing of the petition, the court, upon notice and hearing, shall determine the best interest of the petitioner and all other parties concerned and shall fashion such relief as the court deems appropriate in the circumstances, including the awarding of reasonable attorney fees. The right to file a petition under this subsection shall be in addition to any other rights to remove the fiduciary provided by any other statute or regulation or by the writing creating the fiduciary relationship. If the removal of the fiduciary is prompted solely as a result of the contracting agreement, any reasonable cost associated with such removal and transfer shall be paid by the originating trustee or financial institution entering into the agreement.

*History:* L. 1989, ch. 48, § 7; L. 1990, ch. 60, § 3; L. 1993, ch. 30, § 2; L. 1994, ch. 51, § 1; L. 1994, ch. 294, § 1; L. 1999, ch. 18, § 1; L. 2001, ch. 5, § 48; L. 2010, ch. 17, § 31; L. 2015, ch. 38, § 146; L. 2016, ch. 54, § 63; L. 2024 ch.64, § 63; 2025 SB 139; July 1.

**K.S.A. 9-2108. Trust service office; establishment or relocation; application.**

It is unlawful for any trust company to establish or operate a trust service office or relocate an existing trust service office except as provided herein.

(a) As used in this section: "Trust service office" means any office, agency or other place of business located within this state, other than the place of business specified in the trust company's certificate of authority, at which the powers granted to trust companies under K.S.A. 9-2103, and amendments thereto, are exercised. For the purposes of this section, any activity in compliance with K.S.A. 9-2107, and amendments thereto, does not constitute a trust service office.

(b) After first applying for and obtaining the approval of the commissioner under this section, one or more trust service offices may be established or operated in any city within this state by a trust company incorporated under the laws of this state.

(c) An application to establish or operate a trust service office or to relocate an existing trust service office shall be in the form and manner prescribed by the commissioner and provide the following documents:

(1) A certified copy of the written action taken by the board of directors of the trust company approving the establishment or operation of the proposed trust service office or the proposed relocation of the trust service office;

(2) all other required regulatory approvals;

(3) proof of publication of notice that the applicant intends to file or has filed an application pursuant to this section. The notice shall be published in a newspaper of general circulation where the proposed trust service office is to be located. The notice shall be in the form prescribed by the commissioner and shall contain the name of the applicant, the location of the proposed trust service office and a solicitation for written comments. The notice shall be published on the same day and every day thereafter for two consecutive weeks and provide for a comment period of not less than 10 days after the date of the second publication; and

(4) the application shall include the name selected for the proposed trust service office. The name selected for the proposed trust service office shall not be the same or substantially similar to the name of any other trust company or trust service office doing business in the state of Kansas, nor shall the name selected be required to contain the name of the applicant trust company. If the name selected for the proposed trust service office does not contain the name of the applicant trust company, the trust service office shall provide in the public lobby of such trust service office a public notice that it is a trust service office of the applicant trust company. Any trust company may request an exemption from the commissioner from the provisions of this subsection.

(d) A trust company making application to the commissioner for approval of a trust service office under this section shall pay to the commissioner a fee, in an amount established pursuant to K.S.A. 9-1726, and amendments thereto, to defray the expenses of the commissioner in the examination and investigation of the application. The commissioner shall remit all moneys received under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the bank investigation fund. The moneys in the bank investigation fund shall be used to pay the expenses of the commissioner or designee in the examination and investigation of such applications and any unused balance shall be transferred to the bank commissioner fee fund.

(e) Upon the request of any trust company proposing to relocate an existing trust service office to less than 10 miles from the trust company's existing location, the commissioner may exempt such trust company from the requirements of this section. If an exemption is provided under this subsection, each trust company shall document the written action taken by the board of directors of the trust company approving the proposed relocation of the trust service office and all other required regulatory approvals.

(f) Upon the filing of a complete application with the commissioner, the commissioner shall make or cause to be made, a careful examination and investigation. If the commissioner finds any of the following matters unfavorably, the commissioner may deny the application:

(1) The reasonable probability of usefulness and success of the proposed trust service office; and

(2) the applicant trust company's financial history and condition including the character, qualifications and experience of the officers employed by the trust company.

(g) Upon service of an order denying an application, the applicant shall have the right to a hearing to be conducted in accordance with the Kansas administrative procedure act before the state banking board. Any final order of the state banking board pursuant to this section is subject to review in accordance with the Kansas judicial review act.

(h) When the commissioner determines that a trust company domiciled in this state has established or is operating a trust service office in violation of the laws governing the operation of such trust company, the commissioner may take such action as available under K.S.A. 9-1714, 9-1805, 9-1807 or 9-1809, and amendments thereto, to remedy such violation.

*History:* L. 1993, ch. 81, § 1; L. 1994, ch. 51, § 2; L. 2001, ch. 5, § 49; L. 2010, ch. 17, § 32; L. 2015, ch. 38, § 147; L. 2016, ch. 54, § 64; 2025 SB 139; July 1.

**K.S.A. 9-2111. Prohibiting out-of-state entity to establish or operate trust facility; exceptions.**

(a) Except as provided in K.S.A. 9-2107, and amendments thereto, no trust company, trust department of a bank, corporation or other business entity, with a home office located outside of Kansas shall establish or operate a trust facility within the state of Kansas, unless the laws of the state where the home office of the nonresident trust company, trust department of a bank, corporation or other business entity is located authorize a Kansas-chartered trust company, trust department of a bank, corporation or other business entity to establish or operate a trust facility within that state. The commissioner may require any nonresident trust company to meet the greater of the requirements stated under the banking code or the laws of the nonresident trust company's home state required for a Kansas trust company to do business in the nonresident trust company's home state.

(b) Before any nonresident trust company, trust department of a bank, corporation or other business entity establishes a trust facility in Kansas, a copy of the application submitted to the home state and proof that the home state authorizes a Kansas-chartered trust company, trust department of a bank, corporation or other business entity to establish or operate a trust facility within that state, shall be filed by the applicant with the commissioner.

(c) No Kansas trust company shall establish an out-of-state trust facility until an application has been filed with the commissioner and approval has been received. An application filed pursuant to this section shall be subject to the provisions in K.S.A. 9-2108, and amendments thereto.

(d) No Kansas bank with a trust department shall establish an out-of-state trust facility until an application has been filed with the commissioner and approval has been received. An application filed pursuant to this section shall be subject to the provisions in K.S.A. 9-1111, and amendments thereto.

(e) As used in this section, "trust facility" means any office, agency, desk or other place of business where business is conducted.

(f) Any Kansas trust company or Kansas bank making application to the commissioner pursuant to subsection (c) or (d) shall pay to the commissioner a fee to be established pursuant to K.S.A. 9-1726, and amendments thereto, to defray the expenses of the commissioner in the examination and investigation of the application. The commissioner shall remit all moneys received under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the bank investigation fund. The moneys in the bank investigation fund shall be used to pay the expenses of the commissioner in the examination and investigation of such applications and any unused balance shall be transferred to the bank commissioner fee fund.

*History:* L. 1994, ch. 51, § 3; L. 1994, ch. 294, § 2; L. 2012, ch. 94, § 2; L. 2015, ch. 38, § 148; L. 2017, ch. 24, § 1; 2025 SB 139; July 1.

## Chapter 74 – STATE BOARDS, COMMISSIONS AND AUTHORITIES

### Article 30 – STATE BANKING BOARD

**K.S.A. 74-3004. State banking board; qualifications; appointment, senate confirmation, residence requirements; terms; vacancies.**

(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) (1) Terms of members of the board shall be for three years. Each member shall serve until a successor is appointed and confirmed. Except as provided in paragraph (2), no person shall serve more than two full three-year terms as a member of the board.

(2) 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. The mid-term appointment of a new board member to serve an unexpired term created by such a vacancy shall not be considered a full term for purposes of the two-term limit

*History:* L. 1947, ch. 102, § 100; L. 1961, ch. 387, § 1; L. 1978, ch. 308, § 62; L. 1981, ch. 299, § 55; L. 1982, ch. 347, § 36; L. 1987, ch. 54, § 13; L. 1992, ch. 262, § 11; L. 1995, ch. 241, § 11; L. 2001, ch. 87, § 15; L. 2017, ch. 7, § 1; July 1.

*Revisor's Note:* The state banking board was reestablished and continued in existence by act of the legislature in 1981, see 74-7273. [74-7273 was repealed in 1992.]

**K.S.A. 74-3005. Compensation and expenses; secretary; records.**

Members of the state banking board attending meetings of such board, or attending a subcommittee meeting thereof authorized by such board, shall be paid compensation, subsistence allowances,

mileage and other expenses as provided in K.S.A. 75-3223. The commissioner shall act as secretary for said board and shall keep a permanent record of all meetings and proceedings of said board in his office.

*History:* L. 1947, ch. 102, § 101; L. 1974, ch. 348, § 61; July 1.

**K.S.A. 74-3006. Meetings; quorum; access to records; advisory.**

(a) The board shall meet once each month, on dates it agrees upon, and shall meet at other times as the board deems necessary or when called by the chairperson or any three members of the board. Six members of the board shall constitute a quorum, and a majority vote of the board shall be necessary to carry any question. No action of the board shall be taken except in a formal meeting and after a favorable vote of a majority of the entire board. The members of the board during business hours shall have free access to all of the records in the office of the commissioner. The board shall act in an advisory capacity in all matters pertaining to the conduct and welfare of the banking department and the administration of the banking laws of this state except as otherwise specifically provided by law.

(b) The board, in accordance with K.S.A. 75-4319 and amendments thereto, may recess for a closed or executive meeting to discuss information deemed confidential by virtue of K.S.A. 9-1712 and amendments thereto.

*History:* L. 1947, ch. 102, § 102; L. 1995, ch. 75, § 1; July 1.

**K.S.A. 74-3008. State banking board successor to all powers, duties and functions of savings and loan board.**

(a) The state banking board shall be the successor in every way to the powers, duties and functions of the savings and loan board in which the same were vested prior to the effective date of this act. Every act performed in the exercise of such powers, duties and functions by or under the authority of the state banking board shall be deemed to have the same force and effect as if performed by the savings and loan board in which such powers, duties and functions were vested prior to the effective date of this act.

(b) Whenever the savings and loan board, or words of like effect, is referred to or designated by a statute, contract or other document, such reference or designation shall be deemed to apply to the state banking board.

(c) All orders and directives of the savings and loan board in existence on the effective date of this act shall continue to be effective and shall be deemed to be orders and directives of the state banking board until revised, amended or nullified pursuant to law.

(d) On and after the effective date of this act, whenever any statute, contract or other document concerns the power or authority of the savings and loan board, the state banking board shall succeed to such power or authority.

*History:* L. 1993, ch. 16, § 4; June 18.

## Chapter 75 – STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

## Article 13 – STATE BANK COMMISSIONER

### K.S.A. 75-1304. State bank commissioner; appointment; qualifications; duties.

(a) The governor shall appoint, subject to confirmation by the senate as provided in K.S.A. 75-4315b, and amendments thereto, a state bank commissioner who shall serve at the pleasure of the governor. Except as provided by K.S.A. 46-2601, and amendments thereto, no person appointed as bank commissioner shall exercise any power, duty or function as bank commissioner until confirmed by the senate.

(b) No person shall be eligible for appointment as commissioner unless such person has at least five years actual experience as an executive officer in a state or national bank located in this state.

(c) The commissioner shall devote the commissioner's time and attention to the business and duties of the office on a full-time basis.

(d) While serving as bank commissioner, the commissioner shall not be an officer, voting director, employee or paid consultant of:

(1) Any state or national bank or bank holding company;

(2) any affiliate of a state or national bank or bank holding company; or

(3) any other entity regulated by the commissioner.

*History:* L. 1947, ch. 102, § 83; L. 1978, ch. 308, § 71; L. 1981, ch. 299, § 62; L. 1982, ch. 347, § 50; L. 1999, ch. 166, § 1; L. 2008, ch. 121, § 19; July 1.

### K.S.A. 75-1305. Oaths.

The commissioner, his or her assistant and examiners, before entering upon the discharge of their duties shall take and subscribe the usual oath of office.

*History:* L. 1947, ch. 102, § 84; L. 1967, ch. 434, § 52; July 1.

### K.S.A. 75-1306. Office of state bank commissioner.

It shall be the duty of the secretary of administration to provide the commissioner with suitable office space at Topeka.

*History:* L. 1947, ch. 102, § 85; L. 1953, ch. 375, § 69; L. 1978, ch. 330, § 11; July 1.

**K.S.A. 75-1308. Record of fees and expenses; disposition of moneys received; bank commissioner fee fund.**

The commissioner shall keep a record of all fees collected by the commissioner, together with a record of all expenses incurred in the administration of programs regulated by the division of banking and in the administration of programs regulated by the division of consumer and mortgage lending. The bank commissioner shall remit all moneys received by or for the commissioner from such fees to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury. Ten percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the bank commissioner fee fund. All expenditures from the bank commissioner fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the bank commissioner or by a person or persons designated by the commissioner.

*History:* L. 1947, ch. 102, § 94; L. 1973, ch. 50, § 1; L. 1999, ch. 166, § 10; L. 2001, ch. 5, § 366; L. 2004, ch. 22, § 22; L. 2011, ch. 53, § 55; July 1.

## Article 31 – SALARIES AND ASSISTANTS; MISCELLANEOUS PROVISIONS

**K.S.A. 75-3135. Salary of bank commissioner; appointment of deputy commissioners; assistants and employees; salaries.**

(a) The bank commissioner shall receive an annual salary to be fixed by the governor with the approval of the state finance council. The bank commissioner is hereby authorized to appoint two deputy commissioners who shall be in the unclassified service under the Kansas civil service act and shall receive an annual salary in accordance with an equitable salary schedule established by the bank commissioner and approved by the governor for all unclassified positions. The average of the salaries shall not exceed the average compensation of corresponding state regulatory positions in similar areas. The bank commissioner's salary schedule shall be reported to the state banking board annually.

(b) (1) The deputy commissioner of the banking division shall supervise all banks and trust companies as directed by the bank commissioner and shall perform such other duties as may be required by the bank commissioner.

(2) The deputy commissioner of the consumer and mortgage lending division shall supervise all consumer and mortgage lending functions as directed by the bank commissioner and shall perform such other duties as may be required by the bank commissioner.

(c) If the office of the bank commissioner is vacant or if the bank commissioner is absent or unable to act, the deputy commissioner of the banking division shall be the acting bank commissioner.

(d) (1) The deputy commissioner of the banking division shall have at least five years' experience as a state bank officer, or five years' experience as an officer of a state bank holding company or a wholly-owned subsidiary conducting business that is related to banking, or five years' experience as a state or federal regulator, or a combination of the aforementioned experience.

(2) The deputy commissioner of consumer and mortgage lending shall have at least five years' experience in consumer or mortgage lending, regulatory, legal or related experience.

(e) The bank commissioner is also authorized to appoint or contract for, in accordance with the civil service law, such special assistants and other employees as are necessary to properly discharge the duties of the office.

*History:* L. 1905, ch. 488, § 17; L. 1913, ch. 1, § 8; L. 1915, ch. 3, § 7; L. 1919, ch. 284, § 10; L. 1921, ch. 1, § 22; L. 1923, ch. 1, § 6; R.S. 1923, 75-3135; L. 1925, ch. 7, § 7; L. 1927, ch. 304, § 1; L. 1931, ch. 18, § 2; L. 1933, ch. 271, § 17; L. 1937, ch. 329, § 30; L. 1939, ch. 302, § 1; L. 1943, ch. 277, § 20; L. 1947, ch. 416, § 15; L. 1949, ch. 440, § 1; L. 1953, ch. 388, § 1; L. 1961, ch. 409, § 9; L. 1965, ch. 458, § 22; L. 1967, ch. 443, § 16; L. 1974,

ch. 361, § 75; L. 1983, ch. 285, § 1; L. 1987, ch. 54, § 14; L. 1999, ch. 166, § 11; L. 2012, ch. 161, § 14; L. 2018, ch. 4, § 4; Mar. 8.

**K.S.A. 75-3135a. Bank commissioner; appointment of regional managers and financial examiner administrators; compensation.**

(a) (1) Subject to the provisions of appropriation acts, the bank commissioner may appoint regional managers, financial examiner administrators, case managers, examiners and a business manager within the office of the state bank commissioner as determined necessary by the bank commissioner to effectively carry out the mission of the office. Each regional manager, financial examiner administrator, case manager, examiner or business manager appointed after the effective date of this act shall be in the unclassified service under the Kansas civil service act, shall have special training and qualifications for such positions, shall serve at the pleasure of the bank commissioner and shall receive compensation fixed by the bank commissioner and approved by the governor and shall receive compensation in accordance with an equitable salary schedule established by the bank commissioner and approved by the governor for all unclassified positions.

(2) The average of the amount of compensation in the bank commissioner's salary schedule for such appointed positions in the unclassified service shall not exceed the average compensation of corresponding state regulatory positions in similar areas. The bank commissioner's salary schedule for unclassified positions shall be reported to the state banking board annually.

(b) Nothing in subsection (a) shall affect the classified status of any person employed in the office of the state bank commissioner on the day immediately preceding the effective date of this act. The provisions of this subsection shall not be construed to limit the powers of the bank commissioner pursuant to K.S.A. 75-2948, and amendments thereto.

*History:* L. 2002, ch. 90, § 1; L. 2012, ch. 161, § 15; May 31.

## KANSAS ADMINISTRATIVE REGULATIONS

## Agency 17 – OFFICE OF THE STATE BANK COMMISSIONER

# KANSAS ADMINISTRATIVE REGULATIONS

## Agency 17 – OFFICE OF THE STATE BANK COMMISSIONER

## Article 1 – DEFINITIONS

### K.A.R. 17-1-1. Definitions.

As used in article 1 through article 23 of these regulations, "commissioner" means the Kansas state bank commissioner.

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-701; effective Aug. 9, 1996.)*

## Articles 2 to 7 – RESERVED

## Article 8 – FINANCIAL MODERNIZATION

### K.A.R. 17-8-1. Financial subsidiaries.

(a) Before acquiring an interest in a financial subsidiary pursuant to K.S.A. 9-1101(29), and amendments thereto, or engaging in a new activity in an existing financial subsidiary of the bank, the bank shall provide a written notice to the commissioner that contains the following information:

(1) If acquiring an interest in a financial subsidiary, a description of the transactions through which the bank proposes to acquire control of, or an interest in, the financial subsidiary, and the percentage of ownership proposed;

(2) the name and main office address of the financial subsidiary;

(3) a description of the current and proposed activities of the financial subsidiary; and

(4) if the proposal relates to an initial affiliation with a company engaged in insurance activities, a description of the type of insurance activities that the company is engaged in or plans to conduct, the name of each state where the company holds an insurance license, and the name of the state insurance regulatory authority that issued the license.

(b) A notice filed with the commissioner shall be deemed approved on the 15th calendar day after receipt of a complete notice unless before that time the commissioner notifies the bank of any of the following:

(1) The acquisition of the interest in the financial subsidiary or the proposed new activity in an existing financial subsidiary is approved.

(2) The notice will require additional review.

(3) The bank is not approved to acquire the interest in the financial subsidiary or to engage in the proposed new activity in an existing financial subsidiary.

(c) The aggregate consolidated total assets of all financial subsidiaries of a bank shall not exceed 45 percent of the consolidated total assets of the parent bank.

(d) If the commissioner finds that any financial subsidiary is being operated in either an illegal or an unsafe and unsound manner, the bank may be ordered by the commissioner to take appropriate remedial action or to divest itself of its interest in the financial subsidiary.

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 9-1101; effective Oct. 3, 2003.)*

## Article 9 – INVESTMENT SECURITIES

### K.A.R. 17-9-1. Investment securities; definitions.

For the purposes of K.S.A. 1995 Supp. 9-1101(6) and this article:

(a) "investment security" means an investment made for the account of the bank which is a marketable obligation evidencing indebtedness in the form of a bond, note, or debenture, commonly known as an investment security. The term shall not include, and nothing in this article shall be construed as permitting a bank to purchase, investments which are predominantly speculative in nature or which are in default as to principal and interest; and

(b) "marketable obligation" means an investment that:

(1) may be sold with reasonable promptness at a readily determinable price which corresponds reasonably to its fair value; and

(2) is supported by adequate evidence that the obligor will be able to perform all obligations in connection with the security including the ability to meet all debt service requirements.

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective Aug. 9, 1996.)*

### K.A.R. 17-9-2. Investment securities; limitation.

The percentage limitations contained in K.S.A. 1995 Supp. 9-1101(6) shall be determined on the basis of the par or face value, or cost of the security, whichever is less, and not on the market value.

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective Aug. 9, 1996.)*

**K.A.R. 17-9-3. Investment securities; ledger and records.**

(a) The bank shall maintain a central listing showing the following for each investment security:

(1) par value;

(2) cost;

(3) interest rate;

(4) purchase and maturity dates; and

(5) name of the issuer.

(b) The bank shall retain the following additional information for each investment security:

(1) all credit information and risk documentation necessary to show compliance with K.A.R. 17-9-1; and

(2) original invoices of any sales and purchases.

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective Aug. 9, 1996.)*

**K.A.R. 17-9-4. Investment securities; amortization of premium.**

A bank shall not purchase an investment security for its own account at a price exceeding par unless the bank provides for the regular amortization of the premium paid in accordance with generally accepted accounting principles (GAAP).

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective Aug. 9, 1996.)*

**K.A.R. 17-9-5. Investment securities; conversion.**

(a) The purchase of investment securities convertible into stock at the option of the issuer shall be prohibited.

(b) A bank may purchase investment securities convertible into stock at the option of the holder or with stock purchase warrants attached if it is apparent that the price paid for an otherwise eligible security fairly reflects the investment value of the security itself and does

not include any speculative value based upon the presence of a stock purchase warrant or conversion option.

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective Aug. 9, 1996.)*

**K.A.R. 17-9-6. Investment securities; acquisition through debt previously contracted.**

The restrictions and limitations contained in article 9 of these regulations shall not apply to investment securities acquired:

(a) through foreclosure on collateral;

(b) in good faith by way of compromise of a doubtful claim; or

(c) to avoid loss in connection with a debt previously contracted.

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective Aug. 9, 1996.)*

**K.A.R. 17-9-7. Investment securities; repurchase.**

(a) Subject to the limitation in subsection (b) of this regulation, a bank may purchase and sell investment securities under a repurchase agreement if one or more of the following provisions is part of the repurchase agreement:

(1) the bank has the option or right to require the seller of the securities to repurchase them from the bank at a price stated in the agreement, or at a price subject to determination under the terms of the agreement, but in no case less than the value at the time of the repurchase;

(2) the seller or the seller's nominee reserves the right or the option to repurchase the securities for a price stated or at a price subject to determination under the terms of the agreement, but in no case shall the option be for an amount less than the value at the time of the initial purchase;

(3) the bank selling securities has an option or right to repurchase the securities from the buyer at a price stated or at a price subject to determination under the terms of the agreement; or

(4) the seller or a third party guarantees the bank against loss on resale of the securities.

(b) The total amount that any bank has committed to repurchase at any one time from the state of Kansas or its political subdivisions shall not exceed a sum equal to 10 times the bank's capital and surplus.

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101 and K.S.A. 9-1131; effective Aug. 9, 1996.)*

**K.A.R. 17-9-8. Investment securities; trustees.**

Where the investment security is issued under a trust agreement, the agreement shall provide for a trustee independent of the obligor. The trustee shall be a bank or trust company.

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective Aug. 9, 1996.)*

**K.A.R. 17-9-9. Investment securities; no transaction as principal.**

Except with the prior approval of the commissioner, a bank shall not participate as a principal in the marketing of investment securities.

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective Aug. 9, 1996.)*

**K.A.R. 17-9-10. Investment securities; requests for rulings.**

(a) Any bank may request a determination by the commissioner whether a security which the bank holds or desires to purchase for its own account qualifies as an investment security.

(b) Any request shall be accompanied by information sufficient to enable the commissioner to make a determination.

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective Aug. 9, 1996.)*

## Article 10 – RESERVES

**K.A.R. 17-10-1. Revoked.**

*(Authorized by K.S.A. 9-1001; K.S.A. 1969 Supp. 9-1713; effective Jan. 1, 1970; revoked Aug. 9, 1996.)*

## Article 11 – DOCUMENTATION REQUIREMENTS

**K.A.R. 17-11-1 to 17-11-8. Revoked.**

*(Authorized by K.S.A. 9-1101, K.S.A. 1965 Supp. 9-1713; effective Jan. 1, 1966; revoked Aug. 9, 1996.)*

**K.A.R. 17-11-9. Revoked.**

*(Authorized by K.S.A. 9-1713 and implementing K.S.A. 9-1101 and 9-1131; effective Jan. 1, 1966; amended May 1, 1978; amended, T-84-14, July 1, 1983; amended May 1, 1984; revoked Aug. 9, 1996.)*

**K.A.R. 17-11-10 to 17-11-12. Revoked.**

*(Authorized by K.S.A. 9-1101, K.S.A. 1965 Supp. 9-1713; effective Jan. 1, 1966; revoked Aug. 9, 1996.)*

**K.A.R. 17-11-13. Stockholders' meetings.**

Minutes shall be made of each stockholders' meeting of a bank or trust company. The minutes shall show any action taken by the stockholders, including the election of all directors.

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 9-1114; effective Jan. 1, 1966; amended Aug. 9, 1996.)*

**K.A.R. 17-11-14. Directors' meetings.**

(a) Minutes shall be made of each directors' meeting of a bank or trust company. The minutes shall show any action taken by the directors.

(b) In addition to any other actions the board may take, the following specific actions shall be taken by the board of directors and noted in the minutes:

(1) Election of all officers, showing their titles, salaries, and bonuses, if any;

(2) approval of all loans, including overdrafts. The board may establish a committee with authority to approve loans. The board shall approve a report from the committee summarizing all loans made since the board's last meeting;

(3) review and approval of the directors' examination or audit required under K.S.A. 9-1116, and amendments thereto;

(4) annual approval of all bank policies;

(5) review of all state and federal regulatory examination reports received since the board's last meeting;

(6) annual approval of fidelity bond and bank casualty insurance;

(7) approval of bank income and expenses and securities transactions;

(8) review and ratification of any committee reports; and

(9) approval of dividends and a review that the dividends are in compliance with K.S.A. 9-910, and amendments thereto.

*(Authorized by K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 9-911, K.S.A. 2000 Supp. 9-1114, K.S.A. 2000 Supp. 9-1115, and K.S.A. 9-1116; effective Jan. 1, 1966; amended Sept. 20, 1996; amended Jan. 18, 2002.)*

**K.A.R. 17-11-15. Loans; records.**

Each bank or trust company shall maintain a central listing which shows the following:

(a) the indebtedness of each borrower;

(b) the note number;

(c) the origination date of the loan;

(d) the amount; and

(e) the maturity date.

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101 and 9-2103; effective Jan. 1, 1966; amended Aug. 9, 1996.)*

**K.A.R. 17-11-16. Bonds; records.**

(a) Each bank or trust company shall maintain a central listing showing the following for each bond:

(1) par value;

(2) cost;

(3) interest rate;

(4) purchase date;

(5) maturity date; and

(6) name of the issuer.

(b) In addition, each bank or trust company shall maintain and keep on file for each bond:

(1) all credit information and risk documentation;

(2) original invoices of sales and purchases; and

(3) descriptive circulars or other descriptive material, giving complete information as to the bond issue.

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101 and 9-2103; effective Jan. 1, 1966; amended Aug. 9, 1996.)*

**K.A.R. 17-11-17. Bank-owned real estate; records.**

(a) Each bank or trust company shall maintain the following records for real estate owned by the bank or trust company:

(1) the insurance coverage on the real estate, including the amount of insurance and the expiration date;

(2) the legal description of the property;

(3) the cost of alterations; and

(4) proof of the payment of real estate taxes.

(b) In addition to the above requirements, the bank shall maintain the following records for bank-owned real estate obtained through foreclosure or debt settlement:

(1) the name of the original debtor;

(2) the total amount of indebtedness for which the real estate was acquired;

(3) the cost of acquisition; and

(4) the fair market value supported by an accurate appraisal performed not later than 90 days following the date of acquisition of the property. Thereafter, the fair market value shall be supported by an annual appraisal or appraisal update.

(A) Any appraisal required by subsection (b)(4) may be performed by any of the following:

(i) a certified or licensed appraiser;

(ii) two officers or directors of the bank; or

(iii) some other qualified individual.

(B) As used in subsection (b)(4), "appraisal update" shall mean a review of the property and the existing appraisal to determine the current fair market value and to make adjustments to the bank's valuation of the property if necessary.

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1102; effective Jan. 1, 1966; amended May 1, 1978; amended Jan. 27, 1992; amended Aug. 9, 1996.)*

**K.A.R. 17-11-18. Loans; documentation requirements.**

(a) Except as specified in this subsection, each bank shall maintain complete and current credit information, not older than 15 months, for each borrower if the total amount of the following exceeds $250,000:

(1) All loans made to the borrower; and

(2) all loans attributable to the borrower pursuant to K.S.A. 9-1104, and amendments thereto.

This subsection shall not apply if all loans made or attributable to the borrower are adequately secured.

(b) (1) Unless loan repayment is guaranteed by a governmental program or private insurance company, the following requirements shall apply:

(A) For each purchase-money real estate mortgage loan not greater than $250,000, the bank shall maintain a written verification that a lien search of the records of the county register of deed's office was conducted and the bank's lien position was determined or any option listed under paragraph (b)(1)(B).

(B) For each purchase-money real estate mortgage loan greater than $250,000, the bank shall obtain and maintain on file either an attorney's written title opinion or a title insurance policy.

(C) For each non-purchase-money mortgage that is not greater than $250,000, the bank shall meet one of the following requirements:
  (i) Maintain a written verification that a lien search of the records of the county register of deed's office was conducted and the bank's lien position was determined;
  (ii) obtain and maintain on file an insurance policy fully insuring the bank against loss of the mortgage priority position;
  (iii) obtain and maintain on file an attorney's written title opinion; or
  (iv) obtain and maintain on file a title insurance policy.

(D) For each non-purchase-money real estate mortgage loan greater than $250,000, the bank shall obtain and maintain on file an attorney's written title opinion or a title insurance policy.

(2) For purposes of this subsection, "non-purchase-money real estate mortgage loan" shall mean a mortgage loan that does not finance or refinance the acquisition of real estate or the transfer of a deed.

(c) If the value of the improvements on any real estate is necessary for adequate protection of the loan, an insurance policy covering these improvements against fire and windstorm shall be on file with the bank for any loan in excess of $25,000.

(d) A real estate mortgage or deed of trust, showing the filing information with the county register of deeds, shall be on file with the bank for each loan collateralized by real estate.

(e) For any loan collateralized by personal property, if the bank is required by law to file a financing statement to perfect a security interest, the bank shall retain a copy of the filed financing statement. In other cases, the bank shall maintain all documents related to the loan.

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 9-1101, K.S.A. 9-1130, and K.S.A. 9-1713; effective Jan. 1, 1966; amended May 1, 1983; amended Jan. 27, 1992; amended Aug. 9, 1996; amended Jan. 18, 2002; amended May 30, 2003; amended May 3, 2013; amended July 11, 2014; amended May 27, 2022; amended October 18, 2024.)*

**K.A.R. 17-11-19. Charged-off assets; records.**

(a) Each bank or trust company shall maintain a central listing of any assets charged off the books of the bank or trust company. The central listing shall include a subsidiary ledger for each debtor, showing the date of charge-off, the description of the asset, the amount charged off, and any recoveries.

(b) The bank or trust company shall retain the central listing for 10 years after the last payment is received, or 10 years after the date of the charge-off if no payments have been received.

*(Authorized by K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 2000 Supp. 9-1101, as amended by L. 2001, ch. 87, § 5, and 9-2103, as amended by L. 2001, ch. 27, § 1; effective Jan. 1, 1966; amended Aug. 9, 1996; amended Jan. 18, 2002.)*

**K.A.R. 17-11-20. Revoked.**

*(Authorized by K.S.A. 9-1101, K.S.A. 1965 Supp. 9-1713; effective Jan. 1, 1966; revoked Aug. 9, 1996.)*

**K.A.R. 17-11-21. Appraisals and evaluations.**

(a) Except for those transactions that meet the requirements of subsection (b) or (c), an accurate appraisal of all real estate mortgaged to secure principal debt of $25,000 or more to a bank shall be made by an appraiser who is licensed or certified by the state in which the property is located and who is independent of the transaction.

(b) Two officers or directors of the bank, or a qualified individual who is independent of the transaction, may complete an accurate evaluation of real estate mortgaged in the following types of real estate-related transactions:

(1) Real estate mortgaged to secure either of the following:
(A) Principal debt of $400,000 or less, secured by a single one- to four-family residential property, including construction loans and business loans secured by a single one- to four-family residential property; or
(B) Principal debt of $500,000 or less, not secured by a single one- to four-family residential property;

(2) business loans with a principal debt of $1 million or less secured by real estate, if the primary source of repayment is not dependent upon the sale of, or rental income from, the real estate; or

(3) renewals or refinancing of loans, secured by real estate, in any amount, if either of the following conditions is met:

(A) There is no advancement of new money other than funds necessary to cover reasonable closing costs; or

(B) there has been no obvious and material change in market conditions or physical aspects of the property that affects the adequacy of the real estate collateral or the validity of an existing appraisal, even with the advancement of new money.

(4) If a bank enters into a transaction that is secured by several individual properties, the estimate value of each individual property shall determine whether an appraisal or evaluation would be required for that property under subsection (b).

(c) Neither an appraisal nor an evaluation shall be required for the following types of real estate-related transactions:

(1) Loans that are well supported by income or other collateral if real estate is taken as additional collateral solely in an abundance of caution;

(2) loans to acquire or invest in real estate if a security interest is not taken in real estate;

(3) liens taken on real estate to protect rights to, or control over, collateral other than real estate;

(4) real estate operating leases that are not the equivalent of a purchase or sale; or

(5) real estate-related loans that have met all appraisal requirements necessary to be sold to, or insured by, a United States government agency or a United States government-sponsored agency.

(d) Each individual who conducts an appraisal or evaluation shall view the premises, make a written statement of value, and sign and file the statement with the bank. Each appraisal shall comply with applicable state standards. Each evaluation shall include the following:

(1) A legal description of the property, including street address if applicable;

(2) The owner(s) of the property;

(3) The type and general condition of improvements, including approximate age, size, and construction;

(4) The basis for determining the value of the property; and

(5) The date of the evaluation or appraisal and a signature of each evaluator or appraisers.

(e) Despite any other provisions of this regulation, an appraisal or evaluation may be required by the commissioner if it is deemed necessary to address safety and soundness concerns.

(f) As used in this regulation, a "business loan" means a loan or extension of credit to any corporation, general or limited partnership, business trust, joint venture, pool, syndicate, sole proprietorship, or other business entity.

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 9-1101 and 9-1713; effective Jan. 1, 1966; amended May 1, 1978; amended Jan. 27, 1992; amended Oct. 19, 1992; amended*

*Jan. 25, 1993; amended Sept. 20, 1993; amended Sept. 19, 1994; amended Aug. 9, 1996; amended Jan. 18, 2002; amended July 11, 2014; amended October 18, 2024.)*

**K.A.R. 17-11-22. Insurance on Bank Property.**

The insurable tangible property of a bank or trust company shall be insured for at least seventy percent of its actual value against loss from fire, windstorm and tornado.

*(Authorized by L. 1965, ch. 81; compiled January 1, 1966.)*

**K.A.R. 17-11-23. Other assets; records.**

Each bank or trust company shall maintain a central listing showing the following on any personal property taken in payment of a debt:

(a) a complete description of the property;

(b) the date of acquisition;

(c) the name of the original debtor;

(d) the total amount of indebtedness for which the personal property was acquired; and

(e) the cost of acquisition.

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1112 and 9-2103; effective Aug. 9, 1996.)*

**K.A.R. 17-11-24. Sale of tangible personal property to bank or trust company executive officers, employees, directors, and related interests.**

(a) The commissioner's approval shall not be required if a bank or trust company sells tangible personal property held on the bank's or trust company's accounting books to an executive officer, employee, director, or a related interest under either of the following conditions:

(1) If the tangible personal property has a vehicle identification number or a hull identification number, at a price at or above the average trade-in value specified by a nationally recognized value-reporting service; or

(2) if the tangible personal property does not have a vehicle identification number or a hull identification number, at a price at or above the accounting book value calculated in accordance with generally accepted accounting principles.

(b) Each bank or trust company that sells tangible personal property as specified in subsection (a) shall maintain a record of the property value and the sales agreement for review at the next examination.

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 9-1112; effective March 10, 2023.)*

## Article 12 – TRANSACTIONS

### K.A.R. 17-12-1. Daily transactions.

(a) Each transaction affecting the assets, liabilities, or fiduciary assets held by the bank or trust company shall be shown in detail.

(b) The books and records shall be designed to allow the tracing of any transaction from origin to final entry.

(c) Books and records shall be posted daily covering all transactions for the preceding day, except for the final entries which are made at some other regular stated interval.

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101 and 9-2103; effective Jan. 1, 1966; amended Jan. 27, 1992; amended Aug. 9, 1996.)*

### K.A.R. 17-12-2. Daily statement.

A summary of all transactions showing the assets, liabilities and net worth of the bank or trust company shall be prepared daily for each bookkeeping day and kept on file at the bank or trust company. Additionally, a summary of all transactions relating to fiduciary assets shall be prepared at least monthly and kept on file at the bank or trust company.

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101 and 9-2103; effective Jan. 1, 1966; amended May 1, 1978; amended Jan. 27, 1992; amended Aug. 9, 1996.)*

## Article 13 – RESERVED

## Article 14 – DEPOSIT OF PUBLIC FUNDS; REVENUE BOND APPROVAL

### K.A.R. 17-14-1. Revenue bonds; approval.

The commissioner may approve, as security for the deposit of public funds pursuant to K.S.A. 9-1402, revenue bonds of any municipal corporation or quasi-municipal corporation, except for bonds issued under K.S.A. 12-1740 to 12-1749 and bonds secured by revenues of a utility which has been in operation for less than three years. Revenue bonds may be approved subject to the following conditions:

(a) Such bonds shall be issued pursuant to the laws of Kansas, and the commissioner shall be furnished a copy of the approving legal opinion of a recognized bond attorney.

(b) The rates, fees or charges fixed for the use of services rendered by a utility (as defined by K.S.A. 10-1201) shall be sufficient to:

(1) pay the cost of operation, improvement, and maintenance of the utility;

(2) provide an adequate depreciation fund; and

(3) pay the principal of and interest upon the bonds when due.

(c) Such bonds shall have a debt service coverage for the term of the issue of at least 140%, except that debt service may go as low as 125% in a future year or years, provided:

(1) There is a rate covenant in the ordinance stating that rates, fees and charges shall be raised if necessary to have at least 125% debt service coverage; or

(2) The issue has a rating of A or better in a nationally recognized rating publication.

(d) The municipality shall forward a certified statement of the annual audit required by K.S.A. 10-1208 to the State Bank Commissioner within thirty (30) days of completion, of the same.

(e) The auditor or certifying officer shall make a certified statement that they shall notify the State Bank Commissioner within thirty (30) days of the completion of the audit in any year the coverage of the annual debt service falls below 140% and shall explain what steps have been taken to correct the deficiency.

(f) The municipality shall submit a certified copy of the minutes of the meeting of the local governing body that approved the authority to issue the bond resolution, and shall also submit a certified copy of the Bond Resolution.

*(Authorized by K.S.A. 9-1402, K.S.A. 1965 Supp. 9-1713; effective Jan. 1, 1966; amended Jan. 27, 1992.)*

## Article 15 – RECORDS

### K.A.R. 17-15-1. Records; retention period.

Each bank or trust company shall retain the following records for the periods indicated:

***TYPE OF RECORD*** ***RETENTION RECORD***

**ADMINISTRATIVE**

Attachments and/or garnishments.....2 years after close

NOTE: Legal documents and copies of returns and correspondence should be filed after case closed with general correspondence.

Bank examiner's reports..... 5 years

NOTE: These are the property of the supervisory authorities, whose approval should be obtained prior to destruction.

Charged-off asset records ..... Permanent

Court case records (foreclosed real estate, etc.).....2 years after close

Insurance records

(a) Schedules of fire and other insurance, also records of premium payments and of amounts recovered..... 3 years

(b) Casualty liability policies expired—P.L. & P.D., O.L. & T., etc. ..... 2 years

(c) Windstorm, fire, theft, etc., policies expired ..... 2 years

(d) Bankers Blanket Bonds ..... 6 years

Minute books of meetings (stockholders, directors, committees, etc.)..... Permanent

**ACCOUNTING AND AUDITING**

Accrual and bond amortization records .....1 year

Audit reports ..... 3 years

Audit work papers..... 3 years

Bank Call Reports..... 5 years

Budget worksheets .....Optional

Consolidated financial statements..... 5 years

Daily reserve computation .....1 year

Difference record ..... 2 years

Income and dividend report ..... 5 years

Reconcilements of bank (due to) deposits .....1 year

Reconcilements register (due from).....1 year

Reports to directors ..... 5 years

Reports to executive committee ..... 5 years

Securities vault "in and out" tickets ..... 1 year

Tax records ..... 7 years

NOTE: Copies of schedules and returns to taxing authorities for tax purposes, notices of assessment by taxing authorities and documentary proceedings in appeal therefrom.

**CAPITAL**

Capital stock certificates, records of, or stubs of ..... Permanent

Capital stock ledger ..... Permanent

Dividend checks ..... 5 years after paid

Dividend register ..... 5 years after all checks are paid

Proxies ..... 3 years

Receipts for stock certificates ..... Permanent

NOTE: Where bank secures a receipt it is recommended that it be affixed to stub of certificate book.

**CERTIFICATES OF DEPOSIT**

Certificates ..... 5 years after paid

Ledger cards ..... 2 years after close

Register ..... 2 years

**CHECKING ACCOUNTS—INDIVIDUALS AND FIRMS**

Account Analysis

Analysis work sheets or cards ..... 1 year

Average balance cards ..... Optional

Interest computation records ..... Optional

Service charge records ..... Optional

Bookkeepers' daily lists of checks charged in total (short lists) ..... 1 year

Check book orders ..... Optional

Checks paid (Microfilm copy-front and back) ..... 5 years

Copies of advices of deposit ..... 1 year

Daily report of overdrafts.....Optional

Deposit tickets..... 5 years

NOTE: Return with statement after microfilm

Individual ledgers..... 5 years after last entry

Individual ledger journals .....1 year

Partnership agreement and authority ..... 5 years

Reports of accounts opened and closed .....Optional

Resolutions.....5 years after close

Signature cards.....5 years after close

Statement mailing order.....2 years after close

Statement stubs

(a) If accounts are analyzed direct from statement stubs, the stubs retained in lieu of work sheets or cards..... 2 years

(b) If microfilm is used as a ledger record, stubs should be retained .....Optional

Statements—Microfilm copy..... 5 years

Stop payment orders .....1 year

Undelivered statements and cancelled checks ..... 5 years

**CHRISTMAS CLUB**

Checks (cancelled)..... 1 year after paid

Check register .....1 year

Coupons (deposit tickets).....1 year

Journal.....Optional

Ledger cards or sheets.....1 year

Pass books..... Cancel by perforation and return to customer or take up book and destroy.

Signature cards.....1 year

Trial balances .....Optional

Withdrawal receipts .....1 year

## COLLECTIONS

Collection receipts, carbons of..... 2 years

Collection register..... 2 years

Coupon cash letters, outgoing..... 1 year

Coupon envelopes..... Optional

Customers' file copies..... 1 year

Department blotters..... 2 years

Incoming collection letters..... 1 year

Installment contract or note records..... 2 years after close

## COMMERCIAL LOANS

Collateral cards..... Optional

Collateral receipts..... 5 years

Collateral register..... 5 years

Credit files (closed)..... 5 years

Daily reports..... Optional

Debit and credit tickets..... 1 year

Journal

(a) If the journal is a by-product of posting the liability ledger..... Optional

(b) If the journal is used as book of original entry, with descriptions..... 5 years

Liability ledger..... 5 years

Loan applications..... 5 years

Loan committee minutes..... 5 years

Margin cards..... Optional

Note or discount register

(a) If the register is a byproduct of posting the liability ledger..... Optional

(b) If the register is used as a book of original entry, with description..... 5 years

Note and discount tickler..... Optional

Receipts for coupons removed from collateral..... 5 years

Resolutions ..... 5 years

Statement of borrower under federal regulations (Regulations U, W, Z, etc.) ..... 5 years

**CONSUMER CREDIT**

Borrowers' statements ..... 5 years

Correspondence, general ..... 3 years

Coupons, loan deposits ..... 1 year

Coupons, loan payments ..... 1 year

Credit applications (closed or rejected) ..... 5 years

Credit folders containing applications, etc ..... 5 years after close

Disbursement vouchers, cash receipts ..... 5 years after close

Loan deposit ledger cards ..... 5 years after close

Loan ledger cards ..... 5 years after close

Loans made journal ..... 5 years

Loan paid journal ..... 2 years

Note and Disclosure Statements ..... 4 years from the date of transaction or 2 years from the date of final entry, whichever is later.

Note or discount tickler ..... Optional

Note register ..... 2 years

Rebate receipts ..... 1 year after close

Resolutions ..... 5 years after close

Trial balances ..... Optional

**CUSTOMER SERVICE**

Brokers' confirmations ..... 3 years

Brokers' invoices ..... 3 years

Brokers' statements ..... 3 years

Night depository agreement ..... 1 year after close

Night depository receipts ..... 1 year after close

Safekeeping records and receipts ..... 5 years after close

Securities buy and sell orders ..... 2 years

**DUE FROM BANKS**

Advices from correspondents ..... 1 year

Bank statements ..... 5 years

Drafts ..... 5 years after paid

Draft register ..... 5 years

NOTE: Affidavits, bonds of indemnity, and all pertinent information pertaining to issuance of duplicate checks ..... 5 years after paid

Reconcilements register ..... 1 year

**DUE TO BANKS**

Copies of advices ..... 1 year

Country bank ledger ..... 5 years

Incoming cash letter memos for credit ..... 1 year

Incoming cash letters for remittance ..... 1 year

Proof sheets ..... 1 year

Reconcilement verification ..... 1 year

Reconcilement register ..... 1 year

Reports of accounts, opened and closed ..... 6 months

Resolutions ..... 5 years after close

Signature cards ..... 5 years after close

Trial balances ..... 1 year

Undelivered statements and cancelled checks ..... 5 years

**GENERAL**

Applications for travelers checks ..... 1 year

Central file cards ..... Optional

Change-of-address orders ..... Optional

Check book orders ..... Optional

Code books (not returned) ..... Destroy

General correspondence ..... 3 years

Incoming mail envelopes ..... Optional

Paid bills, statements and invoices..... 5 years

Protest notices .....1 year

Receipts for check books .....Optional

Requisition for supplies .....Optional

Stenographers notebooks and mechanical device records; extra copies of letters if other copies are retained.....Optional

Telegram, cable and radiogram copies ..... 3 years

Vault records, openings and closings.....1 year

Wire transfer debit and credit entries.....1 year

**GENERAL LEDGER**

Daily statement of condition..... Permanent

General journal

(a) If the journal is a byproduct of posting the general ledger..... 1 month

(b) If the journal is used as book of original entry, with Descriptions..... 5 years

General ledger sheets ..... Permanent

General ledger tickets (debits and credits)..... 5 years

**INTERNATIONAL DEPARTMENT**

Cable copies..... 5 years

Cable requisitions..... 5 years

Foreign collection register ..... 5 years

Foreign draft applications ..... 5 years

Foreign exchange remittance sheets or books .....5 years after issue

Foreign mail transfer applications ..... 5 years

Foreign mail transfer carbons ..... 5 years

Letter of credit applications ..... 5 years

Letter of credit ledger sheets..... 5 years

Travelers check applications..... 2 years

Travelers check register ..... 2 years

**INVESTMENTS**

Bond ledger sheets ..... 5 years

Brokers' confirmations ..... 2 years

Brokers' invoices ..... 2 years

Brokers' statements ..... 3 years

Descriptive literature on securities disposed ..... 2 years

**OFFICIAL CHECKS AND DRAFTS**

Carbon copy official check register… ..... 1 month after paid

Cashier checks ..... 5 years after paid

Certified checks or receipts ..... 5 years after paid

NOTE: If not delivered or returned to depositor, photograph and destroy checks and then retain film.

Certified check register ..... 5 years

Drafts (cancelled) ..... 5 years after paid

Expense checks (cancelled) ..... 3 years after paid

Expense vouchers or invoices ..... 6 years

Money orders, bank or personal ..... 5 years

Money order registers ..... 2 years

Receipts for certified checks. ..... 5 years after date

Requisitions

(a) If all information including name of purchase is recorded on Register ..... Optional

(b) If no detail is transcribed on register ..... 5 years

**PERSONNEL**

Attendance record ..... 3 years

Records of employees:

Application for employment, reference records, reports and certificates of examination, efficiency tests and other similar data ..... 6 years after termination

Application of those not employed ..... 6 years

Salary ledger… ..... 3 years

Salary receipts ..... 3 years

NOTE: Retain final receipt in personnel folder.

**PROOF, CLEARINGS AND TRANSIT**

Clearinghouse settlements sheets ..... 3 months

Copies of advices of corrections ..... 6 months

Department or tellers' proof sheets ..... 6 months

Deposit proof sheets or tapes ..... 1 year

Inclearings envelopes, proof sheets or tapes ..... 1 year

Microfilm ..... 2 years

Outclearings proof sheets or tapes ..... 6 months

Outgoing cash letters, transit ..... 6 months

Proof sheets, transit ..... 6 months

**REAL ESTATE LOANS**

Journal (debits and credits) ..... 2 years

Ledger cards ..... 5 years

Loan credit files ..... 5 years after close

Mortgage credits ..... 1 year

Remittances ..... 1 year

Tellers' blotter ..... 2 years

**REGISTERED MAIL**

Marine insurance books ..... 3 years

Registered mail (incoming) record ..... 3 years

Registered mail (outgoing) record ..... 3 years

Return receipt cards ..... 3 years

**SAFE DEPOSIT VAULT**

Access tickets ..... 2 years

Cancelled signature cards ..... 2 years after close

Copies of rent receipts ..... 2 years
Correspondence..... 2 years after close
Leases or contracts, close accounts..... 2 years after close
Ledger record of account ..... Optional

**SAVINGS ACCOUNTS**

Withdrawals ..... 5 years
Deposits..... 5 years
Journal..... 1 year
Ledger cards or sheets..... 5 years after last entry
Window bookkeeping machine control tapes ..... 1 year
Pass books..... Destroy
Reports of accounts, opened and closed ..... Optional
Resolutions..... 5 years after close
Signature cards..... 5 years after close
Trial balances, non-automated ..... Optional
Trial balances, automated
(a) If statement or account history record retained ..... Optional
(b) If no alternative record ..... 5 years
Withdrawal affidavits..... 3 years

**TELLERS**

Cash item record ..... 1 year
Return item register..... 1 year
Tellers' cash books ..... Optional
Tellers' cash tickets, originals and carbon copies ..... 1 month
Tellers' recapitulation..... 1 month
Tellers' machine tapes ..... 1 month
Tellers' blotter, journal or proof..... 2 years
Tellers' exchange tickets ..... 3 months

**TRUST RECORDS**

Advices of payment

Securities department bond and coupon collections ..... 1 year

Amortization schedules ..... Destroy when securities are disposed of

Buy and sell orders ..... 1 year

Cancelled bonds and cancelled coupons ..... Return to issuing corporation or cremate, retaining receipt or cremation certificate until account is closed

Cash trial balances ..... 6 months

Corporate trust ledger ..... 7 years

Correspondence

Corporate trust (bond issues) ..... 3 years

Dividend ..... 3 years

General ..... 3 years

Irregular transfers ..... 3 years

Cost cards, securities ..... 5 years

Coupon collections records ..... 18 months

Coupon envelopes ..... Optional

Daily statement of trust department ..... 5 years

Dividend check tapes (adding machine) ..... Optional

Dividend record cards (closed) ..... 5 years

Dividend and coupon ledger ..... Until closed

Dividend and interest disbursement checks ..... 5 years

Dividend and interest disbursement list ..... Optional

Document files ..... Until closed

Fee cards ..... Until closed

Journal sheets, accounting division and stock transfer ..... 5 years

Ledger records: asset ledger, cash ledger, investment ledger, stock transfer ledger and mutual income foundation ..... 5 years after close

Listing for Form 1099 ..... 1 year after filing

Minute books, trust committee and trust investment committee ..... Permanent

Original trust entries (daily debits and credits and multiple forms) ..... 2 years

Paid invoices: tradesman, professional (excluding attorney) and miscellaneous ..... 3 years

NOTE: In probate accounts retain three years after expiration of time of appeal from order closing account

Probate slips ..... Destroy original when account is closed. Destroy duplicate after circulation.

Registered mail report ..... 3 years

Registration journals ..... Until closed

Rent collection, mortgage and land contract collection (file accountant's copy)…… ..... 5 years

Signature files ..... Until closed

Stock transfer change-of-address authority ..... 1 year

Stock transfer memos ..... 1 year

Stock transfer receipts ..... 3 years

Stockholders list ..... Optional

Supporting papers to transfers ..... 10 years

NOTE: Except recorded instruments and agreement from banks—return to transferor.

Surety bonds ..... 10 years

Tax returns

- Ad valorem tax returns ..... 5 years after filing
- Estate tax returns ..... 15 years after filing
- Federal and state income tax returns ..... 15 years after filing
- Intangible tax returns ..... 5 years after filing
- Social security returns ..... 5 years after filing

Tellers' daily blotter ..... 18 months

Transfer instructions ..... 5 years

Transfer journal tapes ..... 2 years

Transfer tax waivers ..... Until closed

Trust checks ..... Until closed

Trust register ..... Until closed

Vouchers, probate trust ..... 3 years after expiration of time of appeal from order closing account.

**MINIMUM EDP RECORD RETENTION SCHEDULE**

***TYPES OF RECORDS*** ***RETENTION PERIOD***

**CHECKING ACCOUNTS**

Trial balance ..... 1 month

Conversion (initial entry) run ..... 2 years (or 3 months)

Transaction journal ..... 2 years (or 3 months)

Master file change ..... 6 months

New and closed accounts ..... 3 months

Unposted items ..... 3 months

Zero balances ..... 1 month

Large balance changes ..... 1 month

Overdrafts ..... 3 months

Stop payments ..... 6 months

Service charges ..... 1 month

Uncollected funds ..... 1 month

Customer statement ..... 5 years

**SAVINGS ACCOUNTS**

Daily transactions journal ..... 6 months

Daily transactions list of accounts active since last trial ..... 1 week

Exception report ..... 1 year

Closed accounts, control… ..... 6 months

Current active accounts ..... 3 years

Annual statistical analysis ..... Optional

Interest report ..... 6 months

1099 listing, summary…. ..... Optional

Opened and closed accounts .....6 months

Trial balance.....Optional

(if statement or account history retained, otherwise 5 years)

Savings statement-microfilm ..... 5 years

**INSTALLMENT LOANS**

Daily payment journal..... 2 years

Trial balance (if only complete history on borrower) ..... 5 years

New loan report..... 2 years

Loan paid report..... 2 years

Past-due report .....Optional

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 9-1701; effective May 1, 1978; amended Jan. 27, 1992; amended April 19, 1993.)*

## Article 16 – CHARTER APPLICATIONS

### K.A.R. 17-16-1. Application; filing.

(a) An application for a certificate of authority and any supplemental information shall be filed by submitting an original and nine copies to the office of the state bank commissioner.

(b) The application shall be filed at least 14 calendar days before the board's regular meeting date in order to be included on the agenda for that meeting.

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1801; effective, E-77-18, March 19, 1976; effective, E-78-12, April 27, 1977; effective May 1, 1978; amended Jan. 27, 1992; amended Aug. 9, 1996.)*

### K.A.R. 17-16-2. Application; contents.

Each application for a certificate of authority shall contain the following information:

(a) The name and address of the proposed bank or trust company;

(b) the names and addresses of the organizers, proposed officers, proposed directors, and shareholders of the proposed bank or trust company;

(c) a detailed financial statement for the organizers, proposed officers, and proposed directors, and for any individual shareholder or group of proposed shareholders acting in concert that will own or control 10% or more of the stock of the proposed bank or trust company. The financial information shall be fewer than 90 days old and shall be certified by the owners;

(d) a statement of the character, qualifications, and experience of the organizers, proposed officers, and proposed directors, and of any individual shareholder or group of proposed shareholders acting in concert that will own or control 10% or more of the stock of the proposed bank or trust ~company, including the number and type of any criminal convictions;

(e) a statement of fact by the applicant to support a finding of public need for the proposed bank or trust company in the community where it will be located;

(f) a list of the names and addresses of each state bank, national bank, savings and loan association, credit union or trust company, and their branches, located within a radius of 25 miles of the site of the proposed bank or trust company. If the proposed bank or trust company is to be located in a metropolitan area with a population of 100,000 or more, as defined by the office of the state bank commissioner, the listing required by this subsection may, at the discretion of the commissioner, be limited to a five-mile radius of the site of the proposed bank or trust company; and

(g) an affidavit of publication of notice that the applicant intends to file an application for a certificate of authority. The notice shall meet the following requirements:

(1) Be published in a newspaper of general circulation in the city where the proposed bank or trust company is to be located, or if there is no such official newspaper, in an official newspaper for the county in which the city is located;

(2) be in the form prescribed by the board;

(3) be published on the same day for two consecutive weeks, with the second publication appearing at least 14 calendar days before any action taken by the board; and

(4) contain a statement that any interested party may submit, in writing, comments in support of or opposition to the application. Any comment letter of support or opposition shall be filed with the office of the state bank commissioner not later than 10 calendar days after the second publication.

*(Authorized by K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 2000 Supp. 9-1801, as amended by L. 2001, ch. 87, § 13, and K.S.A. 9-1802; effective, E-77-18, March 19, 1976; effective, E-78-12, April 27, 1977; effective May 1, 1978; amended Jan. 27, 1992; amended Aug. 9, 1996; amended Jan. 18, 2002.)*

**K.A.R. 17-16-3. Revoked.**

*(Authorized by K.S.A. 9-1713; effective, E-77-18, March 19, 1976; effective, E-78-12, April 27, 1977; effective May 1, 1978; amended Jan. 27, 1992; revoked Aug. 9, 1996.)*

**K.A.R. 17-16-4. Comment letters; notification of the applicant.**

The applicant shall be notified of the receipt of any comment letters and furnished a copy of those letters. The applicant may provide a written response to the board regarding any comment letters within 10 calendar days following the date the applicant was furnished copies of the comment letters.

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1801; effective, E-77-18, March 19, 1976; effective, E-78-12, April 27, 1977; effective May 1, 1978; amended Aug. 9, 1996.)*

**K.A.R. 17-16-5 to 17-16-6. Revoked.**

*(Authorized by K.S.A. 9-1713; effective, E-77-18, March 19, 1976; effective, E-78-12, April 27, 1977; effective May 1, 1978; amended Jan. 27, 1992; revoked Aug. 9, 1996.)*

**K.A.R. 17-16-7. Revoked.**

*(Authorized by K.S.A. 9-1713; effective, E-77-18, March 19, 1976; effective, E-78-12, April 27, 1977; effective May 1, 1978; revoked Aug. 9, 1996.)*

**K.A.R. 17-16-8. Revoked.**

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 9-1802; effective, E-77-18, March 19, 1976; effective, E-78-12, April 27, 1977; effective May 1, 1978; amended Jan. 27, 1992; amended April 19, 1993; revoked Aug. 9, 1996.)*

**K.A.R. 17-16-9. Application; consideration by the board.**

(a) After considering the application, including any comment letters and the applicant's response to comment letters, the board shall determine whether to approve or deny the application.

(b) The state banking board shall not be required to make any determination unless the board has had at least 10 calendar days to consider any comment letters or the applicant's response to such letters.

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 9-1802; effective, E-77-18, March 19, 1976; effective, E-78-12, April 27, 1977; effective May 1, 1978; amended Jan. 27, 1992; amended Aug. 9, 1996.)*

## Article 17 – FINANCIAL FUTURES CONTRACTS

**K.A.R. 17-17-1. Limitation on engaging in futures.**

A bank's authority to engage in financial futures contracts, pursuant to K.S.A. 1995 Supp. 9-1101 shall be limited to using the contracts as a hedge.

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective, T-85-20, July 2, 1984; effective May 1, 1985; amended Aug. 9, 1996.)*

**K.A.R. 17-17-2. Definitions.**

As used in this article:

(a) “contract” means a financial futures contract; and

(b) "hedging" means a purchase or sale made as protection against a known risk and not primarily for income or profit.

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective, T-85-20, July 2, 1984; amended, T-85-32, Dec. 19, 1984; effective May 1, 1985; amended Aug. 9, 1996.)*

**K.A.R. 17-17-3. Adoption of policy by bank.**

(a) The board of directors shall establish a written policy to engage in financial futures contracts. Policy objectives and limitations shall be specific enough to outline permissible contract strategies and their relationship to other banking activities.

(b) Record keeping systems shall be sufficiently detailed to permit internal auditors and examiners to determine whether operating personnel have acted in accordance with authorized objectives.

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective, T-85-20, July 2, 1984; effective May 1, 1985; amended Aug. 9, 1996.)*

**K.A.R. 17-17-4. Notice to commissioner.**

A bank shall notify the commissioner of the bank's intention to engage in financial futures contracts before commencement of the activity. The bank shall include the following information in the notice:

(a) a copy of the written policy of the bank, established by the board of directors, pursuant to K.A.R. 17-17-3;

(b) the background and experience of all persons authorized to buy and sell contracts;

(c) the trading limits to be imposed upon all persons authorized to buy and sell contracts;

(d) the conditions, if any, which permit deviations from trading limits;

(e) the bank personnel responsible for authorizing any deviations in trading limits;

(f) the procedures developed to prevent unauthorized trading;

(g) copies of forms, in blank, which inform management of the daily contract activity; and

(h) copies of internal record keeping forms, in blank, which reflect the bank's daily contract activity with regard to:

(1) the maturity of each outstanding contract and the type and value of the corresponding cash transaction;

(2) the maturity date of each contract;

(3) the current market price and value of each contract;

(4) the outstanding gross futures position;

(5) the open position;

(6) the amount of money held in margin accounts;

(7) any maturity gaps existing between the maturity date of the contract and the completion dates of the corresponding cash transaction;

(8) the profit or loss for each corresponding cash and futures transaction;

(9) the aggregate profit or loss for all relevant cash and futures transactions; and

(10) the type and amount of each expected cash transaction that did not materialize.

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective, T-85-20, July 2, 1984; effective May 1, 1985; amended Aug. 9, 1996.)*

**K.A.R. 17-17-5. Monthly review of contracts.**

The board of directors, a duly authorized committee or the bank's internal auditors shall review financial futures contract positions on a monthly basis to ascertain conformance with the bank's written policy.

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective, T-85-20, July 2, 1984; effective May 1, 1985; amended Aug. 9, 1996.)*

**K.A.R. 17-17-6. Maintenance of ledger accounts or registers.**

(a) Each bank engaging in financial futures contracts shall maintain general ledger memorandum accounts or commitment registers to adequately identify and control all commitments to make or take delivery of securities.

(b) The bank's registers and supporting journals shall, at a minimum, include the following:

(1) the type, whether the position is long or short, and the amount of each contract;

(2) the maturity date of each contract;

(3) the current market price and cost of each contract;

(4) the amount of money held in margin accounts; and

(5) an identification of the asset or liability being hedged.

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective, T-85-20, July 2, 1984; effective May 1, 1985; amended Aug. 9, 1996.)*

**K.A.R. 17-17-7. Review of contracts; market valuation.**

(a) Except for financial futures contracts described in K.A.R. 17-17-8, the bank shall review each open position and shall determine the market value at least monthly, regardless of whether the bank is required to deposit margin in connection with a given contract.

(b) The bank shall value each contract on the basis of either market or the lower of cost or market, at the option of the bank.

(1) The bank shall recognize any losses resulting from monthly contract valuation as a current expense item. Any bank that values contracts on a market basis shall recognize gains as current income items.

(2) In the event the above described contracts result in the acquisition of securities, the bank shall record these securities on a basis consistent with that applied to the contracts, meaning either market or the lower of cost or market.

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective, T-85-20, July 2, 1984; effective May 1, 1985; amended Aug. 9, 1996.)*

**K.A.R. 17-17-8. Hedging of mortgage banking operations.**

(a) The bank shall account for financial futures contracts associated with bona fide hedging of mortgage banking operations in accordance with generally accepted accounting principles applicable to the activity.

(b) As used in this regulation, "contracts associated with bona fide hedging of mortgage banking operations" means the origination and purchase of mortgage loans for resale to investors or the issuance of mortgage-backed securities.

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective, T-85-20, July 2, 1984; effective May 1, 1985; amended Aug. 9, 1996.)*

**K.A.R. 17-17-9. Effect on bank's financial condition.**

The financial reports of any bank engaging in financial futures contracts shall disclose in an explanatory note any financial futures contract activity that materially affects the bank's financial condition.

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective, T-85-20, July 2, 1984; effective May 1, 1985; amended Aug. 9, 1996.)*

**K.A.R. 17-17-10. Internal controls; reporting.**

To assure adherence to bank policy and prevent unauthorized trading and other abuses, each bank engaging in financial futures contracts shall establish internal controls including monthly reports to management, segregation of duties, and internal audit programs.

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective, T-85-20, July 2, 1984; effective May 1, 1985; amended Aug. 9, 1996.)*

## Article 18 – OPEN-END INVESTMENT COMPANIES

**K.A.R. 17-18-1 to 17-18-3. Revoked.**

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 1984 Supp. 9-1101; effective, T-85-32, Dec. 19, 1984; effective May 1, 1985; revoked Aug. 9, 1996.)*

**K.A.R. 17-18-4. Revoked.**

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 1984 Supp. 9-1101; effective, T-85-32, Dec. 19, 1984; effective May 1, 1985; amended Jan. 27, 1992; revoked Aug. 9, 1996.)*

## Article 19 – BANK SUBSIDIARIES ENGAGED IN SECURITIES ACTIVITIES

**K.A.R. 17-19-1. Organization; application approval.**

(a) Prior to its organization to engage in securities activities in this state, each bank subsidiary shall make application to and obtain approval from the state bank commissioner and the state banking board. Each application shall contain all required information as prescribed by the commissioner and the state banking board.

(b) Upon filing an application to form a bank subsidiary to engage in securities activities, the following criteria shall be considered by the commissioner and the state banking board prior to granting authority:

(1) the financial standing, general business experience and character of the organizers and incorporators;

(2) the character, qualifications and experience of the officers of the proposed bank subsidiary;

(3) the public need for the proposed bank subsidiary;

(4) the prospects for success of the proposed bank subsidiary; and

(5) any other factors the commissioner or the state banking board deems relevant to the applicant.

(c) Each expense incurred in making any examination and investigation of an application to form a bank subsidiary to engage in securities activities shall be paid by the applicant, who shall pay $1,000 to the commissioner to defray such expense. The commissioner may require an additional payment not to exceed $4,000 at any time deemed necessary. Any unused portion of such payment shall be refunded.

(d) Any application may be denied or authority revoked for any bank to own, hold or otherwise operate a bank subsidiary engaged in securities activities upon finding any violation of the state banking department regulations.

(e) Each bank subject to revocation of authority to own, hold or otherwise operate a bank subsidiary engaged in securities activities shall be afforded the right to a hearing pursuant to the Kansas administrative procedure act.

*(Authorized by and implementing K.S.A. 1988 Supp. 9-1101, effective Nov. 20, 1989.)*

**K.A.R. 17-19-2. Registration and licensing; violations; examination.**

(a) Prior to engaging in securities activities, each bank subsidiary shall comply with registration and licensing requirements of the appropriate federal and state securities regulatory agencies. Each bank subsidiary shall maintain on file with the Kansas banking department copies of all required registration documents, together with copies of each license or registration documents issued to the bank subsidiary by each regulatory agency.

(b) Any application may be denied or authority revoked for any bank to own, hold or otherwise operate a bank subsidiary engaged in securities activities upon notification of any violation of federal or state securities laws or regulations.

(c) Any denial of an application or revocation of authority for a bank to own, hold or otherwise operate a bank subsidiary engaged in securities activities shall be made by the commissioner, subject to confirmation by the state banking board.

(d) Each bank subsidiary found to be in violation of any federal or state securities law or regulation shall notify the commissioner of each violation within 10 days of such finding. Each notice shall include all material facts surrounding such violation including:

(1) identification of parties involved;

(2) date of violation;

(3) nature of violation; and

(4) penalties assessed.

(e) The expense, including salaries, travel expenses, supplies and equipment, of each examination of a bank subsidiary deemed necessary by the bank commissioner after receiving notification as required by subsection (d) of this regulation shall be paid by the bank.

*(Authorized by and implementing K.S.A. 1988 Supp. 9-1101; effective Nov. 20, 1989.)*

**K.A.R. 17-19-3. Wholly-owned subsidiary; leasing; employees; office location.**

(a) Each bank subsidiary engaged in securities activities shall be a wholly-owned subsidiary of the parent bank.

(b) Any parent bank may lease or sell office space to its subsidiary engaged in securities activities; provided the lease or sale is of a bona fide nature and represents a fair market value in the community market place. Office space leased or sold by a parent bank to its subsidiary engaged in securities activities shall be separate and distinct from the office space of the parent bank.

(c) Each bank subsidiary engaged in securities activities may employ parent bank employees provided those employees are fairly compensated by the bank subsidiary.

(d) Each bank subsidiary engaged in securities activities shall locate no office outside the state of Kansas unless the prior approval of the bank commissioner and the state banking board is obtained.

*(Authorized by and implementing K.S.A. 1988 Supp. 9-1101, effective Nov. 20, 1989.)*

**K.A.R. 17-19-4. Capital; lending limit**

The aggregate of unsecured loans and capital investments to each bank subsidiary by each parent bank shall not exceed 15 percent of the total amount of capital stock paid in and unimpaired and the unimpaired surplus fund of the parent bank.

*(Authorized by and implementing K.S.A. 1988 Supp. 9-1101; effective Nov. 20, 1989.)*

## Article 20 – EMPLOYMENT

### K.A.R. 17-20-1. Employment; security background check.

(a) Each Deputy Commissioner, Special Assistant or other employee necessary to properly discharge the duties of the office shall submit to a security background check prior to being employed in such position.

(b) Upon the commencement of the interview process, every candidate shall be given written notice that a security background check is required.

(c) The security background check shall be limited to criminal history record information as provided by K.S.A. 22-4701 et seq. and amendments thereto.

(d) If the criminal history record information reveals convictions of crimes of dishonesty, such conviction(s) may be used to disqualify a candidate for any position within the Office of the State Bank Commissioner.

(e) If the criminal history record information is used to disqualify a candidate, the candidate shall be informed in writing of that decision.

(f) Upon determining whether to hire or disqualify a candidate, the candidate's criminal history record information report shall be destroyed. The candidate's personnel file shall only contain a statement that a security background check was performed and the date thereof.

*(Authorized by and implementing K.S.A. 75-3135; effective Jan. 27, 1992.)*

## Article 21 – BANK HOLDING COMPANIES; APPLICATION FOR THE ACQUISITION OF A KANSAS BANK OR BANK HOLDING COMPANY

### K.A.R. 17-21-1. Definitions.

For purposes of this article, the terms used shall have the meanings attributed to them by K.S.A. 1995 Supp. 9-519 and K.S.A. 1995 Supp. 9-701.

*(Authorized by K.S.A. 1995 Supp. 9-539; implementing K.S.A. 1995 Supp. 9-532; effective Aug. 10, 1992; amended April 19, 1993; amended Aug. 9, 1996.)*

### K.A.R. 17-21-2. Application.

(a) With the approval of the commissioner, any bank holding company may acquire control of one or more Kansas banks or Kansas bank holding companies.

(b) A bank holding company shall be deemed to be acquiring control of a Kansas bank or Kansas bank holding company if, as a result of the proposed acquisition:

(1) the company, directly or indirectly or acting through one or more persons, will own, control or have the power to vote 25 percent or more of any class of voting securities of a Kansas bank or Kansas bank holding company:

(2) the company will control in any manner the election of a majority of the directors or trustees of a Kansas bank or Kansas bank holding company; or

(3) the commissioner determines that the company directly or indirectly will exercise a controlling influence over management or policies of a Kansas bank or Kansas bank holding company.

(c) Each request for approval to acquire control of a Kansas bank or Kansas bank holding company shall be made by filing an application in the form required by the commissioner.

(1) A separate application and fee shall be filed for each bank or bank holding company to be acquired.

(2) The applicant holding company shall bear any additional costs of the application.

*(Authorized by K.S.A. 1995 Supp. 9-539; implementing K.S.A. 1995 Supp. 9-532; effective Aug. 10, 1992; amended April 19, 1993; amended Aug. 9, 1996.)*

**K.A.R. 17-21-3. Contents of application.**

(a) Each applicant shall respond accurately and fully to all questions contained in the application form provided by the commissioner.

(b) Upon submitting an application, each applicant shall provide the commissioner with the following additional information:

(1) a statement by the applicant demonstrating that the proposed acquisition is in the interest of the public and of the depositors and creditors of the bank to be acquired or any bank subsidiaries of the bank holding company to be acquired;

(2) a copy of all cease and desist orders, memorandums of understanding or other formal or informal actions taken by any federal or state regulator, under which the applicant or any of the applicant's subsidiaries or affiliates has operated within the 18 months preceding the application;

(3) a copy of the most recent regulatory examination of any bank or trust company subsidiary or affiliate of the applicant if a composite rating of "3," "4," or "5" was received;

(4) a copy of the most recent report of examination of the bank holding company prepared by the federal reserve bank or the applicant's state regulator. If the commissioner is not satisfied that the information provided gives adequate assurance that the bank or banks to be acquired will be operated safely and soundly, the commissioner may conduct an examination of the applicant or any of its subsidiaries or affiliates for the purpose of augmenting such information. The applicant shall bear the cost of any examination;

(5) all information required by K.S.A. 1995 Supp. 9-1722; and

(6) an analysis demonstrating that the acquisition will not cause the applicant to exceed limitations imposed by K.S.A. 1995 Supp. 9-520(a) regarding concentrations of deposits.

*(Authorized by K.S.A. 1995 Supp. 9-539; implementing K.S.A. 1995 Supp. 9-533; effective Aug. 10, 1992; amended Aug. 9, 1996.)*

**K.A.R. 17-21-4. Filing of application.**

(a) Within 14 calendar days of the date any agreement to purchase a bank or bank holding company is entered into, a notice of intent to submit an application pursuant to K.S.A. 1995 Supp. 9-532 shall be filed with the commissioner.

(b) The application shall be filed within 90 calendar days after an agreement has been entered into. At the discretion of the commissioner, failure to file an application within 90 calendar days may be grounds for rejection of the application.

*(Authorized by K.S.A. 1995 Supp. 9-539; implementing K.S.A. 1995 Supp. 9-532; effective Aug. 10, 1992; amended Aug. 9, 1996.)*

**K.A.R. 17-21-5. When complete.**

An application filed pursuant to K.S.A. 9-532 shall be complete when:

(a) the materials described in K.S.A. 1995 Supp. 9-533, K.S.A. 1995 Supp. 9-536 and K.A.R. 17-21-3 have been filed with the commissioner; and

(b) the board of governors of the federal reserve system or the appropriate federal reserve bank acting on delegated authority, and the commissioner have determined that no further information shall be required to complete the application.

*(Authorized by K.S.A. 1995 Supp. 9-539; implementing K.S.A. 1995 Supp. 9-532, and K.S.A. 1995 Supp. 9-533; effective Aug. 10, 1992; amended Aug. 9, 1996.)*

**K.A.R. 17-21-6. Concurrent jurisdiction.**

(a) Examinations of the applicant, its subsidiaries and its affiliates may be conducted by the commissioner. The applicant shall bear the cost of an examination.

(b) The applicant's state and federal regulators may be provided with copies of reports of examinations and other information compiled by the commissioner.

*(Authorized by K.S.A. 1995 Supp. 9-539; implementing K.S.A. 1995 Supp. 9-537; effective Aug. 10, 1992; amended Aug. 9, 1996.)*

**K.A.R. 17-21-7. Revoked.**

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 9-524; effective Aug. 10, 1992; revoked Aug. 9, 1996.)*

**K.A.R. 17-21-8. Application; request for additional information.**

An application filed pursuant to K.S.A. 1995 Supp. 9-532 may be returned by the commissioner if the applicant does not respond in writing within 20 calendar days of a written request by the commissioner for additional information. If the commissioner returns the application, the application shall be deemed withdrawn and the applicant shall forfeit the filing fee.

*(Authorized by K.S.A. 1995 Supp. 9-539; implementing K.S.A. 1995 Supp. 9-532 and K.S.A. 1995 Supp. 9-533; effective Aug. 10, 1992; amended Aug. 9, 1996.)*

## Article 22 – APPLICATION FEES

**K.A.R. 17-22-1. Application fees.**

(a) At the time of filing any application described below, the applicant shall remit to the office of the state bank commissioner the following nonrefundable fee:

(1) Bank or trust company charter .....$2,500

(2) New branch bank .....1,000

(3) Relocation

(A) Main office or branch relocation ..... 1,000

(B) Short-form main office relocation ..... 500

(C) Interchange of main office and branch ..... 500

(D) Main office relocation with existing location retained as a branch ..... 1,000

(E) Short-form main office relocation with existing location retained as a branch ..... 500

(4) Merger, consolidation, or transfer of assets and liabilities ..... 1,000

(5) Change of control

(A) General ..... 1,000

(B) Bona fide gift or inheritance ..... 500

(C) Formation of one-bank holding company and associated exchange of stock ..... 500

(6) Conversion to state charter ..... no fee

(7) Bank service corporation ..... 500

(8) Fiduciary activities

(A) Fiduciary powers ..... no fee

(B) Trust branch established pursuant to K.S.A. 9-1135 ..... 500

(C) Trust service desk established pursuant to K.S.A. 9-2107 ..... 500

(D) Trust service office established pursuant to K.S.A. 9-2108 ..... 500

(E) Contracting trustee agreement established to K.S.A. 9-2107 ..... 500

(9) Money order license ..... 100, plus $10 per agent

(10) Change of name ..... 250

(11) Revenue bond pledgibility ..... 200

(12) Letter of good standing.....50

(13) Administrative appeals pursuant to K.S.A. 9-2108(i), K.S.A. 9-2107(l), or K.S.A. 9-1135(j).....1,000

(b) The statutory procedures governing the applications described in paragraph (a)(2), paragraph (a)(3)(A), (C), (D) or (E), and paragraph (a)(8)(B), (C), or (D) above may require a public hearing. If a hearing is required, the applicant shall pay an additional nonrefundable fee of $400 to defray the expenses of the hearing.

(c) The applicant shall pay any additional cost associated with any examination or investigation if the state bank commissioner determines that an on-site examination of the financial institutions or trust companies that are parties to the application is necessary.

*(Authorized by K.S.A. 9-1713, 9-1127c, 9-1601, 9-812, and K.S.A. 1999 Supp. 9-509, 9-532, 9-1111, 9-1111b, 9-1135, 9-1402, 9-1722, 9-1724, 9-1803, 9-1804, and 9-2107; implementing K.S.A. 1999 Supp. 9-509, 9-532, 9-1111, 9-1111b, 9-1115, 9-1135, 9-1402, 9-1722, 9-1724, 9-1803, 9-1804, and 9-2107 and K.S.A. 9-1127c, 9-1601, and 9-812; effective Oct. 19, 1992; amended Aug. 16, 1993; amended Oct. 31, 1994; amended Nov. 14, 1997; amended April 28, 2000.)*

## Article 23 – TRUST SUPERVISION

### K.A.R. 17-23-1. Definitions.

For the purposes of article 23, the following definitions shall apply.

(a) "Account" means the trust, estate or other fiduciary relationship that has been established with a bank or trust company.

(b) "Bank" means a corporation as defined in K.S.A. 9-701(a) and amendments thereto. With respect to any fund established pursuant to K.S.A. 9-1609 and amendments thereto, "bank" shall also mean two or more banks or trust companies that are members of the same affiliated group and are cotrustees of the fund.

(c) "Cash management vehicle" means any checking, savings or money market account that is used to accumulate cash for payments to or for beneficiaries, or is used to accumulate cash for the purpose of making investments.

(d) "Collective investment fund" means funds held by a bank or trust company as fiduciary and invested collectively in either of the following:

(1) A common trust fund maintained by the bank or trust company exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank or trust company in its capacity as trustee, executor, administrator, conservator, or as

custodian under the uniform transfers to minors act, K.S.A. 38-1701 et seq., and amendments thereto, or any state law substantially similar to the uniform gifts to minors act or the uniform transfers to minors act as published by the national conference of commissioners on uniform state laws; or

(2) a fund consisting solely of assets of retirement, pension, profit sharing, stock bonus or other trusts that are exempt from federal income taxation under the internal revenue code.

(e) "Conservator" means an individual or a corporation who is appointed by the court to act on behalf of a conservatee and who is possessed of some or all of the powers and duties set out in K.S.A. 59-3019 and amendments thereto.

(f) "Custodian under a uniform transfers to minors act" means an account established pursuant to the uniform transfers to minors act, K.S.A. 38-1701 et seq. and amendments thereto, or pursuant to any state law substantially similar to the uniform gifts to minors act or the uniform transfers to minors act as published by the national conference of commissioners on uniform state laws.

(g) "Customer" means any person or account, including any agency, trust, estate, guardianship, committee, or other fiduciary account for which a bank or trust company effects or participates in effecting the purchase or sale of securities, but shall not include a broker, dealer, dealer bank or issuer of the securities that are subject to the transactions.

(h) "Fiduciary" means, unless otherwise defined in the operative agreement between the parties, a bank or trust company undertaking to act alone or jointly with others primarily for the benefit of another in all matters connected with its undertaking, and shall include a trustee, executor, administrator, registrar of stocks and bonds, transfer agent, custodian under any state law substantially similar to the uniform transfers to minors act or the uniform gifts to minors act as published by the national conference of commissioners on uniform state laws, conservator of estates, assignee, receiver, managing agent, custodian or any other similar capacity in which the person or entity has investment authority or investment discretion.

(i) "Fiduciary powers" means the power to act in any fiduciary capacity conveyed by the Kansas uniform powers act.

(j) "Fiduciary records" means all matters that are written, transcribed, recorded, received, or otherwise come into possession of a bank or trust company and are necessary to preserve information concerning the acts and events relevant to the fiduciary activities of the bank or trust company.

(k) "Investment authority" means the responsibility conferred by action of law or a provision of an appropriate governing instrument to make, select or change investments; to review investment decisions made by others; or to provide investment advice or counsel to others.

(l) "Investment discretion," with respect to an account, means that the bank or trust company is authorized to determine what securities or other property will be purchased or sold by or for the account.

(m) "Managing agent" means the fiduciary relationship assumed by the bank or trust company upon the creation of an account that names the bank or trust company as agent and confers investment discretion upon the bank or trust company.

(n) "Periodic plan," including any dividend reinvestment plan, automatic investment plan and employee stock purchase plan, means any written authorization for a bank acting as agent to purchase or sell for a customer a specific security or securities, either in specific amounts, calculated in security units or dollars, or to the extent of dividends and funds available, at specific time intervals and setting forth the commission or charges to be paid by the customer in connection therewith or the manner of calculating them.

(o) "Security" means any interest or instrument commonly known as a "security," whether in the nature of debt or equity, including any stock, bond, note, debenture, evidence of indebtedness or any participation in or right to subscribe to or purchase any of the foregoing. The term "security" shall not include any of the following:

(1) A deposit or share account in a federally or state insured depository institution;

(2) a loan participation;

(3) a letter of credit or other form of bank indebtedness incurred in the ordinary course of business;

(4) currency;

(5) any note, draft, bill of exchange, or bankers acceptance that has a maturity at the time of issuance of not more than nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited;

(6) units of a collective investment fund;

(7) interests in a variable amount or a note as defined in paragraph (c)(2)(B)of K.A.R. 17-23-11; or

(8) U.S. savings bonds.

(p) "Trust committee" means the board of directors or any committee charged, by the board of directors, with the responsibility for administration and supervision of a bank trust department or the trust activities of a trust company. The "trust committee" may assign responsibility to other committees or individuals, as is necessary and appropriate.

(q) "Trust company" means those companies as defined in K.S.A. 9-701(b) and amendments thereto. With respect to any fund established pursuant to K.S.A. 9-1609 and amendments thereto, "trust company" shall also mean two or more banks or trust companies that are members of the same affiliated group and are cotrustees of the fund.

(r) "Trust department" means that group or groups of officers and employees of a bank or trust company organized under the supervision of officers or employees to whom are designated by the board of directors the performance of the fiduciary responsibilities of the bank or trust company, whether or not the group or groups are so named.

*(Authorized by K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 9-1601, 9-1602, 9-1603, 9-1605, 9-1606, 9-1607, 9-1608, 9-1609, 9-1610, 9-1611, 9-1612, 9-2101, 9-2102, 9-2104, 9-2105, 9-2106, K.S.A. 2000 Supp. 9-1604, 9-2107, as amended by L. 2001, ch. 5, § 48, and 9-2111, K.S.A. 2000 Supp. 9-2103, as amended by L. 2001, ch. 27, § 1, and 9-2108, as amended by L. 2001, ch. 5, § 49; effective Feb. 28, 1994; amended Jan. 18, 2002.)*

**K.A.R. 17-23-2. Adoption of policies and procedures with respect to brokerage placement practices.**

(a) Each bank or trust company exercising investment discretion, as defined in subsection (r) of K.A.R. 17-23-1, with respect to an account shall adopt and follow written policies and procedures intended to ensure that its brokerage placement practices comply with all applicable laws and regulations.

(b) Written policies and procedures shall address, where appropriate:

(1) the selection of persons to effect securities transactions and the evaluation of the reasonableness of any brokerage commissions paid to such persons, including the factors considered in these determinations;

(2) any acquisition of services or products, including research services, in return for brokerage commissions;

(3) the allocation of research or other services among accounts, including those which did not generate commissions to pay for the research or other services;

(4) the need, in appropriate instances, to make disclosures concerning the policies and procedures to prospective and existing customers; and

(5) the prohibition of excessive trading in portfolios.

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 9-1601, K.S.A. 9-2103; effective Feb. 28, 1994.)*

**K.A.R. 17-23-3. Administration of fiduciary powers.**

(a) The board of directors shall be responsible for the proper exercise of fiduciary powers by the bank or trust company.

(1) All matters pertinent thereto, including the determination of policies, the investment and disposition of property held in a fiduciary capacity, and the direction and review of the actions of all officers, employees, and committees utilized by the bank or trust company in the exercise of its fiduciary powers, shall be the responsibility of the board.

(2) In discharging this responsibility, the board of directors may assign, by action duly entered in the minutes, the administration of any of the bank's or trust company's fiduciary powers it may consider proper to assign to any of the following designees:

(A) Director;

(B) officer;

(C) employee; or

(D) committee.

(b) If a trust committee is designated pursuant to paragraph (a)(2), the trust committee shall supervise the fiduciary activities of a bank or trust company and shall meet the following criteria.

(1) The trust committee shall consist of at least three directors, at least one of which shall not be an officer of the bank or trust company.

(2) The trust committee shall keep complete minutes of its actions and make periodic reports to the board of directors of its actions.

(c) A fiduciary account shall not be accepted without the prior approval of the board, or the board's designee. A written record shall be made of each fiduciary account acceptance and of the relinquishment or closing out of any fiduciary account. Upon the acceptance of an account, a prompt verification shall be made to determine that assets received have been properly placed on accounting records and documented. The board shall also ensure that at least once during every calendar year thereafter, and within 15 months of the last review, all the assets held in fiduciary accounts for which the bank or trust company has investment discretion, are reviewed to determine the advisability of retaining or disposing of these assets.

(d) All officers and employees taking part in the operation of a bank trust department or trust company shall be bonded.

(e) Each bank or trust company exercising fiduciary powers shall designate, employ, or retain legal counsel who shall be readily available to render an opinion upon fiduciary matters and to advise the bank or trust company.

(f) Each bank or trust company exercising fiduciary powers shall adopt written policies and procedures to ensure that the federal securities laws are complied with in connection with any decision or recommendation to purchase or sell any security. These policies and procedures, in particular, shall ensure that bank trust departments and trust companies do not use material inside information in connection with any decision or recommendation to purchase or sell any security.

*(Authorized by K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 2000 Supp. 9-1114, K.S.A 9-1601, K.S.A. 9-1602, and K.S.A. 2000 Supp. 9-2103, as amended by L. 2001, ch. 27, § 1; effective Feb. 28, 1994; amended Jan. 18, 2002.)*

**K.A.R. 17-23-4. Books and accounts.**

(a) Each bank or trust company exercising fiduciary powers shall retain fiduciary records which shall be kept separate and distinct from other records of the bank or trust company.

(b) Each such bank or trust company shall keep an adequate record of all pending litigation to which it is a party in connection with its exercise of fiduciary powers.

(c) Each bank or trust company shall keep a record of all written complaints and related correspondence concerning any fiduciary account.

(d) A bank or trust company shall retain the records required by this article for:

(1) a period of three years from the later of:

(A) termination of the fiduciary account relationship to which the records relate;

(B) termination of litigation relating to such account; or

(C) the next examination; or

(2) a longer minimum retention period if one is prescribed by K.A.R. 17-15-1 and amendments thereto.

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 9-1130, K.S.A. 9-1603, K.S.A. 9-1608, K.S.A. 9-2103; effective Feb. 28, 1994.)*

**K.A.R. 17-23-5. Audit of trust activities.**

(a) The board of directors, or an audit committee designated by the board of directors, shall make a thorough examination of the books, records, funds and securities held by the bank trust department or trust company, in a fiduciary capacity, at each of the quarterly meetings and the result of such examination shall be recorded in detail.

(b) If the board, or the designated committee, selects an auditor, the auditor's findings shall be reported directly to the board.

(c) In lieu of the required four quarterly examinations, the board of directors, or an audit committee designated by the board of directors, may accept one annual audit by a certified public accountant or an independent auditor approved by the commissioner. All audit reports and findings shall be reported to the board of directors.

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 9-1116; effective Feb. 28, 1994.)*

**K.A.R. 17-23-6. Funds awaiting investment or distribution.**

(a) Funds held by a bank or trust company in a fiduciary capacity that are awaiting investment or distribution shall not be held uninvested or undistributed any longer than is reasonable for the proper management of the account.

(1) Each bank or trust company exercising fiduciary powers shall adopt and follow written policies and procedures intended to provide that a prudent rate of return, available for trust-quality, short-term investments, is obtained upon funds so held, consistent with the requirements of the governing instrument and local law.

(2) These policies and procedures shall take into consideration all relevant factors, including the following:

(A) The anticipated return that could be obtained while the cash remains uninvested or undistributed;

(B) the cost of investing the funds;

(C) the anticipated need for the funds; and

(D) the costs and operational complexities of implementing and maintaining the investments for the bank or trust company.

(b) Funds held in trust by a bank, including managing agency accounts, awaiting investment or distribution may, unless prohibited by the instrument creating the trust, be deposited in the commercial or savings or other departments of the bank.

(1) If the deposits, per account, exceed current federal deposit insurance corporation (F.D.I.C.) limits, the bank shall first set aside, under control of the trust department, as collateral security, direct obligations of the United States and other obligations fully guaranteed by the United States as to principal and interest, or any other security available for pledging by commercial banks under Kansas state law.

(2) The securities that are deposited or substituted as collateral shall at all times be at least equal in market value to the amount of trust funds deposited, to the extent that the deposit exceeds F.D.I.C. insurance limits.

*(Authorized by K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 9-1601, K.S.A. 9-1603, and K.S.A. 2000 Supp. 9-2103, as amended by L. 2001, ch. 27, § 1; effective Feb. 28, 1994; amended Jan. 18, 2002.)*

**K.A.R. 17-23-7. Investment of funds held as fiduciary.**

Funds held by a bank or trust company in a fiduciary capacity shall be invested in accordance with any one or more of the following:

(a) the instrument establishing the fiduciary relationship;

(b) any order of the probate or other court; or

(c) any and all Kansas statutes and regulations applicable, including but not limited to K.S.A. 17-5004, K.S.A. 9-1609, and K.A.R. 17-23-11 and amendments thereto.

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 9-1601, K.S.A. 9-1611, K.S.A. 9-2103; effective Feb. 28, 1994.)*

**K.A.R. 17-23-8. Self-dealing.**

(a) Unless lawfully authorized by the instrument creating the relationship, by court order or by the laws of the state of Kansas, funds of a fiduciary account for which a bank or trust company has investment discretion shall not be invested in stock or obligations of, or property acquired from any of the following:

(1) The bank or trust company, or its directors, officers, or employees, or individuals with whom there exists such a connection;

(2) organizations in which there exists an interest that might affect the exercise of the best judgment of the bank or trust company in acquiring the property; or

(3) affiliates of the bank or trust company, or their directors, officers or employees.

(b) (1) A bank or trust company shall not lend, sell, or otherwise transfer assets of a fiduciary account for which a bank or trust company has investment discretion to the bank or trust company or any of its directors, officers, or employees, or to affiliates of the bank or trust company or any of their directors, officers, or employees, or to individuals or organizations with whom there exists an interest that might affect the exercise of the best judgment of the bank or trust company, unless any of the following conditions is met:

(A) The transaction is lawfully authorized by the instrument creating the relationship, by written direction from the person or persons holding the power to amend or terminate the trust, by court order or by the laws of the state of Kansas;

(B) legal counsel advises the bank or trust company in writing that the bank or trust company has incurred, in its fiduciary capacity, a contingent or potential liability, and the bank or trust company desires to relieve itself from the contingent or potential liability. In this case, the bank or trust company, upon the consummation of the sale or transfer of assets, shall make reimbursement in cash at the greater of book or market value of the assets to the fiduciary account;

(C) the transaction is authorized as is provided in paragraph (b)(8)(B) of K.A.R. 17-23-11; or

(D) the transaction is required in writing by the state bank commissioner.

(2) Notwithstanding paragraph (b)(1), a bank or trust company may lend funds held in trust to participants and beneficiaries of employee benefit plans in accordance with the exemptions found in section 408 of the employee retirement income security act of 1974, 29 U.S.C. § 1108, as in effect on December 17, 1999, which is hereby adopted by reference.

(c) Except as provided in subsection (b) of K.A.R. 17-23-6, funds of a fiduciary account for which a bank or trust company has investment discretion shall not be invested by the purchase of stock or obligations of the bank or trust company or its affiliates unless authorized by the instrument creating the relationship, by court order, or by the laws of the state of Kansas.

(1) If the retention of stock or obligations of the bank or trust company or its affiliates is authorized by the instrument creating the relationship, by court order, or by the laws of the state of Kansas, it may exercise rights to purchase its own stock, or securities convertible into its own stock, when offered pro rata to stockholders.

(2) If the exercise of rights or receipts of a stock dividend results in fractional share holdings, additional fractional shares may be purchased to complement the fractional shares so acquired.

(d) A bank or trust company may sell assets held by it as fiduciary in one account to itself as fiduciary in another account if the transaction is fair to both accounts and is not prohibited by any governing instrument.

(e) A bank or trust company may make a loan to an account from the funds belonging to another account, if the making of these loans to a designated account is authorized by the instrument creating the account from which the loans are made.

(f) A bank or trust company may make a loan to an account and may take as security assets of the account, if the transaction is fair to the account.

(g) Except with the specific written approval of its board of directors, a bank or trust company shall not permit any of its current officers or employees to retain any compensation for acting as a cofiduciary with the bank or trust company in the administration of any account undertaken by it.

*(Authorized by K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 9-1601, K.S.A. 9-1609, K.S.A. 9-1611, and K.S.A. 2000 Supp. 9-2103, as amended by L. 2001, ch. 27, § 1; effective Feb. 28, 1994; amended Jan. 18, 2002.)*

**K.A.R. 17-23-9. Revoked.**

*(Authorized by K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 9-1603, K.S.A. 9-1607, K.S.A. 9-1608, and K.S.A. 2000 Supp. 9-2103, as amended by L. 2001, ch. 27, § 1; effective Feb. 28, 1994; amended Jan. 18, 2002; revoked Feb. 21, 2020.)*

**K.A.R. 17-23-10. Surrender of fiduciary powers.**

Any bank or trust company which has been granted the right to exercise fiduciary powers and which desires to surrender such right shall file with the state bank commissioner a certified copy of the resolution of its board of directors signifying such a desire. Upon receipt of such resolution, the state bank commissioner may make an investigation. If the commissioner is satisfied that the bank or trust company has been discharged from all fiduciary duties which it has undertaken, a letter to the bank or trust company certifying that it is no longer authorized to exercise fiduciary powers shall be issued by the commissioner.

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 9-1604, K.S.A. 9-2103; effective Feb. 28, 1994.)*

**K.A.R. 17-23-11. Collective investment.**

(a) Funds held by a bank or trust company as fiduciary may be invested collectively in either of the following:

(1) A common trust fund maintained by the bank or trust company exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank or trust company in its capacity as trustee, executor, administrator, conservator, or as custodian under any state law substantially similar to the uniform gifts to minors act or the uniform transfers to minors act as published by the American law institute; or

(2) a fund consisting solely of assets of retirement, pension, profit sharing, stock bonus, or other trusts that are exempt from federal income taxation under the internal revenue code.

(b) Collective investment funds, as defined in subsection (d) of K.A.R. 17-23-1, shall be administered as follows.

(1) Each collective investment fund shall be established and maintained in accordance with a written plan, referred to herein as "the plan," which shall be approved by a resolution of the bank or trust company board of directors or by a committee authorized by the board.

(A) "The plan" shall contain appropriate provisions not inconsistent with the rules and regulations of the state bank commissioner as to the manner in which the fund is to be operated, including provisions relating to the following:

(i) The investment powers and a general statement of the investment policy of the bank or trust company with respect to the fund;

(ii) the allocation of income, profits, and losses;

(iii) fees and expenses that will be charged to the fund and to participating accounts;

(iv) the terms and conditions governing the admission or withdrawal of participations in the fund;

(v) the auditing of accounts of the bank or trust company with respect to the fund;

(vi) the basis and method of valuing assets in the fund, setting forth criteria for each type of asset;

(vii) the expected frequency for income distribution to participating accounts;

(viii) the minimum frequency for valuation of assets of the fund;

(ix) the period following each such valuation date during which the valuation may be made, which in usual circumstances shall not exceed 10 business days;

(x) the basis upon which the fund may be terminated; and

(xi) any other matters that may be necessary to define clearly the rights of participants in the fund.

(B) Except as otherwise provided in paragraph (b)(15) of this regulation, fund assets shall be valued at market value unless that value is not readily ascertainable, in which case a fair value determined in good faith by the fund trustees may be used.

(C) A copy of "the plan" shall be available at the principal office of the bank or trust company for inspection during all business hours, and upon request a copy of "the plan" shall be furnished to any person.

(2) Property held by a bank or trust company in its capacity as trustee of retirement, pension, profit sharing, stock bonus, or other trusts that are exempt from federal income taxation under any provision of the internal revenue code may be invested in collective investment funds, subject to the provisions herein contained pertaining to these funds, and may qualify for tax exemption pursuant to section 584 of the internal revenue code. Assets of retirement, pension, profit sharing, stock bonus, or other trusts that are exempt from federal income taxation by reason of being described in section 401 of the code may be invested in collective investment funds established under the provisions of paragraph (a)(2) of this regulation if the fund qualifies for tax exemption under revenue ruling 56-267 and following rulings.

(3) All participations in the collective investment fund shall be on the basis of a proportionate interest in all of the assets. In order to determine whether the investment of funds received or held by a bank or trust company as fiduciary in a participation in a collective investment fund is proper, the bank or trust company may consider the collective investment fund as a whole and shall not be prohibited from making the investment because any particular asset is non-income producing.

(4) Each bank or trust company administering a collective investment fund shall determine the value of the assets in the fund as of the date set for the valuation of assets at least once every three months. However, in the case of a fund described in paragraph (a)(2) above that is invested primarily in real estate or other assets that are not readily marketable, the bank or trust company shall determine the value of the fund's assets at least once each year.

(A) Participation shall not be admitted to or withdrawn from the fund except according to the following:

(i) On the basis of the valuation; and

(ii) according to the valuation date.

(B) Participation shall not be admitted to or withdrawn from the fund unless a written request for or notice of intention of taking such action shall have been entered on or before the valuation date in the fiduciary records of the bank or trust company and approved in the manner as the board of directors shall prescribe. No requests or notices may be canceled or countermanded after this valuation date.

(C) If a fund described in paragraph (a)(2) of this regulation is to be invested in real estate or other assets that are not readily marketable, the bank or trust company may require a prior notice period not to exceed one year, for withdrawals.

(5) (A) Each bank or trust company administering a collective investment fund shall at least once during each period of 12 months cause an adequate audit to be made of the collective investment fund by auditors responsible only to the board of directors of the bank or trust company. In the event the audit is performed by independent public accountants, the reasonable expenses of the audit may be charged to the collective investment fund.

(B) Each bank or trust company administering a collective investment fund shall at least once during a period of 12 months prepare a financial report of the fund. This report, based upon the above audit, shall contain a list of investments in the fund showing the following:

(i) The cost and current market value of each investment;

(ii) a statement for the period since the previous report showing purchases, with cost;

(iii) sales, with profit or loss and any other investment changes;

(iv) income and disbursements; and

(v) an appropriate notation as to any investments in default.

(C) The financial report may include a description of the fund's value on previous dates, as well as its income and disbursements during previous accounting periods. Predictions or representations as to future results shall not be made. In addition, as to funds described in paragraph (a)(1) of this regulation, neither the report nor any other publication of the bank or trust company shall make reference to the performance of funds other than those administered by the bank or trust company.

(D) A copy of the financial report shall be furnished, or notice shall be given that a copy of the report is available and will be furnished without charge upon request, to each person to whom a regular periodic accounting would ordinarily be rendered with respect to each participating account. A copy of the financial report may also be furnished to prospective customers. The cost of printing and distribution of these reports shall be borne by the bank or trust company. In addition, a copy of the report shall be furnished upon request to any person for a reasonable charge. The fact of the availability of the report for any fund described in paragraph (a) (1) of this regulation may be given publicity, solely in connection with the promotion of the fiduciary services of the bank or trust company.

(E) Except as provided in this regulation, the bank or trust company shall not advertise or publicize its collective investment fund or funds described in paragraph (a)(1) of this regulation.

(6) When participations are withdrawn from a collective investment fund, distributions may be made in cash or ratably in kind, or partly in cash and partly in kind. However, all distributions on any one valuation date shall be made on the same basis.

(7) If, for any reason, an investment is withdrawn in kind from a collective investment fund for the benefit of all participants in the fund at the time of the withdrawal and the investment is not distributed ratably in kind, it shall be segregated and administered or realized upon for the benefit ratably of all participants in the collective investment fund at the time of withdrawal.

(8) (A) A bank or trust company shall not have any interest in a collective investment fund other than in its fiduciary capacity. Except for temporary net cash overdrafts or as otherwise specifically provided herein, it shall not lend money to a fund, sell property to, or purchase property from a fund. Assets of a collective investment fund shall not be invested in stock or obligations, including time or savings deposits, of the bank or trust company or any of its affiliates. However, these deposits may be made of funds awaiting investment or distribution. Subject to all other provisions of this regulation, funds held by a bank or trust company as fiduciary for its own employees may be invested in a collective investment fund. A bank or trust company shall not make any loan on the security of a participation in a fund. If because of a creditor relationship or otherwise the bank or trust company acquires an interest in a participation in a fund, the participation shall be withdrawn on the first date on which the withdrawal can be effected. An unsecured advance to an account holding participation shall not be deemed to constitute the acquisition of an interest by a bank or trust company until the time of the next valuation date arrives.

(B) Any bank or trust company administering a collective investment fund may purchase from the fund for its own account any defaulted fixed income investment held by the fund, if in the judgment of the board of directors the cost

of segregation of the investment would be greater than the difference between its market value and its principal amount plus interest and penalty charges due. If the bank or trust company elects to purchase the investment, it shall do so at its market value or at the sum of cost, accrued unpaid interest, and penalty charges, whichever is greater.

(9) The reasonable expenses incurred in servicing mortgages held by a collective investment fund may be charged against the income account of the fund and paid to servicing agents, including the bank or trust company administering the fund.

(10) A bank or trust company administering a collective investment fund shall have the exclusive management of it, except as prudence may allow delegation.

(A) The bank or trust company may charge a fee for the management of the collective investment fund if the fractional part of the fee proportionate to the interest of each participant does not, when added to any other compensations charged by a bank to a participant, exceed the total amount of compensations that would have been charged to the participant if no assets of the participant had been invested in participations in the fund.

(B) The bank or trust company shall absorb the costs of establishing or reorganizing a collective investment fund.

(11) A bank or trust company administering a collective investment fund shall not issue any certificate or other document evidencing a direct or indirect interest in this fund in any form.

(12) A mistake made in good faith and in the exercise of due care in connection with the administration of a collective investment fund shall not be deemed to be a violation of this regulation if promptly after the discovery of the mistake the bank or trust company takes whatever action may be practicable in the circumstances to remedy the mistake.

(13) Short-term investment funds established under subsection (a) of this regulation may be operated on a cost, rather than market value, basis for purposes of admissions and withdrawals, if the plan of operation satisfies each of the following requirements.

(A) Investments shall be limited to bonds, notes, or other evidences of indebtedness payable on demand, including variable amount notes, or having a maturity date not exceeding 91 days from the date of purchase. However, 20 percent of the value of the fund may be invested in longer term obligations.

(B) The difference between the cost and anticipated principal receipt on maturity shall be accrued on a straight-line basis.

(C) Assets of the fund shall be held until maturity under usual circumstances.

(D) After effecting admissions and withdrawals, not less than 20 percent of the value of the remaining assets of the fund shall be composed of cash, demand obligations, and assets that will mature on the fund's next business day.

(c) In addition to the investments permitted under subsection (a) of this regulation, funds or other property received or held by a bank or trust company as fiduciary may be invested collectively, to the extent not prohibited by state law, as follows:

(1) In shares of a mutual trust investment company, organized and operated pursuant to a statute that specifically authorizes the organization of these companies exclusively for the investment of funds held by corporate fiduciaries, commonly referred to as a "bank or trust company fiduciary fund";

(2) (A) In a single real estate loan, a direct obligation of the United States, or an obligation fully guaranteed by the United States, or in a single fixed amount security, obligation or other property, either real, personal or mixed, of a single issuer; or

(B) on a short-term basis in a variable amount note of a borrower of prime credit, if the note is maintained by the bank or trust company on its premises and is utilized by it only for investment of moneys held in fiduciary accounts.

The bank or trust company shall not participate in the loans or obligations authorized under paragraphs (c)(2)(A) and (B) and shall not have an interest in any investment therein except in its capacity as fiduciary;

(3) in a common trust fund maintained by the bank or trust company for the collective investment of cash balances received or held by a bank or trust company in its capacity as trustee, executor, administrator, or guardian, which the bank or trust company considers to be individually too small to be invested separately to advantage:

(A) (i) The total investment for such fund shall not exceed $100,000;

(ii) the number of participating accounts shall be limited to 100; and

(iii) no participating account may have an interest in the fund in excess of $10,000;

(B) in applying these limitations, if two or more accounts are created by the same person or persons and one-half of the income or principal of each account is presently payable or applicable to the use of the same person or persons such account shall be considered as one;

(C) a fund shall not be established or operated under this paragraph for the purpose of avoiding the provisions of subsection (b) of this regulation;

(4) in any investment specifically authorized by court order, or authorized by the instrument creating the fiduciary relationship, in the case of trusts created by a corporation, its subsidiaries and affiliates or by several individual settlors who are closely related. An investment shall not be made under this paragraph for the purpose of avoiding the provisions of subsection (b) of this regulation; or

(5) in any other manner that is approved in writing by the state bank commissioner.

*(Authorized by K.S.A. 9-1609 and K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 9-1609 and K.S.A. 2000 Supp. 9-2103, as amended by L. 2001, ch. 27, § 1; effective Feb. 28, 1994; amended Jan. 18, 2002.)*

**K.A.R. 17-23-12. Record-keeping for securities transactions.**

Each bank or trust company effecting securities transactions for customers shall maintain the following records with respect to such transactions for at least three years.

(a) There shall be chronological records of original entry containing an itemized daily record of all purchases and sales of securities. The records of original entry shall show:

(1) the account or customer for which each such transaction was effected;

(2) the description of the securities;

(3) the unit and aggregate purchase or sale price, if any; and

(4) the trade date and the name or other designation of the broker, dealer or other person from whom purchased or to whom sold.

(b) There shall be account records for each customer which shall reflect:

(1) all purchases and sales of securities;

(2) all receipts and deliveries of securities;

(3) all receipts and disbursements of cash with respect to transactions in securities for such accounts; and

(4) all other debits and credits pertaining to transactions in securities.

(c) There shall be a separate memorandum or order ticket for each order to purchase or sell securities, whether executed or canceled, which shall include:

(1) the account or accounts for which the transaction was effected;

(2) whether the transaction was a market order, limit order or subject to special instructions;

(3) the time the order was received by the trader or other bank or trust company employee responsible for effecting the transaction;

(4) the time the order was placed with broker or dealer; or if there was no broker or dealer, the time the order was executed or canceled;

(5) the price at which the order was executed; and

(6) the price that the broker or dealer utilized.

(d) There shall be a record of each broker or dealer selected by the bank or trust company to effect securities transactions and the amount of commissions paid or allocated to each broker during the calendar year. Nothing contained in this paragraph shall require a bank or trust company to maintain the records required by this regulation in any given manner, provided that the information required to be shown is clearly and accurately reflected and provides an adequate basis for the audit of such information.

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 9-1130, K.S.A. 9-1603, K.S.A. 9-1608, K.S.A. 9-2103; effective Feb. 28, 1994.)*

**K.A.R. 17-23-13. Form of notification for securities transactions.**

Each bank or trust company effecting a securities transaction for a customer shall maintain for at least three years and except as provided in K.A.R. 17-23-14, shall mail or otherwise furnish to such customer either of the following types of notifications:

(a) (1) a copy of the confirmation of a broker or dealer relating to the securities transactions; and

(2) if the bank or trust company is to receive remuneration from the customer or any other source in connection with the transaction, and the remuneration is not determined pursuant to a written agreement between the bank or trust company and the customer, a statement of the source and amount of any remuneration to be received; or

(b) a written notification disclosing:

(1) the name of the bank or trust company;

(2) the name of the customer;

(3) whether the bank or trust company is acting as an agent for the customer, as agent for both the customer and some other person, as principal for its own account, or in any other capacity;

(4) the date of execution and a statement that the time of execution will be furnished within a reasonable time upon written request of the customer and the identity, price and number of shares or units, or principal amount in the case of debt securities, of the security purchased or sold by such a customer;

(5) the amount of any remuneration received or to be received by the bank or trust company from the customer in connection with the transaction;

(6) the source and amount of any other remuneration to be received by the bank or trust company in connection with the transaction, unless remuneration is determined pursuant to a written agreement between the bank or trust company and the customer.

In the case of U.S. government securities, federal agency obligations and municipal obligations, this paragraph (b)(6) shall apply only with respect to remuneration received by the bank or trust company in an agency transaction; and

(7) the name of the broker or dealer utilized; or where there is no broker or dealer, the name of the person from whom the security was purchased or to whom it was sold, or the fact that such information will be furnished within a reasonable time upon written request.

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 9-1601, K.S.A. 9-2103; effective Feb. 28, 1994.)*

**K.A.R. 17-23-14. Time of notification for securities transactions.**

The time for mailing or otherwise furnishing the written notification described in K.A.R. 17-23-13 shall be five business days from the date of the transaction, or if a broker or dealer is utilized, within five business days from the receipt by the bank or trust company of the broker or dealer's confirmation. However, the bank or trust company may elect to use the following alternative procedures if the transaction is effected for the following types of securities.

(a) For accounts, except periodic plans, for which the bank or trust company does not exercise investment discretion, the bank or trust company and the customer may agree in writing to a different arrangement as to the time and content of the notification. The agreement shall make clear the customer's right to receive the written notification within the prescribed time period at no additional cost to the customer.

(b) For accounts, except collective investment funds, for which the bank or trust company exercises investment discretion in other than an agency capacity, the bank or trust company

shall, upon request of the person having the power to terminate the account or, if there is no such person, upon the request of any person holding a vested beneficial interest in the account, mail or otherwise furnish to the person the written notification within a reasonable time. The bank or trust company may charge that person a reasonable fee for providing this information.

(c) Unless otherwise provided in the account agreement, for accounts for which the bank or trust company exercises investment discretion in an agency capacity, the following requirements shall be met:

(1) The bank or trust company shall mail or otherwise furnish to each customer not less frequently than once every three months an itemized statement which shall specify the funds and securities in the custody or possession of the bank or trust company at the end of that period and all debits, credits, and transactions in the customer's account during that period; and

(2) if requested by the customer, the bank or trust company shall mail or otherwise furnish to the customer within a reasonable time the written notification described in K.A.R. 17-23-13. The bank or trust company may charge a reasonable fee for providing this information.

(d) For a collective investment fund, the provisions of K.A.R. 17-23-11 shall apply.

(e) (1) For a periodic plan, the bank or trust company shall mail or otherwise furnish to the customer as promptly as possible after each transaction a written statement showing the following information:

(A) The funds and securities in the custody or possession of the bank or trust company;

(B) all service charges and commissions paid by the customer in connection with the transaction; and

(C) all other debits and credits of the customer's account involved in the transaction.

(2) Upon the written request of any customer, the bank or trust company shall furnish the information described in K.A.R. 17-23-13. However, any information relating to remuneration paid in connection with the transaction shall not be required to be provided to the customer when paid by a source other than the customer. The bank or trust company may charge a reasonable fee for providing this information.

*(Authorized by K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 9-1601 and K.S.A. 2000 Supp. 9-2103, as amended by L. 2001, ch. 27, § 1; effective Feb. 28, 1994; amended Jan. 18, 2002.)*

**K.A.R. 17-23-15. Revoked.**

*(Authorized by K.S.A. 9-1713; implementing K.S.A. 9-1601, K.S.A. 9-2103; effective Feb. 28, 1994; revoked Jan. 18, 2002.)*

**K.A.R. 17-23-16. Location of trust documents.**

(a) Unless an exception is granted by the commissioner, all of the original governing instruments establishing a fiduciary relationship with a bank or trust company shall be permanently maintained and located at one site, which shall be one of the following:

(1) The main bank or trust company location;

(2) an approved branch or trust service office; or

(3) another site approved by the commissioner.

(b) The following factors shall be considered by the commissioner in determining whether to grant an exception:

(1) The cost to the bank or trust company to maintain all original governing instruments at one site;

(2) the additional burden to the bank or trust company to maintain all original governing instruments at one site; and

(3) the effect that storage at separate locations will have on the ability of the commissioner, or the commissioner's designees, to efficiently conduct an examination of the bank or trust company.

(c) All other records shall be stored at any main bank or trust company location, an approved branch or trust service office, or another site approved by the commissioner.

(d) For purposes of examination, the bank or trust company shall make available original governing instruments and other records as deemed necessary by the commissioner to complete an examination.

*(Authorized by K.S.A. 9-1713 and K.S.A. 9-1130; implementing K.S.A. 9-1603, 9-1130, and K.S.A. 1999 Supp. 9-2103; effective Feb. 28, 1994; amended April 28, 2000.)*

# KANSAS ADMINISTRATIVE REGULATIONS

## Agency 103 – JOINT REGULATIONS – STATE BANK COMMISSIONER AND SAVINGS AND LOAN COMMISSIONER

## Article 1 – SECURITY FOR DEPOSIT OF PUBLIC FUNDS

### K.A.R. 103-1-1. Security for deposit of public funds.

The market value of negotiable promissory notes secured by first lien mortgages on real estate and pledged and assigned by a bank or savings and loan association as security for deposits of municipal or quasi-municipal corporations shall be determined in the following manner:

(1) Determine the average interest rate for all such notes pledged by the institution;

(2) Obtain the current GNMA bid rate for comparable obligations; and

(3) Multiply the total of real estate loans pledged by the GNMA bid quotation to ascertain the current value of the pledged real estate loans.

*(Authorized by and implementing K.S.A. 9-1402; effective, T-83-18, July 1, 1982; effective May 1, 1983.)*

# KANSAS ADMINISTRATIVE REGULATIONS

## Agency 104 – JOINT REGULATIONS – CONSUMER CREDIT COMMISSIONER, CREDIT UNION ADMINISTRATOR, SAVINGS AND LOAN COMMISSIONER AND BANK COMMISSIONER

## Article 1 – ADJUSTABLE RATE NOTES

### K.A.R. 104-1-1. Revoked.

*(Authorized by and implementing L. 1982, ch. 94; effective, T-83-29, Sept. 22, 1982; effective May 1, 1983; revoked, T-88-28, Aug. 19, 1987; revoked May 1, 1988.)*

### K.A.R. 104-1-2. Consumer-purpose adjustable rate real estate transactions.

(a) A creditor may use any interest-rate index that is readily verifiable by the borrower if it is beyond the control of the creditor to adjust the interest rate on any of the following:

(1) consumer-purpose adjustable rate notes secured by a real estate mortgage; or

(2) consumer-purpose contracts for deed to real estate which contain an adjustable interest rate provision.

(b) Adjustments to the interest rate shall correspond directly to the movement of the index, subject to any rate-adjustment limitations that a creditor may provide.

(c) When the movement of the index permits an interest-rate increase, the creditor may decline to increase the interest rate by the indicated amount. The creditor may decrease the interest rate at any time.

(d) The creditor may implement adjustments to the interest rate through adjustments to the outstanding principal loan balance, loan term, payment amount, or any combination of the above.

(e) The creditor shall not charge the borrower any costs or fees in connection with regularly-scheduled adjustments to the interest rate, payment, outstanding principal loan balance, or loan term.

(f) For purposes of this regulation, "consumer-purpose" means primarily for personal, family or household purposes.

*(Authorized by and implementing K.S.A. 16-207d; effective, T-88-28, Aug. 19, 1987; effective May 1, 1988; amended Aug. 9, 1996.)*

## KANSAS STATUTES

## Chapter 9 – BANKS AND BANKING; TRUST COMPANIES

*Article 23 – TECHNOLOGY-ENABLED FIDUCIARY FINANCIAL INSTITUTIONS*



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**KANSAS STATUTES**

**Chapter 9 – BANKS AND BANKING; TRUST COMPANIES**

**Article 23 – TECHNOLOGY-ENABLED FIDUCIARY FINANCIAL INSTITUTIONS**

## K.S.A. 9-2301. Citation of act; definitions.

(a) The provisions of K.S.A. 9-2301 through 9-2327, and amendments thereto, shall be known and may be cited as the technology-enabled fiduciary financial institutions act. The technology-enabled fiduciary financial institutions act shall be a part of and supplemental to chapter 9 of the Kansas Statutes Annotated, and amendments thereto.

(b) For purposes of the technology-enabled fiduciary financial institutions act:

(1) "Act" means the technology-enabled fiduciary financial institutions act;

(2) "alternative asset" means professionally managed investment assets that are not publicly traded, including, but not limited to, private equity, venture capital, leveraged buyouts, special situations, structured credit, private debt, private real estate funds and natural resources, including any economic or beneficial interest therein;

(3) "alternative asset custody account" means an account created by the owner of an alternative asset that designates a fiduciary financial institution as custodian or agent and into which the owner transfers, electronically or otherwise, content, materials, data, information, documents, reports and contracts in any form, including, without limitation, evidence of ownership, subscription agreements, private placement memoranda, limited partnership agreements, operating agreements, financial statements, annual and quarterly reports, capital account statements, tax statements, correspondence from the general partner, manager or investment advisor of the alternative asset, an investment contract as defined in K.S.A. 17-12a102(28)(E), and amendments thereto, and any digital asset as defined in K.S.A. 58-4802, and amendments thereto, whether such information is in hard copy form or a representation of such information that is stored in a computer readable format;

(4) "charitable beneficiaries" means one or more charities, contributions to which are allowable as a deduction pursuant to section 170 of the federal internal revenue code that are designated as beneficiaries of a fidfin trust;

(5) "custodial services" means the safekeeping and management of an alternative asset custody account, including the execution of customer instructions, serving as agent, fund administrative services and overall decision-making and management of the account by a fiduciary financial institution and "custodial services" shall be deemed to involve the exercise of fiduciary and trust powers;

(6) "director" means a person designated as a member of the board of directors pursuant to K.S.A. 9-2306, and amendments thereto;

(7) "economic growth zone" means an incorporated community with a population of not more than 5,000 people located within one of the following counties: Allen, Anderson, Barber, Bourbon, Brown, Chase, Chautauqua, Cherokee, Cheyenne, Clark, Clay, Cloud, Coffey, Comanche, Decatur, Doniphan, Edwards, Elk, Ellsworth, Gove, Graham, Grant, Gray, Greeley, Greenwood, Hamilton, Harper, Harvey, Haskell, Hodgeman, Jackson, Jewell, Kearny, Kingman, Kiowa, Labette, Lane, Lincoln, Linn, Logan, Marion, Marshall, Meade, Mitchell, Montgomery, Morris, Morton, Nemaha, Neosho, Ness, Norton, Osborne, Ottawa, Pawnee, Phillips, Pratt, Rawlins, Republic, Rice, Rooks, Rush, Russell, Scott, Sheridan, Sherman, Smith, Stafford, Stanton, Stevens, Sumner, Trego, Thomas, Wabaunsee, Wallace, Washington, Wichita, Wilson or Woodson;

(8) "excluded fiduciary" means a fiduciary financial institution in its capacity as trustee of a fidfin trust, provided that a fiduciary financial institution shall only be deemed an "excluded fiduciary" to the extent the fiduciary financial institution is excluded from exercising certain powers under the instrument that may be exercised by the trust advisor or other persons designated in the instrument;

(9) "fidfin," "fidfin services" or "fidfin transactions" means the financing of a fidfin trust or the acquisition of alternative assets on behalf of and through a fidfin trust, or both, as provided in K.S.A. 9-2311, and amendments thereto, including loans, extensions of credit and direct investments;

(10) "fidfin trust" means a trust created to facilitate the delivery of fidfin services by a fiduciary financial institution;

(11) "fiduciary" means a trustee, a trust advisor or a custodian of an alternative asset custody account appointed under an instrument that is acting in a fiduciary capacity for any person, trust or estate;

(12) "instrument" means any document creating a fidfin trust or alternative asset custody account;

(13) "officer" means a person who participates or has authority to participate, other than in the capacity of a director, in major policymaking functions of a bank, trust company or fiduciary financial institution, whether or not the officer has an official title or if the officer is serving without salary or other compensation. "Officer" includes the chairperson of the board, president, vice president, cashier, secretary and treasurer of a bank, trust company or fiduciary financial institution;

(14) "organizer" means a person who filed the fiduciary financial institution formation documents;

(15) "out-of-state bank" means a national or state bank, savings and loan association or savings bank not incorporated under the laws of Kansas;

(16) "out-of-state financial institution" means an out-of-state bank or an out-of-state trust company;

(17) "out-of-state trust company" means a national or state trust company not incorporated under the laws of Kansas;

(18) (A) "qualified investment" means the purchase or development, in the aggregate, of at least 10,000 square feet of commercial, industrial, multiuse or multifamily real estate in the economic growth zone where the fiduciary financial institution maintains its principal office pursuant to K.S.A. 9-2309, and amendments thereto, provided that such community has committed to develop the necessary infrastructure to support a "qualified investment." A "qualified investment":

(i) May include, as part of satisfying the square footage requirements, the suitable office space of such fiduciary financial institution, as provided in K.S.A. 9-2309, and amendments thereto, if owned by the fiduciary financial institution;

(ii) shall be exempt from the provisions and limitations of K.S.A. 9-1102, and amendments thereto;

(iii) may be retained by a fiduciary financial institution for as long as the fiduciary financial institution operates in this state; and

(iv) may be sold, transferred or otherwise disposed of, including a sale or transfer to an affiliate of the fiduciary financial institution, if the fiduciary financial institution continues to maintain its principal office in an economic growth zone pursuant to K.S.A. 9-2309, and amendments thereto;

(B) notwithstanding the foregoing provisions, if a fiduciary financial institution leases any portion of a qualified investment made by another fiduciary financial institution as the lessee fiduciary financial institution's suitable office space:

(i) The lessee fiduciary financial institution shall make, or cause to be made, a qualified investment in an economic growth zone other than the economic growth zone where such fiduciary financial institution maintains its principal office;

(ii) the leased square footage shall count toward the square footage requirement applicable to a qualified investment under this section, if such lease has an initial term of not less than five years; and

(iii) the square footage requirement otherwise applicable to a qualified investment of the lessee fiduciary financial institution shall be reduced from 10,000 square feet to 5,000 square feet;

(19) "technology-enabled fiduciary financial institution" or "fiduciary financial institution" means any limited liability company, limited partnership or corporation that:

(A) Is organized to perform any one or more of the activities and services authorized by this act;

(B) has been authorized to conduct business as a fiduciary financial institution under this chapter pursuant to the provisions of K.S.A. 9-2302, and amendments thereto;

(C) has made, committed to make or caused to be made a qualified investment; and

(D) has committed, in or as a part of the application provided in K.S.A. 9-2302, and amendments thereto, to conduct any fidfin transactions in accordance with K.S.A. 9-2311, and amendments thereto, including the distributions required therein;

(20) "trust" means a trust created pursuant to the Kansas uniform trust code, K.S.A. 58a-101 et seq., and amendments thereto, or created pursuant to the Kansas business trust act of 1961, K.S.A. 17-2707 et seq., and amendments thereto;

(21) "trust advisor" means a fiduciary granted authority by an instrument to exercise, consent, direct, including the power to direct as provided in K.S.A. 58a-808, and amendments thereto, or approve all or any portion of the powers and discretion conferred upon the trustee of a fidfin trust, including the power to invest the assets of a fidfin trust or make or cause distributions to be made from such fidfin trust; and

(22) the definitions of K.S.A. 9-701, and amendments thereto, apply to fiduciary financial institutions except as otherwise provided in this act.

*History:* L. 2021, ch. 80, § 1; L. 2022, ch. 55 § 1; L. 2024, ch. 15 § 18; July 1.

**K.S.A. 9-2302. Organization; application for certificate of authority; out of state banks and trust companies criteria for approval; fingerprinting; applicable distribution.**

(a) No fiduciary financial institution shall be organized under the laws of this state nor engage in fidfin transactions, custodial services or trust business in this state until the application for such fiduciary financial institution's organization and the application for certificate of authority have been submitted to and approved by the state banking board. The form for making any such application shall be prescribed by the state banking board and any application made to the state banking board shall contain such information as the state banking board shall require. Except as provided in K.S.A. 9-2325, and amendments thereto, the state banking board shall not approve any application until the beneficient conditional charter has been converted to a full charter and the commissioner has completed a regulatory examination.

(b) (1) No Kansas-chartered state bank, Kansas-chartered state trust company or fiduciary financial institution shall engage in fidfin transactions in this state unless an application has been submitted under this act and approved by the state banking board.

(2) Except as otherwise provided by this subsection, any trust company whose application has been approved in accordance with this section and any out-of-state trust company engaging in fidfin transactions in this state shall be considered a fiduciary financial institution for the purposes of this act, shall have all rights and powers granted to a fiduciary financial institution under this act and shall owe all duties and obligations imposed on fiduciary financial institutions under this act, including, but not limited to, the fiduciary duties imposed under K.S.A. 9-2311 and 9-2313, and amendments thereto, and the requirements of K.S.A. 9-2302(c)(5) and (6), and amendments thereto.

(3) Any bank whose application has been approved in accordance with this section and any out-of-state bank that engages in fidfin transactions in this state shall have a separate department for handling fidfin transactions. Except as otherwise provided by this subsection, such separate department shall be considered a fiduciary financial institution for the purposes of this act, shall have all rights and powers granted to a fiduciary financial institution under this act and shall owe all duties and obligations imposed on fiduciary financial institutions under this act, including, but not limited to, the fiduciary duties imposed under K.S.A. 9-2311 and 9-2313, and amendments thereto, and the requirements of K.S.A. 9-2302(c)(5) and (6), and amendments thereto.

(4) Notwithstanding the provisions of paragraphs (2) and (3):

(A) A bank or trust company whose application has been approved in accordance with this section or an out-of-state financial institution that engages in fidfin

transactions in this state shall not be subject to the provisions of K.S.A. 9-2305, 9-2306 or 9¬2308, and amendments thereto; and

(B) the commissioner shall not examine or require applications, reports or other filings from an out-of-state financial institution that is subject to oversight of such financial institution's fidfin transactions by a governmental agency of the jurisdiction that chartered the out-of-state financial institution.

(c) The state banking board shall not accept an application for a fiduciary financial institution unless the:

(1) Fiduciary financial institution is organized by at least one person;

(2) name selected for the fiduciary financial institution is different or substantially dissimilar from any other bank, trust company or fiduciary financial institution doing business in this state;

(3) fiduciary financial institutions' articles of organization contain the names and addresses of the fiduciary financial institution's members and the number of units subscribed by each. The articles of organization may contain such other provisions as are consistent with the Kansas revised limited liability company act, Kansas revised uniform limited partnership act or Kansas general corporation code;

(4) fiduciary financial institution has made, committed to make or caused to be made a qualified investment as defined in K.S.A. 9-2301, and amendments thereto;

(5) fiduciary financial institution has committed to structure any fidfin transactions to ensure that qualified charitable distributions, as defined in K.S.A. 2024 Supp. 79-32,274, and amendments thereto, are made each calendar year that the fiduciary financial institution conducts fidfin transactions; and

(6) fiduciary financial institution has consulted or agrees to consult with the department of commerce regarding the economic growth zones to be selected for purposes of paragraphs (4) and (5).

(d) The state banking board may deny the application if the state banking board makes an unfavorable determination with regard to the:

(1) Financial standing, general business experience and character of the organizers; or

(2) character, qualifications and experience of the officers of the proposed fiduciary financial institution.

(e) The state banking board shall not make membership in any federal government agency a condition precedent to the granting of the authority to do business.

(f) The state banking board may require fingerprinting of any officer, director or organizer of the proposed fiduciary financial institution in accordance with K.S.A. 2024 Supp. 22-4712, and amendments thereto.

(g) The state banking board or the commissioner shall notify a fiduciary financial institution of the approval or disapproval of an application. Any final action of the state banking board approving or disapproving an application shall be subject to review in accordance with the Kansas judicial review act.

(h) (1) In the event such application is approved, the fiduciary financial institution shall be issued a charter upon compliance with any requirements of this act and upon demonstrating to the satisfaction of the commissioner that an applicable distribution has been made. For purposes of this section, "applicable distribution" means a distribution of cash, beneficial interests or other assets having an aggregate value equal to the greater of:

(A) 2.5% of the aggregate financing balances to be held by the fiduciary financial institution immediately upon issuance of the fiduciary financial institution's charter, as reflected in the fiduciary financial institution's application filed pursuant to this section; or

(B) $5,000,000 in accordance with subsection (i), except that if a fiduciary financial institution is chartered to provide only custodial services, the applicable distribution amount shall be $500,000.

(2) If the amount provided in paragraph (1)(B) exceeds the amount provided in paragraph (1)(A), the fiduciary financial institution shall be entitled to a credit against the amount distributable under K.S.A. 9-2311(f), and amendments thereto, in an amount equal to such excess.

(i) The applicable distribution required under subsection (h) shall be distributed as follows:

(1) (A) To the department of commerce:

| Applicable distribution amount | Percentage to department of commerce |
|---|---|
| $0 to $500,000 | 90% |
| $500,001 to $1,000,000 | 50% |
| Above $1,000,000 | 10% |

(B) the amounts specified in subparagraph (A) shall apply to fiduciary financial institutions chartered prior to January 1, 2023. For fiduciary financial institutions chartered after such date, the department of commerce may publish one or more schedules in the Kansas register as the department of commerce deems reasonably necessary to facilitate economic growth and development in one or more economic growth zones. No such schedule shall be effective until after its publication in the Kansas register. The department of commerce shall timely submit to the commissioner any schedule published under this section. The commissioner shall provide a copy of such schedule to any applicant for a fiduciary financial institution charter prior to the issuance of such charter. A fiduciary financial institution shall be subject to the schedule in existence on the date such fiduciary financial institution's charter is issued and shall not be subject to any schedules published after such date;

(C) the department of commerce shall remit all distributions under this subsection to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the technology-enabled fiduciary financial institutions development and expansion fund established in K.S.A. 9-2324, and amendments thereto; and

(2) the balance of the applicable distribution required under subsection (h) shall be distributed to one or more qualified charities as defined in K.S.A. 2024 Supp. 79-32,274, and amendments thereto, as shall be selected by the fiduciary financial institution. Nothing in this section shall preclude a distribution to one or more qualified charities in excess of the amounts provided in this section. An economic growth zone or qualified charity shall have no obligation to repay any distributions received under this act or to make any contributions to a fiduciary financial institution.

*History:* L. 2021, ch. 80, § 2; L. 2022, ch. 55 § 2; L. 2024, ch. 15 § 19; July 1.

**K.S.A. 9-2303. Fees and assessments; examination expenses; remittance of moneys.**

(a) An application for a fiduciary financial institution charter shall include a nonrefundable fee to be remitted in a manner prescribed by the commissioner. Until July 1, 2025, the application fee shall be $250,000. On and after July 1, 2025, the application fee shall be $100,000. The expense of every annual regular fiduciary financial institution examination, together with the expense of administering fiduciary financial institution laws, including salaries, travel expenses, third-party fees for consultants or other entities necessary to assist the commissioner, supplies and equipment, shall be paid by the fiduciary financial institutions of this state. Prior to the beginning of each fiscal year, the commissioner shall make an estimate of the fiduciary financial institution expenses to be incurred by the office

of the state bank commissioner during such fiscal year in an amount not less than $1,000,000. The commissioner shall allocate and assess each fiduciary financial institution in this state on the basis of such fiduciary financial institution's total fidfin transaction balances, consisting of the aggregate fidfin financing balances of the fiduciary financial institution reflected in the last December 31 report filed with the commissioner pursuant to K.S.A. 9-1704, and amendments thereto. If a fiduciary financial institution has no fidfin transaction balances, but such fiduciary financial institution is otherwise providing custodial services or trust services, the commissioner shall allocate and assess such fiduciary financial institution in a manner the commissioner deems reasonable and appropriate. A fiduciary financial institution that has no fidfin transaction balances and no alternative asset custody accounts reflected in the last December 31 report filed with the commissioner may be granted inactive status by the commissioner. The annual assessment shall not exceed $10,000 for such an inactive fiduciary financial institution. The annual fee shall be first assessed for the year immediately following the year the fiduciary financial institution received authority to engage in fidfin transactions, custodial services and trust business and for each year thereafter.

(b) (1) A statement of each assessment made under the provisions of subsection (a) shall be sent by the commissioner on July 1 or the next business day thereafter to each fiduciary financial institution. When the commissioner issues such a statement, payment shall be made within 15 business days after the date the statement was sent in a manner prescribed by the commissioner, which may include such installment periods as the commissioner deems appropriate but not more frequently than monthly.

(2) The commissioner shall remit all moneys received from such fees and assessments to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury and credit 75% of each remittance to the bank commissioner fee fund and 25% to the technology-enabled fiduciary financial institutions development and expansion fund established in K.S.A. 9-2324, and amendments thereto.

*History:* L. 2021, ch. 80, § 3; L. 2022, ch. 55 § 3; July 1.

**K.S.A. 9-2304. Provisions of state banking code applicable; exceptions; conflict of law.**

(a) To the extent a conflict does not exist between this act and chapter 9 of the Kansas Statutes Annotated, and amendments thereto, except as provided in subsections (b), (c) and (e), the provisions of chapter 9 of the Kansas Statutes Annotated, and amendments thereto, shall apply to a fiduciary financial institution in the same manner as it applies to a trust company except that references in chapter 9 of the Kansas Statutes Annotated, and amendments thereto, to:

(1) "Capital stock" includes membership capital and partner capital;

(2) "stock" includes membership units and partnership interests;

(3) "common stock" includes common units and common interests;

(4) "preferred stock" includes preferred units and preferred interests;

(5) "stockholders" includes members and partners;

(6) "articles of incorporation" includes articles of organization and articles of limited partnership;

(7) "incorporation" includes organization;

(8) "corporation" includes company and partnership;

(9) "corporate" includes company and partnership;

(10) "trust business" and "business of a trust company" includes fidfin and fiduciary financial institution business; and

(11) K.S.A. 9-901a(a), and amendments thereto, means K.S.A. 9-2305, and amendments thereto.

(b) For a Kansas-chartered state trust company that receives authority to engage in fidfin transactions under K.S.A. 9¬2302(b), and amendments thereto, the provisions of subsection (a) shall not apply, however, references in chapter 9 of the Kansas Statutes Annotated, and amendments thereto, to "trust business" and "business of a trust company" include fidfin and fiduciary financial institution business.

(c) For a Kansas-chartered state bank that receives authority to engage in fidfin transactions under K.S.A. 9-2302(b), and amendments thereto, the provisions of subsection (a) shall not apply, however, the provisions of chapter 9 of the Kansas Statutes Annotated, and amendments thereto, shall apply in the same manner as they would apply to a trust department of such bank, except that references in chapter 9 of the Kansas Statutes Annotated, and amendments thereto, to "trust business" and "business of a trust company" include fidfin and fiduciary financial institution business.

(d) (1) Except as provided in paragraph (2), if any conflict exists between any provisions of chapter 9 of the Kansas Statutes Annotated, and amendments thereto, and this act, the provisions of this act shall control.

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(2) If the fiduciary financial institution is a bank department or trust company that received authority to engage in fidfin transactions under K.S.A. 9-2302(b), and amendments thereto, the provisions of this act shall only control with regard to fidfin transactions as authorized under K.S.A. 9-2302(b), and amendments thereto.

(e) The provisions of this section shall not apply to an out-of-state financial institution.

*History:* L. 2021, ch. 80, § 4; L. 2022, ch. 55 § 4; July 1.

**K.S.A. 9-2305. Capitalization requirements.**

(a) For purposes of this section, "capital" means the total of the aggregate par value of a fiduciary financial institution's outstanding membership units, its surplus and its undivided profits.

(b) (1) The required capital for fiduciary financial institutions shall at all times be $250,000 when:

(A) The fiduciary financial institution does not accept deposits, other than alternative asset custody accounts;

(B) the fiduciary financial institution maintains no third-party debt except debts owed to the members of the fiduciary financial institution or affiliates of the fiduciary financial institution; and

(C) the fiduciary financial institution has secured an agreement from its members whereby such members agree to contribute additional capital to the fiduciary financial institution if needed to ensure the safety and soundness of the fiduciary financial institution. A fiduciary financial institution that fails to satisfy the foregoing requirements shall be subject to the capitalization requirements of K.S.A. 9-901a, and amendments thereto, applicable to trust companies.

(2) The capital of a fiduciary financial institution shall be divided, with 60% of the amount as the aggregate par value of outstanding membership units, 30% as surplus and 10% as undivided profits.

*History:* L. 2021, ch. 80, § 5; July 1.

**K.S.A. 9-2306. Board of directors; membership; annual meeting; oath; notification of commissioner.**

(a) The business of any fiduciary financial institution shall be managed and controlled by such fiduciary financial institution's board of directors.

(b) The board shall consist of not less than five nor more than 25 members who shall be elected by the members at any regular annual meeting to be held on the date specified in the fiduciary financial institution's governing documents. At least one director must be a resident of this state.

(c) If, for any reason, the meeting cannot be held on the date specified in the governing documents, the meeting shall be held on a subsequent day within 60 days of the day fixed, to be designated by the board of directors or, if the directors fail to fix the day, by the members representing 2/3 of the membership units.

(d) In all cases, at least 10 days' notice of the date for the annual meeting shall be given to the members.

(e) The annual meeting of a fiduciary financial institution shall be held in this state. Any other meetings of the fiduciary financial institution's management or directors, including the meeting required pursuant to K.S.A. 9-1116, and amendments thereto, may be held in any location determined by the fiduciary financial institution's officers or directors.

(f) Any newly created directorship shall be approved and elected by the members in the manner provided in the fiduciary financial institution's organizational documents or, in the absence of such provisions, in the manner provided by the Kansas revised limited liability company act, Kansas revised uniform limited partnership act or Kansas general corporation code. A special meeting of the members may be convened at any time for such purpose.

(g) Any vacancy in the board of directors may be filled by the board of directors in the manner provided in the fiduciary financial institution's organizational documents or, in the absence of such provisions, in the manner provided by the Kansas revised limited liability company act, Kansas revised uniform limited partnership act or Kansas general corporation code.

(h) Within 15 days after the annual meeting, the president or cashier of each fiduciary financial institution shall submit to the commissioner a certified list of members and the number of units owned by each member. This list of members shall be kept and maintained in the fiduciary financial institution's main office and shall be subject to inspection by all members during the business hours of the fiduciary financial institution. The commissioner may require the list to be filed by electronic means.

(i) Each director shall take and subscribe an oath to administer the affairs of such fiduciary financial institution diligently and honestly and to not knowingly or willfully permit any

of the laws relating to fiduciary financial institutions to be violated. A copy of each oath shall be retained by the fiduciary financial institution, in the fiduciary financial institution's records after the election of any officer or director, for review by the commissioner's staff during the next examination. The commissioner may require the oath to be filed by electronic means.

(j) Every fiduciary financial institution shall notify the commissioner of any change in the chief executive officer, president or directors, including in such fiduciary financial institution's report a statement of the past and current business and professional affiliations of the new chief executive officer, president or directors.

*History:* L. 2021, ch. 80, § 6; L. 2022, ch. 55 § 5; July 1.

**K.S.A. 9-2307. Report to commissioner; examinations; requirements.**

(a) A fiduciary financial institution shall make a report to the commissioner pursuant to the provisions of K.S.A. 9-1704, and amendments thereto. In making such a report, a fiduciary financial institution shall:

(1) Report the fiduciary financial institution's fidfin transactions pursuant to generally accepted accounting principles; and

(2) calculate such fiduciary financial institution's capital solvency by including the value of all tangible and intangible assets owned by the fiduciary financial institution, regardless of use.

(b) In examining a fiduciary financial institution, the state banking board and the commissioner shall:

(1) Consider that the collateral or underlying assets associated with fidfin transactions are volatile in nature and that such volatility has been accepted by the members and customers of the fiduciary financial institution;

(2) respect the form, treatment and character of fidfin transactions under the laws of this state notwithstanding the treatment or characterization of such transactions under generally accepted accounting principles or for tax purposes;

(3) evaluate whether available capital, including the agreement of a fiduciary financial institution's members to contribute capital pursuant to K.S.A. 9-2305, and amendments thereto, exceeds the fiduciary financial institution's obligations, determined in accordance with generally accepted accounting principles;

(4) evaluate the background and qualifications of a fiduciary financial institution's executive officers and directors, the internal controls and audit processes enacted by the fiduciary financial institution and adherence to its policies and procedures;

(5) evaluate the profitability of a fiduciary financial institution in accordance with subsection (c);

(6) evaluate a fiduciary financial institution's compliance with applicable state and federal laws; and

(7) evaluate a fiduciary financial institution's information technology systems, policies and practices.

(c) Profitability shall not be a consideration in evaluating a fiduciary financial institution if sufficient capital and equity exist in the business, including, without limitation, membership capital, surplus, undivided profits and commitments by members to contribute additional capital to the fiduciary financial institution pursuant to K.S.A. 9-2305, and amendments thereto, to satisfy the fiduciary financial institution's obligations.

*History:* L. 2021, ch. 80, § 7; L. 2022, ch. 55 § 6; July 1.

**K.S.A. 9-2308. Name of institution; advertising; restrictions.**

A fiduciary financial institution may use in such fiduciary financial institution's business name or advertising the words "fiduciary financial institution" or any similar term or phrase, but may not use in such institution's name the words "bank" or "trust company" without reference to fidfin trusts or any other term that tends to imply that such fiduciary financial institution is a bank or trust company, unless the commissioner has approved the use in writing after finding that the use will not be misleading. While a fiduciary financial institution is a trust company for purposes of federal and state law and rules and regulations and possesses trust powers under this act, it is the intent of this section to impose restrictions on the name of such institution to avoid confusion with other banks and trust companies that operate in this state but that are not fiduciary financial institutions. The naming restrictions imposed under this section shall in no way reduce or eliminate the trust powers granted to a fiduciary financial institution as a trust company under this act. Other than indicating that the fiduciary financial institution is headquartered and chartered in Kansas, no fiduciary financial institution's name or advertising shall infer or imply that such fiduciary financial institution is endorsed by, an affiliate of or otherwise connected with the government of the state of Kansas.

*History:* L. 2021, ch. 80, § 8; July 1.

**K.S.A. 9-2309. Maintaining suitable office space; requirements; staffing; maintenance of records.**

(a) A fiduciary financial institution shall:

(1) Maintain suitable office space in an economic growth zone, as defined in K.S.A. 9-2301, and amendments thereto, for fidfin transactions, custodial services and trust business and for the storage of, and access to, fiduciary financial institution records;

(2) employ, engage or contract with at least three employees to provide services for the fiduciary financial institution in Kansas related to the powers of the fiduciary financial institution and to facilitate the examinations required by this act; and

(3) perform fidfin transactions, custodial services and trust business in Kansas, and a fiduciary financial institution may also engage in fidfin transactions, custodial services and trust business in other states to the extent permitted by applicable law.

(b) As used in this section, the term "suitable office space" means at least 2,000 square feet of class A office space located in an economic growth zone selected by the fiduciary financial institution that the fiduciary financial institution utilizes as such fiduciary financial institution's principal office.

(c) The fiduciary financial institution's principal office shall:

(1) Be in premises distinct and divided from the office space of any other entity;

(2) be located in an economic growth zone selected by the fiduciary financial institution;

(3) have the name, charter and certificate of authority of the fiduciary financial institution prominently displayed;

(4) have access to premises in or adjacent to the office space sufficient to facilitate on-site examinations by the state banking board or commissioner;

(5) to the extent the fiduciary financial institution maintains hard copies of any documents required to be maintained under this chapter, have a secure fireproof file cabinet that contains all such hard copies; and

(6) to the extent the fiduciary financial institution maintains any record electronically, have a secure computer terminal or other secure electronic device that provides access

to such records, including account information, as necessary to facilitate an efficient and effective examination.

(d) Fidfin transactions, custodial services and trust business is deemed to have been performed in Kansas for purposes of this section if fidfin transaction or custodial service agreements are approved or signed in this state on behalf of the fiduciary financial institution and at least three of the following acts are performed by a technology platform wholly or partly operated in this state:

(1) Annual account reviews;

(2) annual investment reviews;

(3) trust or custodial accounting;

(4) account correspondence;

(5) reviewing and signing trust account or custodial account tax returns; or

(6) distributing account statements.

*History:* L. 2021, ch. 80, § 9; July 1.

**K.S.A. 9-2310. General powers.**

Any fiduciary financial institution is hereby authorized to exercise by its board of directors or duly authorized officers or agents, subject to law, the following powers:

(a) To engage in fidfin transactions in accordance with K.S.A. 9-2311, and amendments thereto;

(b) to receive, retain and manage alternative asset custody accounts in accordance with K.S.A. 9-2313, and amendments thereto; and

(c) to engage in trust business as defined in K.S.A. 9-701, and amendments thereto, as incidental to the activities in subsections (a) and (b).

*History:* L. 2021, ch. 80, § 10; L. 2022, ch. 55 § 7; July 1.

**K.S.A. 9-2311. Financing; required distribution amount; schedules; remittance of moneys; disclosure to consumers.**

(a) If authorized by the terms of an instrument as such term is defined in K.S.A. 9-2301, and amendments thereto, a fiduciary financial institution may:

(1) Extend financing, such as through loans or extensions of credit to a fidfin trust when:

(A) The fiduciary financial institution serves as trustee of the borrowing fidfin trust;

(B) the financing is collateralized or supported by the assets of such fidfin trust;

(C) the financing is nonrecourse as to the fiduciary financial institution's customer and is not otherwise guaranteed by such customer;

(D) the fiduciary financial institution agrees, in the applicable financing agreement or other written document, that the fiduciary financial institution is providing financing in a fiduciary capacity;

(E) the fiduciary financial institution agrees that such fiduciary financial institution will manage the collateral or assets underlying the financing in a fiduciary capacity; and

(2) acquire or invest in an alternative asset on behalf of and through a fidfin trust.

(b) The financing of a fidfin trust pursuant to subsection (a)(1) and (a)(2) shall be considered a fiduciary finance or fidfin transaction.

(c) If authorized or directed by the terms of an instrument, no fiduciary financial institution shall be deemed to have a conflict of interest, to have violated a duty to a fidfin trust or the beneficiaries thereof or to have engaged in self-dealing by entering into a fidfin transaction.

(d) The combination rules of K.S.A. 9-1104(f), and amendments thereto, shall be inapplicable to a fiduciary financial institution's fidfin transactions regardless of the identity of the fidfin trust beneficiary if:

(1) The borrower is a fidfin trust; and

(2) the fiduciary financial institution serves as trustee of the borrowing fidfin trust.

(e) A fiduciary financial institution that engages in a fidfin transaction shall be a fiduciary. Subject to the duties and standards of utmost care and loyalty that are associated with serving as a fiduciary, a fiduciary financial institution shall be deemed to be exercising fiduciary powers. All income generated by such fidfin transactions, including interest and

investment income, shall be deemed to be income derived from the exercise of such fiduciary powers.

(f) A fiduciary financial institution that engages in fidfin transactions shall distribute, cause to be distributed or otherwise facilitate the distribution of the required distribution amount as provided by this section. For purposes of this section, "required distribution amount" means cash, beneficial interests or other assets with a value equal to 2.5% of such fiduciary financial institution's fidfin transactions originated during the calendar year. Such transactions shall exclude any renewals, extensions of credit or accruals associated with transactions made in a prior calendar year, less any credit available to such fiduciary financial institution pursuant to K.S.A. 9-2302, and amendments thereto. The required distribution amount shall be distributed as follows:

(1) (A) To the department of commerce:

| Required distribution amount | Percentage to department of commerce |
|---|---|
| $0 to $500,000 | 90% |
| $500,001 to $1,000,000 | 50% |
| Above $1,000,000 | 10% |

(B) the amounts specified in subparagraph (A) shall apply to fiduciary financial institutions chartered prior to January 1, 2023. For fiduciary financial institutions chartered after such date, the department of commerce may publish one or more schedules in the Kansas register as the department of commerce deems reasonably necessary to facilitate economic growth and development in one or more economic growth zones. No such schedule shall be effective until after its publication in the Kansas register. The department of commerce shall timely submit any schedule published under this section to the commissioner. The commissioner shall provide a copy of such schedule to any applicant for a fiduciary financial institution charter prior to the issuance of such charter. A fiduciary financial institution shall be subject to the schedule in existence on the date such fiduciary financial institution's charter is issued and shall not be subject to any schedules published after such date;

(C) the department of commerce shall remit all distributions under this subsection to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the technology-enabled fiduciary financial institutions development and expansion fund established in K.S.A. 9-2324, and amendments thereto; and

(2) the balance of the required distribution amount shall be distributed to one or more qualified charities as defined in K.S.A. 2021 Supp. 79-32,274, and amendments

thereto, as shall be selected by the fiduciary financial institution. An economic growth zone or qualified charity shall have no obligation to repay any distributions received under this act or to make any contributions to a fiduciary financial institution.

(g) The form, treatment and character of fidfin transactions under the laws of this state shall be respected for all purposes of this act notwithstanding the treatment or characterization of such transactions under generally accepted accounting principles or for tax purposes.

(h) A fiduciary financial institution shall disclose to a customer the information required by rules and regulations adopted by the commissioner pursuant to K.S.A. 9-2322, and amendments thereto, to ensure that the customer is informed regarding the nature of the customer's transactions with the fiduciary financial institution, taking into account the level of sophistication of the customer

*History:* L. 2021, ch. 80, § 11; L. 2022, ch. 55 § 8; July 1.

**K.S.A. 9-2312. Authorized functions; parties engaged by an institution; services to residents of other states.**

(a) Subject to the requirements of K.S.A. 9-2309(d), and amendments thereto, a fiduciary financial institution may:

(1) Employ attorneys, accountants, investment advisors, agents or other persons, even if they are affiliated or associated with the fiduciary financial institution, to advise or assist the fiduciary financial institution in the performance of such fiduciary financial institution's fidfin transactions, custodial services and trust business and act without independent investigation upon such recommendations;

(2) employ one or more agents to perform any act of fidfin transactions, custodial services or trust business;

(3) license internet-related services, including web services, software, mobile applications, technology-enabled platforms and processes to or from affiliates, third parties, other fiduciary financial institutions and their affiliates;

(4) license fidfin products and forms, as defined in K.S.A. 9-2321, and amendments thereto, to or from other fiduciary financial institutions and their affiliates;

(5) perform any services that a fiduciary financial institution is authorized to perform under the laws of this state on behalf of another fiduciary financial institution; and

(6) employ another fiduciary financial institution to perform any services that a fiduciary financial institution is authorized to perform under the laws of this state.

(b) A party engaged by a fiduciary financial institution pursuant to subsection (a) shall not be deemed to have engaged in fidfin transactions, custodial services or trust business in this state nor shall such party be deemed a trust service office of the fiduciary financial institution under K.S.A. 9-2108, and amendments thereto, or a trust facility or out-of-state facility under K.S.A. 9-2111, and amendments thereto, by reason of providing services to a fiduciary financial institution or licensing products, platforms, systems or processes to such fiduciary financial institution.

(c) A fiduciary financial institution that provides services or licenses fidfin products or forms pursuant to subsection (a) shall not be deemed a trust service office of the fiduciary financial institution that has acquired such services or licensed such products or forms.

(d) If a fiduciary financial institution offers its technology-enabled platform to provide fidfin services to residents of other states, neither the marketing, use and deployment of such platform by parties in other states nor the origination of fidfin services through such platform shall constitute an out-of-state trust facility under K.S.A. 9-2111, and amendments thereto, if the fiduciary financial institution complies with the provisions of K.S.A. 9-2309, and amendments thereto.

(e) A fiduciary financial institution shall provide notice to the commissioner pursuant to the provisions of K.S.A. 9-2103(a)(12), and amendments thereto, if such fiduciary financial institution engages a party pursuant to the provisions of subsection (a).

(f) Whenever a fiduciary financial institution causes to be performed for such fiduciary financial institution, by contract or otherwise, any service authorized under this act or the state banking code, such performance shall be subject to regulation and examination by the commissioner to the same extent as if such service was being performed by the fiduciary financial institution itself.

*History:* L. 2021, ch. 80, § 12; L. 2022, ch. 55 § 9; July 1.

**K.S.A. 9-2313. Custodial services; requirements.**

(a) A fiduciary financial institution may serve as a custodian, which may include serving as a qualified custodian, as defined by the United States securities and exchange commission in 17 C.F.R. § 275.206(4)-2, of an asset custody account. In performing custodial services under this section, a fiduciary financial institution shall:

(1) Implement all accounting, account statement, internal control, notice and other standards specified by applicable state or federal law and rules and regulations for custodial services;

(2) maintain information technology best practices relating to alternative assets held in custody;

(3) fully comply with applicable federal anti-money laundering, customer identification and beneficial ownership requirements; and

(4) take other actions necessary to comply with the requirements of this section.

(b) Alternative asset custody accounts over which a fiduciary financial institution serves as a custodian or qualified custodian are not depository liabilities or assets of the fiduciary financial institution.

(c) In performing custodial services under this section:

(1) A fiduciary financial institution shall be a fiduciary and shall be subject to the duties and standards of utmost care and loyalty that are associated with serving as a fiduciary;

(2) a fiduciary financial institution shall be deemed to be exercising fiduciary powers; and

(3) all income earned by a fiduciary financial institution and derived from performing custodial services shall be deemed to be income derived from the exercise of fiduciary powers.

*History:* L. 2021, ch. 80, § 13; July 1.

**K.S.A. 9-2314. Trust advisor; rights, powers, immunities and liabilities.**

Any instrument providing for a trust advisor may also provide such trust advisor with some, none or all of the rights, powers, privileges, benefits, immunities or authorities available to a trustee under Kansas law or under such instrument. Unless the instrument provides otherwise, a trust advisor has no greater liability to any person than would a trustee holding or benefiting from the rights, powers, privileges, benefits, immunities or authority provided or allowed by the instrument to such trust advisor.

*History:* L. 2021, ch. 80, § 14; July 1.

**K.S.A. 9-2315. Excluded fiduciary; actions not liable for; relieved of certain duties; deemed administrative actions.**

(a) An excluded fiduciary is not liable, either individually or as a fiduciary, for any of the following:

(1) Any loss that results from compliance with a direction of the trust advisor, including any loss from the trust advisor breaching fiduciary responsibilities or acting beyond the trust advisor's scope of authority; or

(2) any loss that results from a failure to take any action proposed by an excluded fiduciary that requires a prior authorization of the trust advisor if such excluded fiduciary timely sought but failed to obtain such authorization.

(b) Any excluded fiduciary is relieved from any obligation to review or evaluate any direction from a trust advisor to make distributions or to perform investment or suitability reviews, inquiries or investigations or to make recommendations or evaluations with respect to any investments to the extent the trust advisor had authority to direct the acquisition, disposition or retention of the investment. If the excluded fiduciary offers such recommendations or evaluations to the trust advisor or any investment person selected by the trust advisor, such action shall not constitute an undertaking by the excluded fiduciary to monitor or otherwise participate in actions within the scope of the advisor's authority or to constitute any duty to do so.

(c) Any excluded fiduciary is also relieved of any duty to communicate with or warn or apprise any beneficiary or third party concerning instances in which the excluded fiduciary would or might have exercised the excluded fiduciary's own discretion in a manner different from the manner directed by the trust advisor.

(d) Absent contrary provisions in the governing instrument, the actions of the excluded fiduciary, such as any communications with the trust advisor and others and carrying out, recording and reporting actions taken at the trust advisor's direction, pertaining to matters within the scope of authority of the trust advisor, shall be deemed to be administrative actions taken by the excluded fiduciary solely to allow the excluded fiduciary to perform those duties assigned to the excluded fiduciary under the governing instrument. Such administrative actions shall not constitute an undertaking by the excluded fiduciary to monitor, participate or otherwise take any fiduciary responsibility for actions within the scope of authority of the trust advisor.

(e) In any action against an excluded fiduciary pursuant to the provisions of this section, the burden to prove the matter by clear and convincing evidence is on the person seeking to hold the excluded fiduciary liable.

*History:* L. 2021, ch. 80, § 15; July 1.

**K.S.A. 9-2316. Trust advisor; presumed fiduciary; jurisdiction; appointment.**

(a) A trust advisor shall be presumed to be a fiduciary when exercising such trust advisor's authority under this act.

(b) By accepting an appointment to serve as a trust advisor of a fidfin trust or an alternative asset custody account that is subject to the laws of this state, the trust advisor submits to the jurisdiction of the courts of Kansas even if investment advisory agreements or other related agreements provide otherwise. The trust advisor may be made a party to any action or proceeding relating to a decision or action of the trust advisor.

(c) An instrument may appoint an individual, corporation or limited liability company as the trust advisor of a fidfin trust or an alternative asset custody account.

*History:* L. 2021, ch. 80, § 16; July 1.

**K.S.A. 9-2317. Entity as trust advisor; requirements.**

(a) If an entity is appointed as a trust advisor, the provisions of article 8 of chapter 9 of the Kansas Statutes Annotated, and amendments thereto, shall not apply to such entity, if the entity:

(1) Is established for the exclusive purpose of acting as a trust advisor;

(2) is acting in such capacity under an instrument that names a fiduciary financial institution as trustee or custodian;

(3) is not engaged in trust business with the general public as a public trust company or with any family as a private trust company;

(4) does not hold itself out as being in the business of acting as a fiduciary for hire as either a public or private trust company; and

(5) agrees to be subject to examination by the office of the state bank commissioner at the discretion of the commissioner.

(b) The governing documents of any such entity shall limit such entity's authorized activities to those of a trust advisor and shall further limit the performance of such functions to only fidfin trusts and alternative asset custody accounts. An entity complying with this section shall notify the commissioner in writing of its existence and capacity to act within 30 days of the establishment of such capacity.

*History:* L. 2021, ch. 80, § 17; L. 2022, ch. 55 § 10; July 1.

**K.S.A. 9-2318. Indemnification of trust advisor; exceptions.**

An instrument may relieve and indemnify a trust advisor and a fiduciary financial institution that serves as trustee of a fidfin trust or alternative asset custody account from liability for a breach of fiduciary duty. Any such provision is unenforceable to the extent that it relieves the trust advisor or fiduciary financial institution from liability for a breach of fiduciary duty committed:

(a) In bad faith;

(b) intentionally; or

(c) with reckless indifference to the interest of a beneficiary.

*History:* L. 2021, ch. 80, § 18; L. 2022, ch. 55 § 11; July 1.

**K.S.A. 9-2319. Trustee compensation.**

(a) Notwithstanding the provisions of K.S.A. 58a-708, and amendments thereto, if the terms of a fidfin trust specify the trustee's compensation, such trustee is entitled to be compensated as provided in such terms, except that compensation may be increased or decreased upon approval by the trustee and by unanimous consent of the beneficiaries.

(b) If the terms of a fidfin trust specify the trustee's compensation, the trustee is entitled to be compensated as specified, except that the court may allow more compensation if:

(1) The duties of the trustee are substantially different from those contemplated when the trust was created; or

(2) the compensation specified by the terms of the trust would be unreasonably low.

*History:* L. 2021, ch. 80, § 19; July 1.

**K.S.A. 9-2320. Privacy; protection in court proceedings; exception.**

The privacy of those who have established a fidfin trust or alternative asset custody account shall be protected in any court proceeding concerning such trust if the acting trustee, custodian, trustor or any beneficiary so petition the court. Upon the filing of such a petition, the instrument, inventory, statement filed by any trustee or custodian, annual verified report of the trustee or custodian, final report of the trustee or custodian and all petitions relevant to trust administration and all court orders thereon shall be sealed upon filing and shall not be made a part of the public record of the proceeding, except that such petition shall be available to the court, the trustor, the trustee, the custodian, any beneficiary, their attorneys and to such other interested persons as the court may order upon a showing of need.

*History:* L. 2021, ch. 80, § 20; July 1.

**K.S.A. 9-2321. Forms; definition; request for review; review not approval or endorsement.**

(a) For purposes of this section, "form" includes:

(1) An instrument as defined in K.S.A. 9-2301, and amendments thereto;

(2) a transaction agreement between a fiduciary financial institution and a fidfin trust;

(3) any other documents executed by a fiduciary financial institution or a fidfin trust in connection with a fidfin transaction; and

(4) any document executed by a fiduciary financial institution or a customer in connection with the creation and management of an alternative asset custody account.

(b) The commissioner may, upon a written request from a fiduciary financial institution prior to a form submission, offer to review a form and reply with informational comments only. Such informational comments shall not, in any manner, constitute approval or endorsement of such form, and the fiduciary financial institution shall not represent that such form has been approved by the office of the state bank commissioner.

*History:* L. 2021, ch. 80, § 21; July 1.

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**K.S.A. 9-2322. Adoption of rules and regulations by the commissioner; contracts for technical assistance.**

(a) Pursuant to K.S.A. 9-1713, and amendments thereto, the commissioner shall adopt rules and regulations on or before January 1, 2022, as are necessary to administer this act.

(b) The office of the state bank commissioner may enter into contracts for technical assistance and professional services as are necessary to administer the provisions of this act and to meet the deadline for the adoption of rules and regulations provided by this section. Such contracts shall be exempt from the requirements of K.S.A. 75-3739, 75-37,102 and 75-37,132, and amendments thereto, or any other statute relating to the procurement of such services.

*History:* L. 2021, ch. 80, § 22; July 1.

**K.S.A. 9-2323. No maximum interest rate or charge.**

Notwithstanding the provisions of chapter 16 of the Kansas Statutes Annotated, and amendments thereto, to the contrary, or any other statute, there is no maximum interest rate or charge or usury rate restriction between or among a fiduciary financial institution and a fidfin trust if the interest rate or charge is established by written agreement. A "written agreement" means a document in writing, whether in physical or electronic form, in which the parties have demonstrated their agreement to the terms and conditions of an extension of credit, including the rate of interest.

*History:* L. 2021, ch. 80, § 23; July 1.

**K.S.A. 9-2324. Technology-enabled fiduciary financial institutions development and expansion fund; administration by secretary of commerce; purpose; interest earnings.**

(a) There is hereby established in the state treasury the technology-enabled fiduciary financial institutions development and expansion fund to be administered by the secretary of commerce. Expenditures from the fund shall be for the purposes of distributing to economic growth zones for the purposes of economic development projects or opportunities and promoting and facilitating the development, growth and expansion of fiduciary financial institutions, fidfin activities and custodial services in the state and to locate such fiduciary financial institutions' office space in an economic growth zone as defined in K.S.A. 9-2301, and amendments thereto. All expenditures from the technology-

enabled fiduciary financial institutions development and expansion fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of commerce or the secretary's designee.

(b) On or before the 10th day of each month, the director of accounts and reports shall transfer from the state general fund to the technology-enabled fiduciary financial institutions development and expansion fund interest earnings based on:

(1) The average daily balance of moneys in the technology-enabled fiduciary financial institutions development and expansion fund for the preceding month; and

(2) the net earnings rate for the pooled money investment portfolio for the preceding month.

*History:* L. 2021, ch. 80, § 24; July 1.

**K.S.A. 9-2325. Pilot program; requirements; fees; distributions; conversion to full charter; report to certain committees of the legislature.**

(a) On July 1, 2021, the commissioner shall:

(1) Grant a conditional fiduciary financial institution charter to the Beneficient company upon the Beneficient company:

(A) Filing an application with the commissioner;

(B) satisfying the requirements of K.S.A. 9-2302(c)(1) through (5), and amendments thereto;

(C) satisfying the requirements of K.S.A. 9-2302(f), and amendments thereto; and

(D) satisfying the capital requirements imposed under K.S.A. 9-2305, and amendments thereto; and

(2) designate a community within Harvey county, as selected by Beneficient fiduciary financial institution, as the first economic growth zone.

(b) On July 1, 2021, the commissioner shall establish a fidfin fiduciary financial institution pilot program that:

(1) Includes the Beneficient company as a participant in such pilot program;

(2) assesses the Beneficient company an initial fee of $1,000,000 in lieu of the initial fee provided in K.S.A. 9-2303, and amendments thereto; and

(3) imposes a requirement for the Beneficient company to distribute, cause to be distributed or otherwise facilitate a distribution of cash, beneficial interests or other assets having an aggregate value of $9,000,000 in accordance with the requirements of K.S.A. 9-2302(i), and amendments thereto, and such amount shall be construed as the applicable distribution amount for purposes of K.S.A. 9-2302, and amendments thereto.

(c) Except as provided by subsection (d), upon issuance of the conditional fiduciary financial institution charter, the Beneficient company shall be subject to all requirements imposed on fiduciary financial institutions under this act but may not commence fidfin transactions, custodial services or trust business in this state until the earlier of:

(1) December 31, 2021; or

(2) the date the commissioner adopts rules and regulations pursuant to K.S.A. 9-2322, and amendments thereto.

(d) (1) On December 31, 2021, the conditional charter granted under this section to the Beneficient company shall be converted to a full fiduciary financial institution charter.

(2) The commissioner may extend the period that the Beneficient company may not commence fidfin transactions, custodial services or trust business in this state for a period not to exceed six months from the date specified in subsection (c) if the commissioner submits a report to the senate financial institutions and insurance committee and to the house of representatives financial institutions and rural development committee identifying the specific reasons for which such extension is necessary. Such report shall be submitted on or before January 10, 2022. Notwithstanding the provisions of this subsection, the Beneficient company may satisfy the applicable distribution requirement of K.S.A. 9-2302(i), and amendments thereto, and the required distribution amount in K.S.A. 2021 9-2311(f), and amendments thereto, by placing assets in escrow with one or more qualified charities, except that such funds shall be released when the Beneficient company is permitted to commence fidfin transactions, custodial services or trust business.

(e) On or before January 10, 2022, the office of the state bank commissioner shall provide a report to the house of representatives financial institutions and rural development committee and the senate financial institutions and insurance committee updating such committees on the progress of such pilot program. Such report shall include recommendations from the office of the state bank commissioner for any legislation necessary to implement the provisions of this act.

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*History:* L. 2021, ch. 80, § 25; L. 2022, ch. 4 § 1; March 10.

**K.S.A. 9-2326. Trust interest not void or invalid by any common law rule.**

Notwithstanding the provisions of K.S.A. 59-3401, and amendments thereto, no interest held in a fidfin trust shall be void or invalid by reason of any common law rule, including, but not limited to, the rule against perpetuities or rule limiting the duration of trusts.

*History:* L. 2021, ch. 80, § 26; July 1.

**K.S.A. 9-2327. Tax classification as determined under the federal internal revenue code.**

Notwithstanding the provisions of K.S.A. 17-2035, and amendments thereto, for purposes of any tax imposed by the state or any instrumentality, agency or political subdivision of this state, a business trust that is used in connection with fidfin transactions or custodial services, as defined in K.S.A. 9-2301, and amendments thereto, and for which a fiduciary financial institution, as defined in K.S.A. 9-2301, and amendments thereto, serves as trustee shall be classified as a corporation, an association, a partnership, a trust or otherwise, as shall be determined under the federal internal revenue code.

*History:* L. 2021, ch. 80, § 27; July 1.

## SPECIAL ORDERS OF THE COMMISSIONER

**STATE OF KANSAS**
**STATE BANK COMMISSIONER**
**SPECIAL ORDER 1995-5**
Bank Relocation; 30-Mile Radius

This Order, is hereby issued this 6th day of September, 1995 by the Kansas State Bank Commissioner (commissioner) pursuant to K.S.A. 9-1715, as amended.

**PART I**

**WHEREAS**, pursuant to 12 U.S.C. § 30, as applied in the February 16, 1995 DECISION OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATIONS OF BANK MIDWEST OF KANSAS, NATIONAL ASSOCIATION, LENEXA, KANSAS, AND BANK MIDWEST, NATIONAL ASSOCIATION, KANSAS CITY, MISSOURI (OCC Decision) a national banking association may move its main office location up to thirty miles from the city limits of the city in which it is currently located; and,

**WHEREAS**, pursuant to 12 U.S.C. § 30, as applied in the OCC Decision, a national banking association may move its main office from one state to another. For purposes of this order, the state from which a bank moves its main office shall be known as the "host state"; the state into which the bank moves its main office shall be known as the "home state"; and,

**WHEREAS**, pursuant to 12 U.S.C. § 30, as applied in the OCC Decision, the national banking association, subsequent to the relocation of its main office to the home state, has the authority to retain its host state locations for operation as interstate branches; and,

**WHEREAS**, pursuant to 12 U.S.C. § 36, as applied in the OCC Decision, the national banking association, subsequent to the relocation of its main office to the home state, has the authority to seek and acquire OCC approval to establish branches at additional host state locations; and,

**WHEREAS**, pursuant to 12 U.S.C. § 215a and 12 U.S.C. § 36, as applied in the OCC Decision, a national banking association in a home state may effectuate a merger with a national banking association that has regulatory approval to relocate to the home state from a host state, and

subsequent to the merger, the surviving national banking association located in the home state has the authority to retain the host state locations for operation as interstate branches; and,

**WHEREAS**, no provision of Kansas law presently allows the relocation of any state bank from a host state to a location within a home state; and,

**WHEREAS**, no provision of Kansas law presently allows a state bank which has relocated its home state to Kansas, or a Kansas state bank that has relocated its home state to Missouri, to operate or establish branches in the host states; and,

**WHEREAS**, no provision of Kansas law, including K.S.A. 9-1724 which authorizes the merger of Kansas state banks, allows a Kansas state bank to merge with a Missouri state bank that has received regulatory approval to relocate to Kansas; and,

**WHEREAS**, K.S.A. 9-1715, as amended, grants to the commissioner "...the power to authorize any or all state banks to engage in any activity in which such banks could engage were they operating as national banks at the time such authority is granted..."; and,

**WHEREAS**, a number of state banks have articulated a desire to convert from a state bank charter to a national banking association charter in order to access the authority presented by 12 U.S.C. § 30, 12 U.S.C. § 36, and 12 U.S.C. § 215a, as applied in the OCC decision; and,

**WHEREAS**, the commissioner deems the issuance of this special order to be reasonably required to preserve the welfare of state banks and to promote competitive equality between state banks and national banking associations, and is therefore required by statute to issue this special order;

**PART II**

**IT IS THEREFORE ORDERED**, that upon the affirmative vote of not less than two-thirds of a Kansas state bank's outstanding voting stock, and with the prior approval of the commissioner, a

Kansas state bank may relocate its main office not more than 30 miles from the city limits of the city in which it is located to any location within the state of Missouri.

**IT IS FURTHER ORDERED**, that no such approval shall be granted, pursuant to this Part, before the Kansas state bank has filed an application on a form and containing such information as required by the commissioner.

**IT IS FURTHER ORDERED**, that no such approval shall be granted, pursuant to this Part, before the commissioner has received written notice from the Missouri Commissioner of Finance certifying that the Kansas state bank has applied for and received approval from the state of Missouri to relocate its main office pursuant to the laws and regulations of the state of Missouri.

**IT IS FURTHER ORDERED**, that a Kansas state bank which receives approval from the Missouri Commissioner of Finance shall, not more than 15 days following such relocation, provide the commissioner with the bank's Kansas certificate of authority or charter, and written certification that notice of the relocation has been filed with the Corporations Division of the Kansas Secretary of State.

**IT IS FURTHER ORDERED**, that upon receiving the prior approval of the commissioner, pursuant to this Part, and subsequent to the bank's relocation of its main office to a location in the state of Missouri, the bank shall have the authority to operate the bank's Kansas locations, which existed at the time of the approval of the relocation, as branches.

**IT IS FURTHER ORDERED**, that a Kansas state bank which relocates its main office to Missouri and retains its Kansas locations as branches, pursuant to the authority provided by this Part, shall have the authority to establish additional Kansas branch locations, pursuant to the authority and in accordance with the procedures established by K.S.A. 9-1111, as amended, to the same extent as a state bank with its main office in Kansas, provided the bank seeks and acquires the prior approval of the Missouri Commissioner of Finance.

**IT IS FURTHER ORDERED**, that the commissioner shall retain the authority to examine the resulting Missouri bank and its Kansas branches for the purpose of determining the safety and

soundness of their operation and compliance with applicable laws and regulations, to levy any assessments and/or fees associated with the supervision as determined by the commissioner, and to exchange examination reports and other regulatory information with the state of Missouri.

**IT IS FURTHER ORDERED**, that a Kansas state bank which relocates its main office to Missouri and retains its Kansas locations as branches, pursuant to the authority provided by this Part, shall be subject to the provisions of K.S.A. 9-1701, K.S.A. 9-1703, K.S.A. 9-1708, K.S.A. 9-1714, K.S.A. 9-1805, and K.S.A. 9-1807, to the same extent as a state bank with its main office in Kansas.

**PART III**

**IT IS FURTHER ORDERED**, that with the prior approval of the commissioner, a Missouri state bank may relocate its main office not more than 30 miles from the city limits of the city in which it is located to any location within the state of Kansas.

**IT IS FURTHER ORDERED**, that no such approval shall be granted, pursuant to this Part, before the Missouri state bank has filed an application with the commissioner. This application shall be on a form prescribed by the commissioner and shall include the following items:

(A) A certified copy of the Missouri state bank's articles of agreement;

(B) A transcript of the minutes of the stockholder's meeting of the Missouri state bank, showing that at least a majority of the outstanding voting stock of the Missouri state bank was voted in favor of the relocation and conversion to a Kansas state bank;

(C) Articles of incorporation duly made and executed in accordance with the Kansas general corporation code; and which shall also specifically include the names and addresses of its stockholders and the amount of stock owned by each; and which shall also specifically provide that the proposed resulting Kansas state bank is and shall be considered the same as, and a continuation of, the business and corporate entity of the converting Missouri state bank, and that with regard to powers, duties, and rights the resulting bank is a corporation formed under the laws of Kansas.

(D) The proposed name of the resulting Kansas state bank.

(E) The names and addresses of all persons who are to be officers and directors of the resulting Kansas state bank.

(F) Any and all additional information the commissioner deems necessary to make a determination regarding the legality of the proposed relocation or resulting Kansas state bank.

**IT IS FURTHER ORDERED**, that the resulting Kansas state bank shall have the authority to issue and exchange its shares of stock for the shares of the Missouri state bank.

**IT IS FURTHER ORDERED**, that no such approval shall be granted, pursuant to this Part, before the commissioner has conducted an investigation of the Missouri state bank, to the extent the commissioner deems necessary, to determine that the assets of the Missouri state bank are properly valued, that the capital stock of the resulting Kansas state bank will be unimpaired, that the proposed stockholders, directors, and officers are of sufficient character and experience, and that approval of the application will result in a Kansas state bank which is in compliance with the provisions of this order and applicable Kansas law.

**IT IS FURTHER ORDERED**, that upon approval by the commissioner of the relocation of a Missouri state bank to Kansas, pursuant to this Part, and after the Missouri state bank has supplied the commissioner written certification that its articles of incorporation, and the other items contained in the application required by this Part, have been duly filed with the Corporations Division of the Kansas Secretary of State, the commissioner shall issue the bank a certificate of authority showing that such bank is authorized to transact a general banking business in Kansas and that, pursuant to the provisions of the Kansas banking code and other applicable laws of Kansas, the resulting bank is afforded the same rights, powers and franchises and is subject to the same restrictions, duties and obligations as any state bank incorporated in Kansas.

**IT IS FURTHER ORDERED**, that upon receiving the prior approval of the commissioner, pursuant to this Part, and subsequent to the bank's relocation and acquisition of a Kansas certificate of authority, the resulting Kansas state bank shall have the authority to operate the bank's Missouri locations, which existed at the time of the approval of the relocation, as branches.

**IT IS FURTHER ORDERED**, that the resulting Kansas state bank which relocates and retains

its Missouri locations as branches, pursuant to the authority provided by this Part, shall have the authority to establish additional Missouri branch locations, pursuant to the authority and in accordance with the procedures established by K.S.A. 9-1111, as amended, provided the bank seeks and acquires the prior approval of the Missouri Commissioner of Finance.

**PART IV**

**IT IS FURTHER ORDERED**, that notwithstanding the requirements of Part III of this Order, with the prior approval of the commissioner, a Kansas state bank with its main office not more than 30 miles from the city limits of the city in which the home office of a particular constituent Missouri state bank is located, may merge with the particular constituent Missouri state bank; *provided,* the particular constituent Missouri state bank has applied for and received approval from the Missouri Commissioner of Finance to relocate its main office to Kansas pursuant to the laws and regulations of the state of Missouri.

**IT IS FURTHER ORDERED**, that no such approval shall be granted, pursuant to this Part, before the commissioner has received written notice from the Missouri Commissioner of Finance certifying that the Missouri state bank has applied for and received approval from the state of Missouri to relocate its main office to Kansas pursuant to the laws and regulations of the state of Missouri.

**IT IS FURTHER ORDERED**, that no such approval shall be granted, pursuant to this Part, before the Kansas state bank has fully complied with K.S.A. 9-1724 and the Kansas general corporation code, including, without limitation, the filing of an application on a form required by the commissioner and by satisfactorily meeting all substantive and procedural requirements which relate to the merger of a Kansas state bank.

**IT IS FURTHER ORDERED**, that upon receiving the prior approval of the commissioner, pursuant to this Part, and subsequent to the merger, the Kansas state bank which survives the merger with a Missouri state bank, shall have the authority to operate the Missouri state bank's Missouri locations, which existed at the time of the approval of the merger, as branches.

**IT IS FURTHER ORDERED**, that the resulting Kansas state bank which merges with a Missouri state bank and retains its Missouri locations as branches, pursuant to the authority provided by this Part, shall have the authority to establish additional Missouri branch locations, pursuant to the authority and in accordance with the procedures established by K.S.A. 9-1111, as amended, provided the bank seeks and acquires the prior approval of the Missouri Commissioner of Finance.

**PART V**

**IT IS FURTHER ORDERED**, that any bank which relocates from a host state to a home state, or which survives a merger, pursuant to the authority provided by this Order, shall succeed by operation of law, without any conveyance or transfer, to all the actual or potential assets, real property, tangible personal property, intangible personal property, rights, franchises, and interests; and shall by operation of law continue all trust functions being exercised by the relocated bank or the merged bank, and shall be substituted for the relocated bank or the merged bank and shall hold and enjoy the same and all rights of property and interests of a fiduciary nature including, without limitation, as trustee, agent, executor, administrator, registrar, conservator, assignee, receiver, custodian, transfer agent, corporate trustee, corporate agent, or any other fiduciary capacity in the same manner and to the same extent as these rights and interests were held by the relocated or merged bank at the time of its relocation or merger. In the case of a merger, this section is intended to be in addition to and not in exclusion of any powers, rights, duties or liabilities established on behalf of any party by K.S.A. 17-6709.

**IT IS FURTHER ORDERED**, pursuant to K.S.A. 9-1715(b), as amended, that the terms of this special order shall become effective September 6, 1995 and shall remain in full force and effect until amended or revoked by the Kansas State Bank Commissioner.

**IT IS SO ORDERED.**

**STATE BANK COMMISSIONER**

Frank D. Dunnick

**STATE OF KANSAS**
**STATE BANK COMMISSIONER**
**SPECIAL ORDER 1997-2**
Interstate Branching

**THIS ORDER**, is hereby issued this 30th day of May, 1997 by the Kansas State Bank Commissioner (commissioner) pursuant to K.S.A. 9-1715, as amended.

**PART I**

**FOR PURPOSES OF THIS ORDER,** the following definitions shall apply:

**Bank** means an insured bank as defined by 12 U.S.C. § 1813(h).

**De Novo Branch** means a branch office of a bank which is originally established by the bank and does not become a branch office of the bank as a result of a merger transaction.

**Home State** means:

(a) with respect to a national bank, the state in which the main office of the bank is located; and

(b) with respect to a state bank, the state by which the bank is chartered.

**Host State** means a state other than the home state of a bank in which the bank maintains a branch, or seeks to establish and maintain a branch.

**Interstate Merger Transaction** means a merger transaction between banks with different home states.

**Kansas National Bank** means a federally chartered bank, the home state of which is Kansas.

**Kansas State Bank** means a state chartered bank, the home state of which is Kansas.

**Merger Transaction** means any transaction in which a bank merges with, consolidates with, assumes liabilities of, or transfers liabilities to another bank.

**Responsible Federal Agency** means the federal agency determined by 12 U.S.C. § 1828(c)(2).

**Resulting Bank** means the bank that survives an interstate merger transaction.

**PART II**

**WHEREAS**, pursuant to 12 U.S.C. § 215a-1, national banks are authorized to engage in an interstate merger transaction, if the transaction is approved by the responsible agency, in accordance with 12 U.S.C. § 1831u; and

**WHEREAS**, pursuant to 12 U.S.C. § 1831u, on and after June 1, 1997, the responsible federal agency is authorized to approve an interstate merger transaction involving a Kansas national bank; and

**WHEREAS**, pursuant to 12 U.S.C. § 36(d), a Kansas national bank which is a resulting bank, is authorized to retain and operate as a branch, any office that any bank involved in the interstate merger transaction was operating as a main office or branch immediately before the merger transaction; and

**WHEREAS**, pursuant to 12 U.S.C. § 36, a Kansas national bank which is a resulting bank, is authorized to seek and acquire the Comptroller of the Currency's approval to establish and operate branches at additional locations in those host states in which the resulting bank maintains branches; and

**WHEREAS**, pursuant to 12 U.S.C. § 36(g), a Kansas national bank is authorized to seek and acquire the Comptroller of the Currency's approval to establish and operate a de novo branch in a host state in which the bank does not maintain a branch, if the host state has a state law expressly permitting the establishment of the de novo branch; and

**WHEREAS**, no Kansas statute presently allows a Kansas state bank to engage in an interstate merger transaction to the same extent as 12 U.S.C. § 215a-1 permits for Kansas national banks; and

**WHEREAS**, no Kansas statute presently allows a Kansas state bank, which is a resulting bank, to retain and operate as a branch, any office that any bank involved in the interstate merger transaction was operating as a main office or branch immediately before the merger transaction; and

**WHEREAS**, no Kansas statute presently allows a Kansas state bank, which is a resulting bank, to establish and operate branches at additional locations in those host states in which the resulting bank maintains branches; and

**WHEREAS**, no Kansas statute presently allows a Kansas state bank, to establish and operate a de novo branch in a host state in which the bank does not maintain a branch; and

**WHEREAS**, K.S.A. 9-1715, as amended, grants to the commissioner "...the power to authorize any or all state banks to engage in any activity in which such banks could engage were they operating as national banks at the time such authority is granted..."; and

**WHEREAS**, the commissioner deems the issuance of this special order to be reasonably required to preserve the welfare of state banks and to promote competitive equality between state banks and national banking associations, and is therefore required by statute to issue this special order;

**PART III**

**IT IS THEREFORE ORDERED**, that a Kansas state bank may engage in an interstate merger transaction in accordance with K.S.A. 17-6702, after applying for and receiving the necessary regulatory approvals as required by the terms of this order and 12 U.S.C. § 1831u.

**IT IS FURTHER ORDERED**, that if a proposed interstate merger transaction provides for the resulting bank's home state to be a state other than Kansas, a Kansas state bank shall not engage in the proposed merger transaction until the required approvals have been received from the resulting bank's regulatory supervisors. Such Kansas state bank shall provide written notification to the commissioner of the merger transaction at least 10 days prior to consummation. Not more than 15 days following the merger transaction the resulting bank shall surrender the former Kansas state bank's certificate of authority or charter, and shall certify in writing to the commissioner that the proper instruments have been filed in accordance with K.S.A. 17-6003, and amendments thereto.

**IT IS FURTHER ORDERED**, that if a proposed interstate merger transaction provides for the resulting bank to be a Kansas state bank, the transaction shall not be permitted until the Kansas state bank has applied for and received written approval from the commissioner. No such approval shall be granted before the Kansas state bank has fully complied with K.S.A. 9-1724 and the Kansas general corporation code, including, without limitation, submission of an application on a form required by the commissioner, payment of the non-refundable merger fee established by K.A.R. 17-22-1, and satisfaction of all substantive and procedural requirements which relate to the merger of a Kansas state bank.

**IT IS FURTHER ORDERED**, that a Kansas state bank which is a resulting bank, is authorized to retain and operate as a branch, any office that any bank involved in the interstate merger transaction was operating as a main office or branch immediately before the merger transaction.

**IT IS FURTHER ORDERED**, that a Kansas state bank which is a resulting bank, is authorized to establish and operate branches at additional locations in those host states in which the resulting bank maintains branches. No such authority shall be exercised before the Kansas state bank has submitted an application on a form required by the commissioner, paid the non-refundable branch bank fee established by K.A.R. 17-22-1, and satisfied all procedural requirements related to the

establishment of a new branch by a Kansas state bank. The application process shall be in accordance with K.S.A. 9-1111, except administration of all procedures and approval of the application shall be the responsibility of the commissioner.

**IT IS FURTHER ORDERED,** that a Kansas state bank is authorized to establish and operate a de novo branch in a host state in which the bank does not maintain a branch, if the host state has a state law permitting the establishment of the de novo branch. No de novo branch shall be established or operated until the Kansas state bank has applied for and received all necessary regulatory approvals. Additionally, no such authority shall be exercised before the Kansas state bank has submitted an application on a form required by the commissioner, paid the non-refundable branch bank fee established by K.A.R. 17-22-1, and satisfied all procedural requirements related to the establishment of a new branch by a Kansas state bank. The application process shall be in accordance with K.S.A. 9-1111, except administration of all procedures and approval of the application shall be the responsibility of the commissioner.

**IT IS FURTHER ORDERED**, that a resulting bank, shall succeed by operation of law, without any conveyance or transfer, to all the actual or potential assets, real property, tangible personal property, intangible personal property, rights, franchises, and interests of the merged bank; and shall by operation of law continue all trust functions being exercised by the merged bank, and shall be substituted for the merged bank and shall hold and enjoy the same and all rights of property and interests of a fiduciary nature including, without limitation, as trustee, agent, executor, administrator, registrar, conservator, assignee, receiver, custodian, transfer agent, corporate trustee, corporate agent, or any other fiduciary capacity in the same manner and to the same extent as these rights and interests were held by the merged bank at the time of the merger transaction. This section is intended to be in addition to and not in exclusion of any powers, rights, duties or liabilities established on behalf of any party by K.S.A. 17-6709.

**IT IS FURTHER ORDERED**, that nothing in this order provides the statutory authority required by 12 U.S.C. § 36(g) and 12 U.S.C. § 1828(d) to permit a bank with a home state other than Kansas to establish and operate a de novo branch in Kansas.

**IT IS FURTHER ORDERED**, that nothing in this order provides the statutory authority required by 12 U.S.C. § 1831u (4) to permit an interstate merger transaction which involves acquisition of a branch located in Kansas without the acquisition of the bank.

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**IT IS FURTHER ORDERED**, that pursuant to K.S.A. 9-1715(b), as amended, the terms of this special order shall become effective June 1st, 1997 and shall remain in full force and effect until amended or revoked by the commissioner.

**IT IS SO ORDERED.**

**STATE BANK COMMISSIONER**

W. Newton Male

**STATE OF KANSAS**
**STATE BANK COMMISSIONER**
**SPECIAL ORDER 2008-1**
Loan Referrals, Acting as Finder

This Order issued this 10th day of October, 2008, by the State Bank Commissioner.

**WHEREAS,** 12 C.F.R. §7.1002 authorize a national bank to act as a "finder", bringing interested parties together to a transaction and performing various functions set out in the regulation; and

**WHEREAS**, the Comptroller of the Currency has deemed borrowers and lenders to be encompassed by the term "interested parties"; and

**WHEREAS,** state law provides no similar authority for state banks to act as a finder, bringing together interested parties to a transaction; and

**WHEREAS,** K.S.A. 9-1715 provides the state bank commissioner with the power to authorize state banks or trust companies to engage in any activity in which such banks or trust companies could engage were they operating as any other insured depository institution, including a national bank; and

**WHEREAS**, the Commissioner deems the issuance of this special order to be reasonably required to preserve and protect the welfare of state banks and to promote the competitive equality of state and national banks;

**IT IS THEREFORE ORDERED** that Kansas state banks shall have the authority to act as a finder as permitted in 12 C.F.R. §7.1002, and to engage in those activities which the Comptroller of the Currency determines to be incidental to the activity of acting as a finder; and

**IT IS FURTHER ORDERED**, that Special Order 1995-4 is revoked because those activities are fully encompassed by the authority granted in this Order; and

**IT IS FURTHER ORDERED**, pursuant to K.S.A. 9-1715(b) as amended, that the terms of this special order shall become effective October 10, 2008 and shall remain in full force and effect until amended or revoked by the State Bank Commissioner.

**IT IS SO ORDERED.**

**STATE BANK COMMISSIONER**

J. Thomas Thull

**STATE OF KANSAS**
**STATE BANK COMMISSIONER**
**SPECIAL ORDER 2021-1**
Tax Equity Finance Transactions

This Special Order is issued this 2nd day of August, 2021, by the State Bank Commissioner (Commissioner).

**WHEREAS,** the Office of the Comptroller of the Currency has adopted a final rule on April 1, 2021, at 85 Fed. Reg. 83,686, enacting 12 C.F.R. § 7.1025, and under the new rule, a nationally chartered bank may under certain circumstances engage in tax equity finance transactions that are deemed functionally equivalent to a loan; and

**WHEREAS,** Kansas state-chartered banks are not currently permitted to engage in tax equity finance transactions; and

**WHEREAS,** K.S.A. 9-1715, as amended, grants the Commissioner the power to authorize Kansas state-chartered banks to engage in any activity in which such banks could engage were they operating as a national bank; and

**WHEREAS,** the Commissioner deems the issuance of this Special Order to be reasonably required to preserve the welfare of state banks and to promote the competitive equality of state banks and other insured depository institutions;

**IT IS THEREFORE ORDERED,** subject to the limitations and conditions set forth in this Special Order, a Kansas state-chartered bank is hereby authorized to engage in tax equity finance transactions that would be permissible for a nationally chartered bank under 12 C.F.R. § 7.1025 as enacted on April 1, 2021; and

**IT IS FURTHER ORDERED,** a Kansas state-chartered bank engaging in tax equity finance transactions shall limit the total dollar amount of tax equity finance transactions undertaken

pursuant to this Special Order to no more than five percent of its capital, as defined in K.S.A. 9-1104(a)(2), as amended, unless the Commissioner determines by written approval that a higher aggregate limit will not pose an unreasonable risk to the bank and that the tax equity finance transactions in the bank's portfolio will not be conducted in an unsafe or unsound manner; however, in no case may a bank's total dollar amount of tax equity finance transactions undertaken pursuant to this section exceed 15 percent of its capital; and

**IT IS FURTHER ORDERED,** a Kansas state-chartered bank engaging in tax equity finance transactions shall provide written notification to the Commissioner prior to engaging in each tax equity finance transaction and shall include the bank's evaluation of the risks posed by the transaction; and

**IT IS FURTHER ORDERED,** tax equity finance transactions engaged in by Kansas state-chartered banks shall be subject to the substantive legal requirements of a loan, including the lending limits prescribed by K.S.A. 9-1104, as amended, and applicable federal requirements; and

**IT IS FURTHER ORDERED,** the authority to engage in tax equity finance transactions under this Special Order is separate from, and does not limit, other investment authorities available to Kansas state-chartered banks; and

**IT IS FURTHER ORDERED** pursuant to K.S.A. 9-1715(b), as amended, the terms of this Special Order shall take effect on August 2, 2021, and shall remain in full force and effect until amended or revoked by the State Bank Commissioner.

**IT IS SO ORDERED.**

**STATE BANK COMMISSIONER**

David L. Herndon

## GUIDANCE

Please note that subsequent legal cases and legislation can affect the validity of past guidance documents. Guidance documents are valid at the time they are published, based on the law and facts at that given time. The OSBC conducted a review of its guidance documents in 2019, made relevant updates, and determined that the following guidance documents, as updated, remain valid.

**Current Guidance**

1994-13.....FASB 115 and Dividend Calculation

1994-14.....Repurchase Agreements with Municipalities

1994-15.....Holding Period for ORE

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1996-8A.....Timing of Audits

1996-8B.....Leasing of Bank Premises to Third Parties

1997-2.....Special Order 1997-2

1997-3..... Approval of Officer Compensation by an Institution's Board of Directors / New State Ethics Rules Applicable to Bank Examiners / Record Retention

1997-5 ..... Approval of Officer Compensation by an Institution's Board of Directors

1997-7.....Legal Lending Limit and Reg O

2000-2.....Sale of Bank Property to Employees / Approval of the Commissioner

Memo 1994-13 FASB 115 and Dividend Calculation

Date: May 10, 1994

From: William D. Grant Jr., General Counsel

ISSUE:

Must losses, identified by a bank's implementation of Financial Accounting Standard No. 115 (FAS 115),[1] be deducted from the amount in the bank's undivided profits (U.P.) when calculating the funds available for dividends pursuant to K.S.A. 9-910?

ANALYSIS:

Without special permission from the Kansas State Banking Board, any dividends must be paid out of an institution's U.P. K.S.A. 9-910 provides a formula for determining the amount of funds contained in the U.P. account which are available for disbursement as dividends.

According to K.S.A. 9-910, the institution must identify any unrealized losses by using generally accepted accounting principles". The amount of this calculated loss must then be deducted from the amount contained in the U.P. account to determine what portion of the U.P. is available for dividends.

The recent implementation of the "generally accepted accounting principle" known as FAS 115[2] (mark to market) mandates that certain securities be carried in special categories at market value on the institution's books. In other words, because of this accounting method, an institution must book unrealized gains and unrealized losses on those securities which are required to be periodically "marked to market". This periodic adjustment to the values of the securities will most likely result in either an aggregate net gain or aggregate net loss in relation to the value of the institution's entire securities portfolio.

To satisfy the provisions of K.S.A. 9-910, any aggregate net, unrealized loss within the overall portfolio, resulting from the most recent valuation, as required by FAS 115[3], should be included in the "losses" deducted from undivided profits when calculating funds available for dividend.

[1] Updated 2019. Reference is now Accounting Standards Codification §320.
[2] Same.
[3] Same.

Memo 1994-14 Repurchase Agreements with Municipalities

TO: All State Chartered Banks
FR: Kevin Glendening, Assistant Deputy Commissioner
DT: June 10, 1994
RE: Repurchase Agreements with Municipalities

A recent Attorney General's opinion (no. 94-14) pertaining to K.S.A. 12-1675 states that when a municipality enters into a repurchase agreement, the underlying security must be delivered to the municipality purchaser or an independent third party custodian which may include the state treasurer. The actual transfer of ownership and control of the security used in a repurchase arrangement is also known as a "delivery versus payment" type of repo.

The purpose of this memo is to provide banks general guidance on A) the appropriate structure of this type of repurchase agreement and B) the method of accounting for these agreements on the bank's books. Banks who currently are or who in the future plan to engage in repo activities with municipalities are encouraged to review the AG's opinion and related issues with their legal and accounting staff. Our examiners will be reviewing these repurchase agreements for compliance with the applicable statute and related AG opinion at future examinations.

STRUCTURE OF REPO

A number of people have asked how a repo agreement with a municipality would work under the delivery versus payment method. There are a number of variables which may enter into any specific repo agreement (described below), however, the following general elements would be common to all repos of this type:

The seller (bank) would instruct its correspondent to deliver the security to the safekeeping/custodial account of the buyer (muni). Once the security is transferred to the buyer's (muni) account it will no longer appear in the seller's (bank) safekeeping account, and a confirmation would be sent to the seller (bank) showing the withdrawal of the security from their account. When the repo transaction matures, the buyer (muni) must notify the custodian/correspondent to return the security to the safekeeping account of the seller (bank).

Generally, the municipality must have a safekeeping/custodial account in order to carry out these transactions. It appears that in many cases, the bank will set up the safekeeping/custodial account at its correspondent as a service to the municipality. The municipality and/or its custodian, however, would be the account holder and the bank would not have access to it.

Depending on the terms of the repo agreement, the seller (bank) may or may not receive maturity notices or credit advices on the security used for the repo, although if possible banks are encouraged to do so. Likewise, the treatment of interest payments received on the security during the term of the repo should also be covered in the agreement. These issues will require the seller (bank), for their own benefit, to keep accurate records of the securities used for these repos since they may not receive notices from the correspondent.

"Book Entry" securities, those for which actual certificates are not generally issued, may be divided and sold, generally in increments of $5,000. It is our understanding that virtually all government sponsored securities are issued as book entry. Based on this assumption, a bank could, as an example, sell off portions of a large denomination security to different municipalities, transferring ownership of their respective portions to each. This would appear to eliminate any problem of a bank using large securities for smaller repo arrangements. In these instances, the buyer (muni) would be issued a safekeeping receipt for their portion of the security purchased and the seller (bank) would be issued a new safekeeping receipt for that portion of the security retained.

It's important to remember that the Attorney General's opinion referenced above

pertains to public funds money only. Individuals or private sector interest could, in theory, negotiate with the bank for whatever terms they desire. In any event, the repo agreement should clearly spell out the terms of the arrangement.

ACCOUNTING FOR REPO

Consistent with Call Report treatment of repurchase agreements and GAAP, the bank may continue to carry the security involved in the repo on their books for recordkeeping purposes. The bank should segregate those securities used for repos under a separate asset account such as "Bonds held for repo" or similar category. The money received from the municipality for their purchase of the repo would be debited to a cash and due account, and an offsetting entry on the liability side of the ledger to "Outstanding repos" or similar account would be made. It should be remembered that the bank's retention of the repo security on their books for recordkeeping purposes does not alter the AG opinion's requirement for the transfer of ownership.

Memo 1994-15 Holding Period for ORE

To: All Field Examiners
Fr: Kevin Glendening, Assistant Deputy Commissioner
Dt: June 20, 1994

Re: Holding period for ORE

Effective April 7, 1994, K.S.A. 9-1102 was amended to permit banks to carry all types of real estate acquired through DPC on their books for a period of 10 years with possible extensions for up to an additional 4 years.

It is important to remember this change applies **only to real estate acquired DPC**, and that possible extensions beyond 10 years must be approved annually by this office. All other appraisal and documentation requirements remain unchanged. The department will apply the 10 year holding period retroactively to ORE currently held as a book asset by banks, with the counting period running from the end of any required redemption period following the bank's acquisition of the property.

In addition, the department has determined that ORE acquired by the bank and previously charged off under the old holding period limitation, may be rebooked for the remaining time as would have been permitted under the new law, to the extent that the combined total number of years (A) held as a book asset and (B) held as a nonbook asset does not exceed 10 years (Refer to example). In these instances, the bank must obtain a current appraisal which supports the rebooked amount.

EXAMPLE

Bank obtains property DPC and has held it as a book asset for 5 years and a nonbook asset for 3 years, or a total of 8 years. Therefore, the bank may rebook the property for a period of 2 years (10 - 8 = 2) plus extensions, if granted.

If you have questions on the application of the new rules, please contact the office.

Memo 1994-20 Unclaimed Property

DATE: July 29, 1994 (Modified on 10-98)
TO: The Chief Executive Office of a Kansas State Chartered Bank, Trust Company, or Savings and Loan Association
FROM: Frank D. Dunnick, Bank Commissioner

RE: UNCLAIMED PROPERTY

During the 1994 legislative session the State Treasurer's office requested and received numerous changes to the provisions of the unclaimed property law. These changes are found in K.S.A. 58-3934 As part of the revisions to this law, the Treasurer sought power to examine the state chartered banks, trust companies, and savings and loan associations in the area of unclaimed property. This office and representatives of the Kansas Bankers Association met with the Treasurer and her staff to work a compromise in this area. As a result, our examining staff will continue to review the unclaimed property held by state chartered institutions as a part of our routine examination. If violations of K.S.A. 58-3934 are found, they will be brought to the attention of the institution's management and correction of such violation will be requested. The violation write-up, which is contained in the examination report, will be provided to the State Treasurer's office **only if correction of the violation is not completed within fourteen days after the institution receives their final examination report**. Once our office notifies the Treasurer of non-compliance, the Treasurer will have the authority to examine your institution for compliance with K.S.A. 58-3934.

This letter is to make all state chartered banks, trust companies, and savings and loan associations aware of the change in the procedures this department will utilize as a follow up to uncorrected violations of the unclaimed property law. We have always reviewed an institution's compliance with this law as a part of our routine examination. Additionally, we have always asked for correction of such violations, if noted. This letter will serve as notice of this department's intention to disclose information of uncorrected violations of the unclaimed property law, which are derived during the course of an examination, to the State Treasurer, if such violations remain uncorrected for more than fourteen days after the final examination report is received by the institution. Once received by the Treasurer, she will have the option whether to make a further examination of your institution for compliance in this area.

Additionally, you should be aware, the new law requires a bank, trust company or savings and loan association to provide the State Treasurer with a letter from an independent CPA or a resolution of its board of directors which will certify compliance with the unclaimed property act. If this letter or resolution is not sent, the State Treasurer retains the right to examine your institution.

If you have any questions regarding this communication, please do not hesitate to contact Deputy Commissioner Judi Stork or me at 913-296-2266.

FDD:JMS:dsl

File R - All Bank Mailing

Memo 1994-22 Overnight Federal Funds

TO: All Kansas State Chartered Banks FROM: Frank Dunnick, Bank Commissioner RE: Overnight Federal Funds
DATE: August 31, 1994

This agency has historically taken the position that overnight federal funds were subject to the lending limitations imposed by K.S.A. 9-1104 and were limited to 15% of capital stock paid in and unimpaired and unimpaired surplus. Those federal funds which were secured by U.S. Government bonds or obligations were exempt from this limitation. This long standing interpretation was prompted by the concern that the bank selling the funds, or making the overnight loan to the correspondent bank, would not thoroughly review the creditworthiness of the obligor, and a failure of a purchaser of large amounts of federal funds (a correspondent bank) could in turn cause the failure of several smaller institutions. The conservative approach was to limit the amount of funds sold to that of the legal lending limit.

Recently, this office completed a review of the Federal Reserve Bank's (FRB) Regulation F, which purpose is to limit the risks that the failure of a depository institution would pose to insured depository institutions. This regulation sets forth standards that a bank must follow before they enter into correspondent banking relationships. Additionally, Regulation F limits a bank's interday credit exposure to 25% of the bank's total capital (the limitation is 50% until June 19, 1995 when it is reduced to 25%), unless the bank can demonstrate that its correspondent is at least adequately capitalized.

The standards set forth in FRB Regulation F diminish the concerns of this department as discussed in paragraph one. Based on this, **this department will no longer consider overnight federal funds sold to a correspondent bank to be a loan and the legal limitations of K.S.A. 9-1104 will no longer apply. The department will closely review the following information during the examination for compliance with Regulation F:**

1. The bank shall maintain a policy which details the method of selecting correspondent banks which takes into account credit and liquidity risk, including operational risks. This policy should cover all types of relationships the bank may have with their correspondent banks, including the selection criterion for demand deposit accounts, federal funds sold, participation of overlines, bond safekeeping, certificates of deposits, etc. Specific approval of each correspondent bank, within the policy, is not mandated.

   If the exposure to a particular correspondent is significant, the policy shall require a periodic review of the financial condition of the correspondent which shall take into account any deterioration in the correspondent's financial condition. Factors which should be reviewed and maintained on file include the capital level of the correspondent, the level of nonaccrual and past due loans and leases, the level of earnings, and other factors affecting the financial condition of the correspondent. **When examining, this office will be looking for the most recent call report and the computation and analysis of key ratios in the areas listed above on all correspondents.** This data will not be required for those correspondent relationships which carry small balances that change infrequently or for those small balances which are only used for clearing purposes.

   The policy established should be reviewed and approved by the bank's board of directors at least annually.

2) The bank shall maintain on file the capital calculations for their correspondent as noted in the most recent Report of Condition and Income. This includes the total risk-based capital ratio, the tier 1 risk-based

capital ratio, and the leverage ratio.

If the above factors are not met, a violation of FRB Regulation F will be cited. Additionally, if the correspondent bank does not meet the adequately capitalized status, as defined in Regulation F, or if they do not keep information on file to support the current capital ratios, overnight federal funds will be subject to the 25% percent limit contained in Regulation F. (Note - Pursuant to Regulation F, the limitation is 50% versus 25% during the phase in period. The limitation will be reduced to 25% on June 19, 1995.)

Memo 1994-25 Charged-Off Debt of Insiders

TO: Memo Book
FR: William D. Grant Jr., General Counsel
DT: September 7, 1994

ISSUE: Does the requirement of forfeiture of position by a director or officer who becomes indebted to the bank on charged-off debt pursuant to K.S.A. 9-1114 and 9-1 11 5, also require forfeiture if the debt is forgiven by the bank?

ANALYSIS: K.S.A. 9-1114 and 9-1115 provides a director or an officer "... who shall become indebted to such bank or trust company on any judgment or charged off indebtedness shall forfeit such person's position..."

This requirement clearly requires an officer's or director's removal from any management role with a bank to which they have failed to repay an obligation. This provision is designed to protect against voluntary non-collection of insider loans, to preserve the credibility and integrity of bank management, and to maintain the bank's effectiveness in requiring its customers to meet their obligations to the bank.

Additionally, the directors and the president of a bank are required to be stockholders of the bank and therefore, at some point, may be relied upon to supply additional capital for the maintenance of the institution's viability. Inherent in this requirement is the state's interest in assuring that bank management possess the wherewithal to meet their financial obligations.

The language of the statutes do not specifically address the circumstance where the judgment or debt of the director of officer is eliminated by virtue of the bank's voluntary forgiveness of the obligation. However, with the above-mentioned concerns and the underlying rationale for requiring resignation in mind, it would directly conflict with the objectives of the statutes to allow voluntary forgiveness to relieve the officer or director of the resignation requirement.

Based upon this conclusion, voluntary elimination of a judgment or debt by the institution is not grounds for avoidance of the resignation requirements of K.S.A. 9-1114 and 9-1115.

Memo RM1994-26

To: Bill Grant, General Counsel
From: Sonya Allen, Staff Attorney
Date: September 9, 1994

ISSUE: When loans, such as dealer paper, are sold to a bank pursuant to a "with recourse" assignment or endorsement, at what point should the balance of the loan be added into the assignor's total liability for purposes of the legal lending limits statute, K.S.A. 91104?

ANALYSIS: Under subsection (a)(1) of K.S.A. 91104,[1] so long as the obligation of a drawer, endorser or guarantor remains secondary, it is not included within the term liability for purposes of determining legal lending limits. To determine whether an assignment "with recourse" creates primary or secondary liability it is necessary to first define "assignment". The term "assignment" is generally used to signify transfer of nonnegotiable instruments, while the term "endorsement" is used to signify transfer of negotiable instruments. 6A CJS Assignments 5a. In an assignment, "where liability is imposed on the assignor for nonpayment or default of the debtor, the assignee usually cannot proceed against the assignor until he has exercised due diligence in an unsuccessful attempt to recover from the obligor." 6A CJS Assignments 90.

Regardless of whether an instrument is negotiable or nonnegotiable, the Kansas courts have determined that the assignor (or the endorser, in cases of negotiable instruments) does not become primarily liable until the primary debtor defaults and the assignor is given notice. Mercantile Bank v. Farmers and Merchant's State Bank, 920 F.2d 1539 (10th Cir. 1990).[2]

In Mercantile, the 10th Circuit Court of Appeals cited Foster Frosty Foods, Inc. v. Commissioner, 32 F.2d 230, 233 (10th Cir. 1964) for the proposition that "an assignment 'with full recourse' acts as a guarantee by the assignee in case of such a breach". 920 F.2d at 1 544. The Court further held, as did the Kansas District Court, that "a 'full recourse' assignment of a nonnegotiable document, without any other explanatory language, is only a conditional guarantee." 920 F.2d at 1 5441 545. Because it is a conditional guarantee, the creditor must first proceed against the defaulting principal obligor before attempting to collect from the guarantor. Kansas State Bank and Trust Co. v. DeLorean, 7 Kan.App.3d 246, 640 P.2d 343,350 (1982).

The Appeals Court in Mercantile expressed agreement with the District Court's reliance on both the general meaning of the word "recourse" and on an analogy to Article 3 negotiable instrument law in reaching its decision, as there was no Kansas case law on point. The District Court had noted that under Article 3 of the UCC, an endorsement without restrictive language is considered an endorsement "with full recourse". The UCC states that in this case, an endorser is only secondarily liable, because liability is conditioned on presentment, dishonor, and notice of dishonor of the negotiable instrument. Under the revised UCC statutes, the same result is still reached. See K.S.A 1 993 Supp. 843415, 843501, 843502, 843503, and 843504.

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[1] Updated 2019. New statutory cite is K.S.A. 9-1104(e)(2).
[2] Updated 2019. The *Mercantile* case was vacated by the court; however, case law still supports the conclusion reached in this regulatory mailing.

As noted above, the "general rule" found in the UCC is that before an endorser becomes primarily liable, presentment, dishonor and notice of the dishonor must occur. However, the UCC contains a number of exceptions to this general rule which ease the requirements regarding presentment and dishonor. In fact, in a number of instances, the simple occurrence of a missed payment may trigger the recourse agreement and create a right of recourse for the assignee against the assignor/endorser.

Therefore, in the absence of language contained in the assignment or endorsement expressly establishing a trigger time for the right of recourse, a missed payment creates a strong likelihood that the endorser is primarily liable and obliged to pay the amount due on the instrument according to its terms. Consequently, it is the position of this department that the debt should be aggregated at that time with the other debts of the endorser for purposes of K.S.A. 91104.

CONCLUSION:

In general terms, a "with recourse" assignment, or an endorsement, without any other language, acts as a conditional guarantee. As a conditional guarantee, the assignor or endorser is only secondarily liable for the debt. According to the UCC and Kansas law, it is possible that the assignor's or endorser's liability becomes primary once the debtor misses a payment. Therefore, for the purpose of applying K.S.A. 91104, once the debtor misses a due payment, the department will aggregate the debt with all other assignor liability. This determination of when primary liability attaches is not a strict determination of the legal enforceability of the obligation, but is intended as a conservative determination for purposes of applying the legal lending limits statute.

Memo 1994-27 Third Party Messenger Services

TO: All Kansas State Chartered Banks
FROM: Sonya Allen, Staff Attorney
DATE: September 9, 1994

RE: Use of Third Party Messenger Services Between Banks and Their Customers

For purposes of this memo, a "messenger service" refers to any service, such as a courier service or armored car service, that is used by a bank and its customers to pick up from, and deliver to specific customers at locations such as their homes or offices items relating to transactions between the bank and such customers.

The first consideration in determining whether such a service constitutes "branch banking" is whether or not the activities conducted by the messenger service are core banking functions that would be considered to be branching activities. Such activities include but are not limited to receiving deposits, paying checks, or loaning money. The determination of what other various activities are branching activities may be determined on a case-by-case basis.

Once it has been determined whether a particular activity is a branching activity, the following guidelines shall apply.

I. Pickup and delivery of items relating to nonbranching activities.

A bank may either "establish (i.e., own or rent)" a messenger service' or may contract with third party messenger service to pick up and deliver items relating to nonbranching activities.

In establishing or contracting for such a service, the bank may establish terms, conditions and limitations that it deems appropriate to assure compliance with safe and sound banking practices.

II. Pickup and delivery of items pertaining to branching activities.

Without receiving approval from the state bank commissioner to establish a branch, a bank may not establish a messenger service to pickup and deliver items relating to branching activities. However, a bank may use a third party messenger service to perform this function.

A third party messenger service means one that is established and operated by a third party. Such a determination is made on a case-by-case basis, based on the totality of the circumstances. However, the following guidelines are given as "safe harbor" provisions under which a messenger service that meets each of the following criteria shall be deemed to be established by a third party.

A. The first requirement is that a party other than the bank shall own the service and its facilities (or rent them from another party other than the bank) and employ the persons engaged in the provision of the service.

B. Second, the messenger service shall meet the following criteria.

1. The messenger service makes its service available to the public, including other depository institutions.

2. The messenger service retains ultimate discretion to determine which customers and geographical areas it will serve.

3. The messenger service maintains ultimate responsibility for scheduling, movement and routing.

4. The messenger service does not operate under the name of the bank, and the bank and the messenger do not advertise, or otherwise represent, that the bank itself is providing the service. However, the bank may advertise that its customers may use one or more third party messenger services to transact their business with the bank.

5. The messenger service assumes responsibility for the items during transit and maintains adequate insurance covering holdups, employee infidelity, and other in-transit losses.

6. The messenger service enters into contracts with customers which include the following provisions:

   a. the messenger service acts as the agent for the customer when the items are in transit between the bank and the customer;
   b. in the case of items intended for deposit, such items shall not be deemed to have been deposited until delivered to the bank at an established bank office; and

   c. in the case of items representing withdrawals, such items shall be deemed to be paid when the bank gives the item to the messenger service for return to the customer.

C. Third, a bank may help a customer to defray all or part of the costs incurred by the customer in transporting items through a third party messenger service by directly paying the messenger or by reimbursing the customer, and may also impose terms, conditions and limitations with respect to the payment of such costs without such activity constituting "establishment" of a service.

D. Finally, a bank may also establish terms, conditions and limitations not inconsistent with these provisions as it deems appropriate to assure compliance with safe and sound banking practices.

Conclusion:

The "safe harbor" provisions contained in this memo are intended to provide general guidance regarding the acceptable uses of messenger services between banks and their customers. Situations which fall outside the guidelines will be scrutinized on a case-by-case basis, based on the totality of the circumstances to determine whether such a service constitutes branch banking.

Memo 1994-29 Livestock Exclusion from Classification

TO: All Field Examiners[1]
FROM: Frank D. Dunnick, Bank Commissioner DATE: September 15, 1994

RE: EXCLUSION OF LIVESTOCK FROM CLASSIFICATION

Effective immediately, the department's position for livestock exclusion will be as follows. If the bank has a current livestock inspection on file, and the livestock is adequately perfected by means of a properly filed UCC-1, the livestock value, after deducting the accrued interest on the purchase money loan for the livestock, and any outstanding feed and vet bills, will be excluded from classification. As an examiner, you will need to determine what the accrued interest deduction will be by reviewing current bank records. The amount of estimated feed and vet bills, if any, will be ascertained by questioning bank management.

A current livestock inspection for the purposes of this memorandum will be every 90 days for cattle which are bought and sold on a frequent and ongoing basis, and every six months for all other cattle. This varies from the guidelines contained in Memorandum 93-7, dated June 18, 1993. Memorandum 93-7 requires inspections of livestock on an annual basis unless cattle are bought and sold on a frequent and ongoing basis which then requires inspections every 90 days. **If the banker wishes the livestock to be considered for exclusion from classification, the inspection must be every ninety days for those cattle bought and sold on a frequent and ongoing basis and <u>every six months for all other cattle</u>.** While this requirement is more stringent than Memo 93-7 for all cattle that are not sold on a frequent and ongoing basis, we anticipate the bankers will only obtain semi-annual inspections on their poorer or borderline customers; those which the banker anticipates to be classified credits. The inspection frequency by bankers will most likely not change for the remaining good quality credits, where annual inspections are required by Memo 93-7.

The intent of this policy is for the blanket exclusion of livestock from classification. Deviations from the policy are not anticipated except on rare occasions.

I'm sure as this policy is implemented there will be questions from all of you. Please do not hesitate to give Judi, Kevin or me a call regarding this memo.[2]

FDD:JMS:dsla

[1] Updated 2019. To all Kansas Banks.
[2] Updated 2019. Call the OSBC at its general number, 785-296-2266 with any questions.

Memo 1995-3 Investment in Temporary Notes

TO: Memo Book
FROM: Sonya Allen, Staff Attorney
DATE: January 27, 1995

RE: K.S.A. 9-1101 (3); general obligation bonds; temporary notes.

ISSUE: Does the investment authority provided by K.S.A. 9-1101 (3) include the authority to invest in temporary notes?

ANSWER: Yes. DISCUSSION:
K.S.A. 1993 Supp. 9-1101 (3)[1] gives banks the power to buy and sell "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". In order to determine whether "general obligation bond" as used in 9-1101 (3) was intended to include temporary notes, it is necessary to define what a temporary note is.

Temporary notes are short term notes issued in anticipation of the issuance of general obligation bonds by the municipality. See AG Opinion 82-122. According to K.S.A. 10-123, temporary notes are "executed and registered in the same manner" as bonds and constitute general obligations of the municipality issuing them. In addition, bonds and temporary notes are subject to the same standards regarding the municipality's ability to invest their idle proceeds and regarding disposition of interest pursuant to K.S.A. 10-131. Furthermore, the General Bond Law, which is applicable to all issuances of municipal bonds, has been determined by case law to apply to temporary notes. Mallon v. City of Emporia, states that "temporary notes are encompassed within the meaning of bonds", 11 Kan. App. 2d 494 at 498, 726 P.2d 1354 (1986), citing First State Bank v. Bone, 122 Kan. 493, 252 Pac. 250 (1927).

In light of the above facts, it is the department's position that the language of 9-1101 (3) concerning a bank's power to invest in general obligation bonds of a municipality includes the power to invest in temporary notes. Accordingly, applying the language of subsection (3), a bank may invest in temporary notes issued by a municipality or quasi-municipality in the state of Kansas without limitation. If the bank chooses to invest in temporary notes of a municipality or quasi-municipality of another state, there likewise would be no limitation unless either or both of the situations described in (a) and (b) were present. If (a) the direct and overlapping indebtedness of such municipality or quasi- municipality was in excess of 10% of its valuation, excluding therefrom all valuations on intangibles and homestead exemption valuation, or (b) if the temporary note of such municipality or quasi-municipality has been in default in the payment of principal or interest within the 10 years prior to the time the bank acquires the temporary note, then there would be an investment limitation of 15% of the bank's paid in and unimpaired capital and its unimpaired surplus fund. For examination report purposes, temporary notes will be included in the securities category.

[1] Updated 2019. New statutory cite is K.S.A. 9-1101(a)(4)(A)(iii).

Memo 1995-5 Use of Word "Bank" in a Corporation Name

TO: Memo Book
FROM: Sonya Allen, Staff Attorney
DATE: February 21, 1995

RE: **Use of the word "Bank" in a corporation's name**

CJS Banks and Banking § 53 offers the following guidance concerning the use of the words "bank" and "banking" in a corporation's name:

> "Where a statute prohibits the uses of such words except by deposit banks, the designation 'investment banker' or any similar designation containing the words 'bank,' 'banker,' 'banking,'... may not be used by anyone not doing a deposit business or subject to banking regulations"

The Kansas statute which addresses this issue is K.S.A. 9-2011, which states:

> It shall be unlawful for any individual, firm or corporation to advertise, publish or otherwise promulgate that they are engaged in the banking business ... without first having obtained authority from the bank commissioner as herein provided . . ."

It is the department's position that the primary purpose of this statute is to protect consumers from being led to believe that a business is subject to banking laws and regulations and that such business' financial condition, affairs and activities are closely monitored by a bank regulator.

The use of the word "bank" or any derivation thereof (i.e. banc, banque, etc.) in the title of a business by an individual, firm, or corporation may constitute advertising to the general public that such individual, firm or corporation is engaged in the banking business. However, such advertisement or promulgation is only lawful for those who are engaged in the business of banking, and only an individual, firm or corporation who has obtained authority from the state bank commissioner may lawfully engage in the banking business. Those who use the word bank without obtaining such authority are, in effect, holding out to the public that they have obtained such authority and are a "bank", subject to banking laws, regulations, and supervision, when in fact they are not. Such an assertion through advertising is deceptive and confusing to the public, and is exactly the type of activity intended to be prohibited by K.S.A. 9-2011.

Of course, there are exceptions, as certain types of businesses which are clearly not in the business of banking may use the word bank without causing any confusion. For example, consumers would not believe the "Blood Bank" was subject to banking laws and regulations. The opportunity for confusion, and consequently, the need for consumer protection, becomes more apparent, however, when the corporation is offering financial services which in the eyes of the consumer appear to be the same or similar to those offered by banks.

In light of these considerations and the need for the protection of consumers, the likelihood of causing confusion by using the word "bank" or other forms of the word vary greatly depending on the nature of the business, the amount of direct public contact, and the way the word "bank" is used by the entity. Therefore, the department will review each situation on a case by case basis to determine whether the chance of confusion is great enough to warrant a determination that the particular use of the word could be construed as promulgating that the entity is lawfully engaged in the business of banking. The criteria the department will use to analyze each situation will vary according

to particular facts presented. However, important factors to be considered in every case will include the type of services provided by the business, the sophistication of the parties the entity interacts with, and the amount of contact that business has with the general public.

Memo 1995-27 Unclaimed property; abandonment periods; money orders

To: All State Chartered Banks
From: Amy Johnson, Legal Assistant
Date: November 2, 1995

Re: Unclaimed property; abandonment periods; money orders

Approximately two months ago, the State Treasurer's Office distributed information regarding the above- mentioned topic. Apparently, two of the documents conflicted with each other regarding the abandonment time periods contained in the Uniform Unclaimed Property Act (UPA), K.S.A. 58-3934 et seq. This memo is intended to eliminate possible confusion about abandonment periods relating to personal money orders versus bank money orders.

This confusion may have been created by the following language in K.S.A. 58- 3937(e):[1]

"'money order' means a money order issued by a business association and includes a personal money order or other similar instrument issued by a banking or financial organization, but not a bank money order, which is deemed a cashier's check."

Unfortunately, the UPA fails to provide a definition which distinguishes a "bank money order" from a "personal money order or other similar instrument issued by a banking or financial organization".

In general, as stated in B. Clark, The Law of Bank Deposits, Collections and Credit Cards, ¶1.05[15] (Revised ed. 1995)

"A money order calls for a payment to a named payee. There are three parties to a money order: the drawee, the remitter, and the payee. Particularly for purposes of stopping payment, the courts have distinguished between two kinds of money orders (1) a 'bank money order', which is really a cashier's check by another name, and (2) a 'personal money order, issued by and drawn upon a bank or nonbank without indication of either remitter or payee. There is no right to stop payment on a bank money order, while the remitter can stop payment on a personal money order."

In regard to bank money orders, *Id*. at ¶3.06[3][d][I] states:

"Bank money orders are obligations executed by the bank itself, in the nature of promissory notes with the bank as maker. They should be treated as cashier's checks."

and H. Bailey, Brady on Bank Checks, The Law of Bank Checks, 1.21 (7th ed. 1992) states:

"Bank money orders are a form of money order issued and sold by banks...bank money orders are practically a modified form of cashier's check and may be indorsed any number of times. Bank money orders are signed on behalf of the issuing bank."

[1] Updated 2019. New statutory cite is K.S.A. 58-3934(l).

B. Clark, *supra*, at ¶3.06[3][d][ii] in regard to personal money orders states:

"This instrument, issued by and drawn upon a commercial bank without indication of either purchaser or payee, is often used as a checking account substitute by the purchaser-remitter. A personal money order is not signed in any place by an authorized representative of the issuing bank, though the bank's name appears as drawee. Because the bank has not 'signed' the instrument, it is not liable under it."

In summary, a bank money order is a "direct obligation" of the bank and is usually signed by an agent of the bank, such as a cashier's check. A personal money order is not signed by the bank, and not an obligation of the bank issuing it. The bank is nothing more than a drawee on a personal money order.

We contacted the State Treasurer's Office to verify the correct abandonment time periods and to confirm that our interpretation of bank and personal money orders was accurate. Jolana Pinon, Assistant State Treasurer, verified the following determination as accurate.

K.S.A. 58-3937[2] states money orders have an abandonment period of 7 years. Our interpretation is that this provision only applies to personal money orders. K.S.A. 58-3938[3] assigns a 5-year abandonment period for cashier's checks. Bank money orders are "direct obligations" of the bank and should be treated as cashier's checks. Therefore, according to the provisions of the UPA, the correct abandonment period for a bank money order is 5 years.

[2] Updated 2019. New statutory cite is K.S.A. 58-3935.
[3] Updated 2019. New statutory cite is K.S.A. 58-3935(a)(16).

Memo 1996-8 6-24-96 All-bank Mailing

**To: All State-Chartered Banks**
**From: W. Newton Male, Bank Commissioner**
**Date: June 24, 1996 (Modified 10-98)**

**Re: ~~Commissioner's Listening Tour~~**
**Timing of Audits**
**Leasing of Bank Premises to Third Parties**

**~~A. Commissioner's Listening Tour.~~**

~~Enclosed please find a brief letter noting the times and locations for the Commissioner's 1996 Listening Tour. The tour is scheduled for July 8-10 at various locations across the state. Don't miss this unique opportunity to ask questions and voice any concerns.~~

**~~B.~~ Timing of Audits.**

Enclosed is a memoradum outlining this department's revised interpretation of the annual audit requirement. We appreciate all of the input received throughout the drafting process, and hope this policy will prove to be more flexible for banks and their accountants.

**~~C.~~ Leasing of Bank Premises to Third Parties.**

This enclosed memorandum was also drafted after reviewing numerous comments from bankers regarding two proposed memoranda sent out late last year which dealt with leasing bank space. The majority of comments we received indicated the proposed memo on sale of nondeposit investment products was duplicative and unnecessary in light of federal requirements already in place. Others expressed concern that we had not adequately addressed concerns of small banks with limited space. After giving consideration to the comments, it was decided that we should combine the two proposed memos into one document that covers any leasing of bank space to a third party. To avoid unnecessary duplication of Federal and State regulation, we have adopted the Interagency Statement on Retail Sales of Nondeposit Investment Products. The memo does impose minimum requirements for any type of leasing, and also includes a list of items we believe a bank should consider when entering into any agreement to lease bank space. Thank you to all who provided comments on this issue. They were very helpful in drafting this policy.

See Memos 1996-8A and 1996-8B

Memo 1996-8A Timing of Audits

**TO:** **All State Chartered Banks and Trust Companies**
**FROM:** **W. Newton Male, Bank Commissioner**
**DATE:** **June 21, 1996**
**RE:** **Timing of audits**

This memo provides guidance regarding the appropriate timing of audits required to comply with K.S.A. 9-1116 for commercial operations, and K.A.R. 17-23-5, for trust operations. In December of last year, we requested comments regarding our interpretation of this statute and regulation. In response to those comments, the following revised policy has been adopted. We hope it will provide banks and their accountants with flexibility, while allowing this office to fulfill its responsibility to adequately monitor the safety and soundness of Kansas banks and trust companies.

Both K.S.A. 9-1116 and K.A.R. 17-23-5 require quarterly audits and directors' reviews. A review of the audit activity must be done at a board of directors' meeting each calendar quarter. In lieu of the quarterly audits and directors' reviews, a bank or trust company may choose to have one annual audit performed by a CPA or an independent auditor approved by the commissioner. The department's current interpretation of the statute and regulation, issued November 18, 1994, requires either one annual audit or four quarterly audits and directors' reviews every 12 months.

As part of a review of the department's current position of this issue, comments were solicited from the banks, trust companies and various auditors. Most of the comments encouraged a broader interpretation of "annual audit," for banks and trust companies that choose to have an annual audit performed. Many suggested that the November 18, 1994 interpretation eliminates the element of surprise and impedes flexibility in scheduling which is necessary in practical application. We agree with these comments and have revised our policy as follows.

**Annual audit option:**

If a bank or trust company relies upon annual audits, each annual audit must be performed at least once during each calendar year, and each annual audit must commence no later than 18 months after the "as of" date of the previous annual audit. The annual audit shall include financial information covering at least a 12 month period. As used in this memo:

a) "Annual audit" means EITHER:

   1. a review of agreed upon procedures performed by a certified public accountant or an independent auditor approved by the commissioner, performed in accordance with the attached "minimum audit guidelines" of this department; OR

2. an audit consisting of an examination of the financial statements, accounting records and other supporting evidence of a bank or trust company performed by a certified public accountant in accordance with generally accepted auditing standards and of sufficient scope to enable the auditor to express an opinion on the bank's or trust company's financial statements as to their presentation in accordance with generally accepted accounting principles (GAAP).

b) "Commence" means the auditor's physical start date for the audit; the day when the auditor begins work.

c) "As of" date means the calendar date to which the bank's or trust company's accounts are balanced and reconciled.

For example, assume an outside annual audit is performed with an "as of" date of January 1, 1994. This audit would be the bank's audit for calendar year 1994. The bank would have until July 1, 1995 (18 months from January 2, 1994) to commence the annual audit for calendar year 1995.

**Quarterly audits and directors' reviews option:**

If the bank or trust company relies on quarterly audits and directors' reviews (performed by the board of directors or an auditor selected by the board), the following rules apply. For purposes of determining compliance, the examiner will ascertain the date of the last quarterly review by the board of directors. From that date, the examiner will look retrospectively over the 12 months prior to that review and determine whether all of the minimum audit requirements were met during that time period. If they were, the bank or trust company would be in compliance, and will have an additional 12 months prospectively, to perform all of the minimum audit requirements and subsequent directors' reviews again. It is important to note that the department's minimum audit guidelines require certain functions to be performed each quarter. Therefore, to maintain a program of quarterly audits and directors' reviews, in compliance with the statute or regulation, certain audit activity must be performed each quarter. If a quarter passes without the required quarterly audit activity and board review, the institution must have a full blown annual audit within 12 months of the date of the last quarterly audit and directors' review to remain in compliance.

As an example, suppose that the examiner enters a bank on September 10, 1993. The examiner determines the last quarterly audit was conducted during the 2nd quarter and reviewed by the board on June 30, 1993. The examiner would then look back 12 months from that date to June 30, 1992. If four quarterly audits had been conducted and all of the minimum audit requirements had been met, and the results of those audits had been reviewed at the four quarterly director's meetings, between June 30, 1992 and June 30, 1993, the bank would be in compliance. The bank would then have until June 30, 1994

to either complete four more quarterly audits and director's reviews or to have an annual audit performed.

Suppose, however, the examiner enters a trust company on November 10, 1993 and the examiner determines the last quarterly audit was reviewed by the directors on May 31, 1993. Because more than a quarter has already passed, it would be impossible for the trust company to complete and review four quarterly audits by May 31, 1994. Therefore, the trust company would be required to have an annual audit commenced before May 31, 1994. The trust company could then return to doing the four quarterly audits and directors' reviews, or it could have another annual audit performed during calendar year 1995. Assuming the 1994 audit was conducted as of May 31, 1994, the 1995 annual audit would have to be commenced within at least 18 months from that date, or no later than November 30, 1995.

Because there must be an audit every calendar year, a bank may not always have the full 18-month window available to it. Suppose, for example, that the examiner enters a bank on February 10, 1994 and the examiner determines the last quarterly audit was reviewed on September 30, 1993. Again, because more than a quarter has already passed, it would be impossible for the bank to complete four quarterly audits by September 30, 1994. Therefore, the bank would be required to have an annual audit commenced before September 30, 1994. The bank could then return to doing the four quarterly audits, or the bank could have another annual audit performed. Keeping in mind the requirement that an annual audit be performed once every calendar year, under these circumstances, if the bank chooses to have another annual audit performed, and the 1994 annual audit was conducted as of September 30, 1994, the annual audit for 1995 would have to be commenced no later than December 31, 1995. This is true even though the time from September 30, 1994 to December 31, 1995 is 15 months rather than the 18-month outer limit allowed, because there must be an annual audit performed during the calendar year 1995.

Replaces Memo 1995-28

Memo 1996-8B

**TO:** **All Kansas State Chartered Banks**
**FROM:** **W. Newton Male, Bank Commissioner**
**DATE:** **June 21, 1996**
**RE:** **Leasing of Bank Premises to Third Parties**

Note: This memorandum supersedes and replaces the December 13, 1993 departmental memo on leasing of bank space.

This memorandum is designed to provide general guidelines pertaining to leasing of bank premises to third parties, including but not limited to securities marketers, insurance agencies or travel agencies. Sections A and Section B of this memorandum contain provisions which the banks are required to follow in order to remain in compliance with K.S.A. 9-1102. Section C contains suggested practices banks may want to consider. These suggested practices may be tailored to fit a particular bank's own circumstances, and are designed to provide the bank extra protection against unnecessary or unwanted liability.

The overriding concern in any third-party leasing arrangement is to ensure that the lessee conducting business on bank premises maintains a separate existence from the bank/lessor. This separateness must be maintained both in terms of public appearance and financial responsibility. Maintaining this separate nature helps ensure that the bank is not required to defend lawsuits or shoulder liability that may result from the actions of the third party lessee.

This memorandum has been drafted with sensitivity to the broad variation that exists between large metropolitan banks and small community banks with regard to available space, personnel, and service capabilities. For purposes of this memo wholly owned subsidiaries of the bank are not considered third party lessees. Entities which are owned by the holding company of the bank or by insiders of the bank which conduct business operations on bank premises are considered third party lessees.

## A. General Terms of Third-Party Lease Agreements.

After the bank's board of directors has determined by a majority vote that a lease agreement should be entered into, the bank must draft a written agreement with the third party. The final lease agreement should be approved by the bank's board of directors. At a minimum, the written agreement should:

1. contain a clause expressly negating the existence of a partnership or joint venture;

2. describe the duties and responsibilities of each party, including a description of permissible activities by the third party on the institution's premises, terms as to the use of the institution's space, personnel, and equipment, and compensation arrangements for personnel of the institution and the third party;

3. require the third party to comply with all terms of the agreement, applicable laws and regulations;

4. authorize the institution and the appropriate banking authority to have access to such records of the third party as are necessary or appropriate to evaluate compliance with the agreement;

5. provide authority for prior approval by the bank's board, or the board's designee, of all advertising of the third party; and

6. require the third party to indemnify the institution against potential liability resulting from actions of the third party.

The agreement may include other items, such as providing for written employment contracts for any personnel who are employees of both the institution and the third party.

**B. Leases to Third Parties Conducting Retail Sales of Nondeposit Investment Products.**

The need for separation of operations and the potential for customer confusion are most serious when the third party is offering nondeposit investment products such as mutual funds and annuities on bank premises. Sales activities should be designed to minimize customer confusion about the products offered and to safeguard the bank from potential liability. The department has determined that a bank's compliance with the February 15, 1994 Federal Interagency Statement on Retail Sales of Nondeposit Investment Products should adequately relieve any regulatory concerns of this department. The Interagency Statement has been further clarified by the September 12, 1995 Joint Interpretations of the Interagency Statement which likewise is hereby adopted by this department.

Since all federally insured institutions are obligated to comply with the Interagency Statement, adoption by reference of these existing authorities will reduce duplication of regulation and eliminate confusion created by the existence of parallel rules.

**C. Additional Considerations.**

The following subjects contain some overlap with or resemblance to requirements contained in the Federal Interagency Statement. If the activity being conducted by the third party involves the sale of nondeposit investment products, compliance with all terms in the Interagency Statement is required. However, the subjects in this section are additional protective measures the bank should consider in any type of third party lease arrangement. They are intended as general guidelines. Implementation of these guidelines is recommended but not required by the department.

*1. Work Space*

When possible the location of the third party lessee's operation should be physically separated from the bank's operations. It is recognized that physical separation of work space is not possible in many small banks. In those circumstances, it becomes especially important to delineate in any way possible, between banking services and services provided by the lessee. One way to accomplish that goal is to ensure that nonbank operations are not being conducted at a bank teller's window where retail deposits are taken, or at a similar point of service. It has also been suggested by bankers that the following type of document be signed by customers receiving services from the third party, regardless of the customer's relationship with the bank, and placed in the third party's files:

**I, (customer's name) have been advised that (third party) is a separate entity not owned or a subsidiary of (bank), even though they might have common employees. I also understand that none of the products sold through (third party) have any relationship to the bank and are not covered by Federal Deposit Insurance Corporation (FDIC) insurance.**

**_____ _____**

**(signature of customer) (date)**

The department agrees such a written acknowledgment would be helpful. The proposed language can be tailored to specific situations, and is an effective way to further clarify to the customer the separateness of the bank and the third party. Banks with limited space may find such a form particularly useful.

*2. Advertising*

Any advertising or promotional material utilized by the bank which mentions the lessee's services, or vice versa, should clearly indicate that the two entities are separate and unrelated concerns, and that the lessee's services are not being offered by the bank.

*3. Access to Bank Premises by Nonbank Employees*

Particular attention should be given to the security of bank operations when determining what type of access to bank premises will be allowed to nonbank employees during hours when the bank is closed. "None" is the best alternative.

Replaces Memo 1995-11 and 1995-12

Memo RM97-2 Special Order 1997-2

To: All State-Chartered Banks
From: W. Newton Male, Bank Commissioner
Date: June 2, 1997
Re: Special Order 1997-2

Enclosed please find a copy of Special Order 1997-2 which became effective June 1, 1997. This Order is being issued to promote competitive equality between state banks and national banking associations in Kansas. As many of you are aware, effective June 1, 1997 interstate merger transactions involving Kansas national banks are now legal. Additionally, Kansas national banks are authorized to retain and operate as branches any offices involved in the interstate merger which were operating as a main or branch office prior to the merger. The language of the Riegle-Neal Interstate Banking and Branching Efficiency Act requires a state to take affirmative action if they wish to grant this power to their state chartered institutions. Because our legislature did not act on the issue, the Commissioner has decided to issue Special Order 1997-2, which grants Kansas state chartered banks interstate branching authority to the same extent as national banks. This Special Order establishes application guidelines. The Order does not permit the establishment of interstate branches in Kansas on a de novo basis.

# Office of the State Bank Commissioner
# All Bank Mailing

**Memo RM97-3**

**TO:** **All State Chartered Banks & Trust Companies**
**FROM:** **W. Newton Male, Bank Commissioner**
**DATE:** **July 17, 1997**

**A. Revocation of Special Order 1990-1.**

Enclosed you will find a Notice of Revocation for Special Order 1990-1. It has been determined that state chartered banks have authority under the incidental powers provision in K.S.A. 9-1101 to sell both fixed and variable rate annuities. Therefore, the Special Order is no longer necessary.

**B. Approval of Officer Compensation by an Institution's Board of Directors.**

Enclosed is a memorandum concerning proper documentation and approval of officers' compensation.

**C. Comprehensive Other Real Estate Policy and Guidelines.**

Enclosed is a memorandum outlining the guidelines and policies of this office concerning other real estate ("ORE"). Please note this policy supercedes some previous issuances which should be discarded to avoid confusion.

**D. New State Ethics Rules Applicable to Bank Examiners.**

The 1997 Kansas Legislature enacted House Bill 2064, which, among other things, implements new rules relating to state employees accepting gifts and discounted or free meals. These new rules are applicable to all Office of the State Bank Commissioner (OSBC) staff, and with a few exceptions, generally prohibit examiners from requesting or accepting any gift, economic opportunity, or meal, regardless of value, that is conveyed because of the examiner's employment with the state. Although effective for only a short period of time, there have been numerous questions raised and opinions issued by the Kansas Commission on Governmental Standards and Conduct regarding the scope of the new law. Because of this uncertainty, and because the potential penalties for violation of the rules can include termination and civil fines up to $15,000 per violation, the OSBC has adopted a conservative policy regarding employee conduct. Therefore, all employees of the department will no longer be permitted to accept meals or other free or discounted items compliments of the bank or an individual bank employee. This policy does not prohibit the examiners from accompanying bank personnel to meals, it only requires the examiners to pay their own bill. Snacks such as coffee, soft drinks, and snack foods are specifically excepted from the new statute, so if routinely available in the bank, examiner acceptance of these types of items are not prohibited by the statute. It would be very helpful if you could please make all bank personnel aware of the new law and the OSBC's policy in this regard.

**E. Record Retention.**

It has come to our attention that a provision of this office's record retention regulation, K.A.R. 17-15-1, should be clarified in light of current banking practices. Under the heading "CHECKING ACCOUNTS-INDIVIDUAL AND FIRMS", the following retention period is listed:

"Checks paid (microfilm copy-front and back).....5 years"

This 5-year retention period is sufficient if a bank is still returning canceled checks to its customers. However, if a bank is no longer sending canceled checks back to its customers, the bank should retain copies of checks paid for seven years, rather than five years, to comply with the requirements in K.S.A. 84-4-406. This statute, which is part of the Uniform Commercial Code, states that a bank must either return items paid to the customer or provide a statement of the account sufficiently identifying the items. If the bank chooses not to return the items to the customer, subsection (b) of the statute requires the bank to retain the items, or if the items are destroyed, to maintain the capacity to furnish legible copies of the items until the expiration of seven years after receipt. A copy of the statute is attached for your review.

For Attachments, see Memos RM97-4, RM97-5, and RM97-6

# Office of the State Bank Commissioner
# Memorandum

Memo RM97-5

June 23, 1997

To: All State Chartered Banks

From: W. Newton Male, State Bank Commissioner

**RE: Approval of Officer Compensation by an Institution's Board of Directors**

K.S.A. 9-1114 specifically states ". . . The business of any bank or trust company shall be managed and controlled by its board of directors . . ." K.A.R. 17-11-14 is an administrative regulation intended to provide supplemental guidance regarding the administration of this fundamental duty of an institution's directors. This regulation contains the following:

> *(b) In addition to any other actions the board may take, the following specific actions shall be taken by the board of directors and noted in the minutes:*
> *(1) election of all officers showing their titles, salaries, and bonuses, if any*

In response to questions received by this office, a review of the history of the statute and regulation was conducted, and the intent of these laws was considered. This memo is intended to provide specific guidance regarding board approval of officer compensation, and the items which must be contained in the board's minutes to comply with these provisions. For purposes of this memo, "officer compensation" shall include the determination of salaries and/or bonuses.

First, it has been determined that an institution's board of directors should remain directly responsible for review and final approval of the actual dollar amounts of all officer compensation. The board is authorized to delegate the review and determination of proposed officer compensation to a subcommittee or a qualified officer appointed by the board. However, final approval of the specific dollar amount of each officers' compensation must be granted by the board as a whole.

Second, as with any formal action of the board, final approval of officer compensation must be contained in the directors' minutes. Under normal circumstances, the specific dollar amount of each officer's compensation must be reflected in the minutes. However, if in the judgment of the board, protecting the confidentiality of specific compensation amounts is in the best interest of the institution, the board may maintain the figures on a separate schedule, in lieu of inclusion in the director's minutes. In the event the board elects to use a compensation schedule, the board should formally adopt this alternative method and include such adoption in the minutes. The schedule must detail the specific dollar amount of each officer's compensation. In addition, each time the board approves officer compensation that will not be shown numerically in the minutes, the minutes shall show that each board member has been provided and reviewed the compensation schedule prior to the board's action.

Any board consideration which occurs subsequent to the issuance of this memorandum should be executed in accordance with these requirements. Failure to adhere to the procedures outlined above, will result in the citation of an apparent violation of K.S.A. 9-1114 and K.A.R. 17-11-14.

# Office of the State Bank Commissioner
# All Bank Mailing

**TO:** **All Kansas State-Chartered Banks** **Memo RM97-7**
**FROM:** **W. Newton Male, Bank Commissioner**
**DATE:** **December 17, 1997**
**RE:** **Legal Lending Limit and Reg O**

As you know, K.S.A. 9-1104 was amended during the 1996 legislative session and expanded the lending limit of a Kansas state-chartered bank to 25% of capital. Prior to the revision, K.S.A. 9-1104 contained a special lending limit for officers or employees of the bank. In the new K.S.A. 9-1104, there is no special lending limit for employees, executive officers, or directors, so the general limit of 25% is applicable to all of these individuals for purposes of state law. There has been some confusion among banks concerning how this 25% state limit and the Federal Reserve Board's Regulation O ("Reg O") limits should be applied. Both limits (state and Reg O) must be looked at separately and compliance with both laws must be maintained by the bank. The following is a discussion of the basic restrictions banks should be aware of concerning loan limits for individual officers, directors and principal shareholders. **PLEASE NOTE:** Reg O contains additional restrictions on a bank's aggregate lending limit to all insiders, as well as prior approval requirements, which are not the subject of this memo.

**I. State Lending Limit for Executive Officers, Directors and Principal Shareholders**

The general lending limit of **25%** in K.S.A. 9-1104 applies to all of these categories of individuals.

**II. Reg O Restrictions on Loans to "Insiders", Which Includes Executive Officers, Directors and Principal Shareholders**

(Note: Although Reg O uses the term "member bank", the regulation is applicable to all FDIC-insured banks by virtue of 12 C.F.R. 337.3.)

The Federal Reserve Board's Regulation O, 215.4 (c) sets out the following restriction on lending to insiders (executive officers, directors, or principal shareholders and any related interest of such person).

> "Individual lending limit. No member bank may extend credit to any insider of the bank or insider of its affiliates in an amount that, when aggregated with the amount of all other extensions of credit by the member bank to that person and to all related interests of that person, exceeds the lending limit of the member bank specified in section 215.2(i) of this part."

Section 215.2(i) states the lending limit as follows:

> **"The lending limit for a member bank is an amount equal to the limit on loans to a single borrower established by section 5200 of the Revised Statutes, 12 U.S.C. 84. This amount is 15 percent of the bank's unimpaired capital and unimpaired surplus in the case of loans that are not fully secured, and an additional 10 percent of the bank's unimpaired capital and unimpaired surplus in the case of loans that are fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the loan."**

**As the above sections indicate, Reg O sets a general 15% lending limit for insiders. Reg O provides for an additional 10% in the case of loans to insiders that are fully secured by readily marketable collateral having a market value at least equal to the amount of the loan.**

**III. Additional Reg O Restrictions that are Applicable to *Executive Officers***

**Section 215.5 (12 C.F.R. 337.3, for non-member banks) lists *additional* restrictions on loans to executive officers. These restrictions are based on the purpose of the loan.**

**As previously stated, the 25% limit (15% basic limit plus an extra 10% for any loans that are fully secured by readily marketable collateral) established in 215.2 is the absolute maximum amount of credit a bank can extend to executive officers. However, within these confines, a bank can extend that credit as follows:**

**1. in any amount (but not exceeding the percentage limits in 215.2(i) ) to finance the education of the executive officer's children;**

**2. in any amount (but not exceeding the percentage limits in 215.2(i) ) to finance or refinance the purchase, construction, maintenance or improvement of a residence of the officer, provided:**

**i. the extension of credit is secured by a first lien on the residence and the residence is owned (or expected to be owned after the extension of credit) by the executive officer.**

**ii. in the case of a refinancing, only the amount used to repay the original extension of credit, together with the closing costs of the refinancing, and any additional amount used for the purpose of purchase, construction, maintenance or improvement of a residence are included in this category.**

**3. in any amount (but not exceeding the percentage limits in 215.2(i) ) for other purposes if the extension of credit is secured by:**

**i. a perfected security interest in bonds, notes, certificates of indebtedness, or Treasure bills of the United States or in other such obligations fully guaranteed as to principal and interest by the United States;**

**ii. Unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission or establishment of the United States or any corporation wholly owned directly or indirectly by the United States; or**

**iii. a perfected security interest in a segregated deposit account in the lending bank.**

**Finally, any extensions of credit to an executive officer which are made for purposes other than those enumerated in I-3 above cannot exceed at any one time, in the aggregate, the hiaher of 2.5% of the bank's capital and unimpaired surplus or $25,000, but in no event more than $100,000.**

# Office of the State Bank Commissioner
# Regulatory Mailing RM2000-2

TO: All State Chartered Banks
FROM: George E. Myers, Director of Examinations
DATE: May 24, 2000

SUBJECT: Sale of Bank Property to Employees / Approval of the Commissioner

K.S.A. 9-1112 requires, in part, that state banks obtain the approval of the Commissioner prior to the sale of any asset to an employee, the bank's parent company, or a subsidiary of the bank's parent company. To assist the department in processing approval requests as rapidly as possible, the following procedures should be utilized:

Automobiles

The bank should submit a brief letter describing the vehicle (make, model, year, mileage, condition), the carrying value on the bank's books, as well as the proposed sales price and terms. The department will assume a sales price at or above the current NADA trade-in/wholesale value to be sufficiently documented. The department will carefully scrutinize any proposed sale below the NADA value. To substantiate a lower sales price, the bank should obtain a written appraisal from an independent source or solicit bids through publicly advertising the vehicle.

Real Estate

The bank should submit a letter describing the property, current book value, date acquired, and proposed sales price and terms. The letter should also indicate what efforts have been made to market the property, and the result of those efforts. The request should be accompanied by an appraisal/evaluation performed within the last 12 months.

Other Assets

A request for permission to sell other items of personal property (computers, furniture, etc.) should contain a description of the item (model, age, etc.), the proposed sales price, the method used to establish that price, and any efforts to otherwise market the item.

The merits of all requests will be reviewed on a case-by-case basis. Should you have questions about any of these procedures, please contact our office.

TO: All State Chartered Banks

FROM: George E. Myers, Director of Examinations

DATE: May 24, 2000

SUBJECT: Use of County Tax Assessment Information for Evaluations

The purpose of this memorandum is to clarify that county tax assessment information may be used as part of an "evaluation" for real estate loans made under the FIRREA de minimis threshold of $250,000[1] and greater than $25,000 as defined by K.A. R. 17-11-21.

If the county tax assessment information is used as the basis for the evaluation, the officers/directors must show due diligence and review the tax information to determine its validity. The review must include a written reconciliation of the stated value, with proper consideration given to the market, cost, or income appraisal approach as the evaluation dictates.

As a reminder, K. A. R. 17-11-21 simply states the evaluation should be performed by either two officers or directors of the bank, or by a qualified individual who is independent of the bank.[2] Also, the land and building should be appraised separately,[3] and the property should be actually viewed by the one(s) doing the evaluation.

The contents of the evaluation should include:

1) A legal description of the property, including street address (if available) and its present use;
2) The owner(s) of the property;
3) The type and general condition of improvements, including their approximate age, size and construction;
4) The basis for the appraised value[4] – i.e. comparable sales of similar property, cost of replacement, or income derived from the property. Generally, a brief explanation, which demonstrates the value was determined in a logical manner, is sufficient. Again, information on comparable sales is preferable, but consideration will be given to the market area and level of real estate activity; and
5) The date of the evaluation and the signature and address of the appraisers.[5]

Attached please find a "Real Estate Evaluation Form" that you may find useful in completing your evaluations. The use of this form is not mandatory; it is provided merely as a tool for your use.

Should you have questions about this memorandum, please contact our office.

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[1] Updated 2019. Threshold amount increased to $500,000 pursuant to federal law change and Special Order 2018-1.
[2] Updated 2019. New language in the regulation says "independent of the transaction."
[3] Updated 2019. Removes "Also, the land and building should be appraised separately" because this language is no longer in the regulation.
[4] Updated 2019. Value described here is not "appraised" but estimated market value.
[5] Updated 2019. The persons conducting the evaluations should be referenced as evaluators and not appraisers.

To: All Kansas State Chartered Banks
From: Gwen N. Hill, Staff Attorney
Date: November 5, 2001
Re: Request for Extension of Time to Hold Property

Pursuant to K.S.A. 9-1112 (d) and (e),[1] a bank is permitted to hold property that comes into its possession as a result of a collection of debt. This property should be sold in a commercially reasonable sale within twelve months of the acquisition of the property. However, subsection (e)[2] permits a bank to hold the property longer than twelve months, with authorization of the commissioner, if a commercially reasonable sale cannot be conducted within that time frame. The holding period for personal property was changed from six months to twelve months during the 2001 legislative session. This change should allow banks ample opportunity to dispose of property, and requests for extensions of time to hold property should be rare. However, in the event a bank is approaching its twelve-month deadline and finds an extension is needed, the bank should, at a minimum, provide the following information to this office.

- A thorough description of the asset.
- An explanation of how the bank acquired the asset and the name(s) of the previous owner(s).
- The date the bank took possession of the property.
- The dollar amount that is booked to Other Assets.

- If the property is a vehicle, the bank should include the basis used to assign value to the asset, such as NADA value, dealer quotes/bids, etc., as well as the following:
    - the year, make, and model;
    - serial number;
    - odometer reading;
    - options;
    - a statement regarding the general condition of the asset; and
    - any other information relevant to the condition or value of the vehicle.

- If the property is other than a vehicle, the bank should include the value assigned to the property, as well has how that value was determined.

- The actions the bank has taken or is taking to market or sell the asset, and any responses received.

- An explanation of why disposal of the property is impossible or impractical within the twelve-month period.

- The requested length of time to hold the property.

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[1] Updated 2019. New statutory cite is K.S.A. 9-1102(i).
[2] Same.

# Office of the State Bank Commissioner
# Regulatory Mailing RM2002-2

**TO: All State-Chartered Banks**
**FROM: Franklin W. Nelson, Bank Commissioner**
**DATE: March 6, 2002**
**RE: Legal Lending Limit; Loans to Corporate Groups**

K.S.A. 9-1104 is the state legal lending limit law. The law was substantially re-written in 1996, and since that time, the number of lending limit questions received by our office has decreased dramatically. One section that all banks do not appear to be aware of, however, is paragraph (f) (4), Special Rules for Loans to Corporate Groups. This memorandum is being provided to bring the provision to your attention, and to explain the way the department applies the statute.

First, paragraph (A) of that section of the statute states:

> (A) Loans by a bank to a borrower and the borrower's subsidiaries shall not, in the aggregate, exceed 50% of the bank's capital. At no time shall loans to any one borrower or to any one subsidiary exceed the general lending limit of 25%, except as allowed by other provisions of this section. For purposes of this paragraph, a corporation or a limited liability company is a subsidiary of a borrower if the borrower owns or beneficially owns directly or indirectly more than 50 percent of the voting securities or voting interests of the corporation or company.

Examples:

ABC corporation owns 60% of the stock of XYZ corporation. XYZ is a subsidiary for purposes of this provision in the statute, and the bank could not loan more than 50% of its capital to these two entities.

John Brown owns 51% of a limited liability company. The limited liability company is a subsidiary of John for purposes of this provision in the statute, and the bank could not loan more than 50% of its capital to John and the LLC. This example illustrates that because of the way the term "borrower" is defined in the statute, a corporate group may consist of an individual and a corporate entity, rather than two corporate entities.

It is important to note that no determination of direct benefit or common enterprise, as defined in K.S.A. 9-1104 ((f) (1) through (3), is required for the 50% limit to be applicable. In other words, in the first example, a bank could make a loan to ABC corporation, and with appropriate collateral, could go up to 35% of its capital. However, the bank could then only loan XYZ corporation 15% of its capital. This is not because of any determination of direct benefit or common enterprise between the companies, but because the maximum amount that could be lent to the two entities in the aggregate, is capped at 50% by the loans to corporate groups rule in the statute.

Next, paragraph (B) states:

> (B) Loans to a borrower and a borrower's subsidiaries that do not meet the test contained in (f)(4)(A) will not be combined unless either the direct benefit or common enterprise test is met.

This provision means that if a borrower owns something less than 50% of the voting securities or voting interests of an entity, then the 50% aggregate rule does not apply, and these credits would only be combined for lending limit purposes if the direct benefit or common enterprise test is met.

While these provisions have been in the lending limit statute since 1996, we do not believe they are widely understood or even known by bankers. Please keep these provisions in mind in your lending decisions. Feel free to contact your review examiner or the legal staff in this office, or send a general e-mail to the office at bankcomm@ink.org, if you have additional questions.

Office of the State Bank Commissioner Regulatory Mailing **RM2004-01**

**To:** **All State Chartered Banks**
**From:** **Clarence W. Norris, Bank Commissioner**
**Date:** **May 12, 2004**
**Re:** **Certificate of Deposit Account Registry Service**

As you know, examiners for the Office of the State Bank Commissioner routinely review public deposits and pledging requirements as part of the regular safety and soundness examination of banks. A recent opinion issued by the Kansas Attorney General's Office, Opinion No. 2004-9, permits governmental entities to invest idle funds which are not immediately needed in local banks which participate in a Certificate of Deposit Account Registry Service ("CDARS"). This deposit of funds is deemed to be in compliance with the requirements of K.S.A. 12-1675 (b)(2).

Based on our review of the Attorney General's Opinion, as well as information on the CDARS website, www.cdars.com, CDARS is a deposit placement service offered by Promontory Interfinancial Network in which a group of FDIC insured financial institutions reciprocate with one another to provide their large depositors with FDIC insurance on the entire deposit. This allows depositors to place large deposits with their local bank, and that bank in turn places those funds that exceed the FDIC limit with other banks in the CDARS network. In exchange for those deposits, the local bank receives Certificates of Deposit for the same amount from other network member banks. The depositor will continue to manage all funds with the original depository bank, so there is no need to be in contact with multiple banks regarding the funds on deposit. Monthly, the local depository bank will send a statement to the depositor listing each CD, the bank issuing the CD, maturity dates, interest earned, and other details.

The result of this arrangement is that the depositor receives FDIC coverage on its entire deposit, since each bank participating in the CDARS network will only have $100,000[1] of the entity's funds on deposit; and the local bank will continue to have the entire amount of the deposit available for use in the local community because of the reciprocal deposits from other financial institutions.

The Attorney General's office opined that the CDARS program would be consistent with K.S.A. 12-1675 (b)(2), if the following conditions were met:

1. The Kansas institution receiving the original deposit has a main or branch office located in the required area;
2. The Kansas institution receives reciprocal deposits in an amount equal to the funds placed by the governmental entity;
3. Other participating financial institutions are located within the U.S.; and
4. Each CD is in an amount eligible for full FDIC coverage.

[1] Updated 2019. The FDIC coverage is $250,000.

A copy of the Attorney General's Opinion is attached. This mailing should not be construed as an endorsement by the Office of the State Bank Commissioner of the CDARS program or of Promontory Interfinancial Network. This mailing is provided for information purposes only.

**Regulatory Mailing 2004-2**

TO: All Examination Staff and All State-Chartered Banks
FROM: George E. Myers, Director of Examinations
RE: OSBC Comprehensive Other Real Estate Policy and Guidelines
DATE: November 1, 2004

This memo revises the OSBC Comprehensive ORE Policy and Guidelines memo RM1997-6 dated 7/15/97 and replaces all prior ORE pronouncements issued by the Office the State Bank Commissioner (specifically, memo 94-8, issued 2/25/94 and 94-16, issued 6/23/94).

## OTHER REAL ESTATE DEFINED

ORE consists of all real estate held by the bank, which is not a part of bank premises or expressly intended for future expansion as governed by K.S.A. 9-1102(2).[1]

## TRANSFER FROM LOANS TO ORE

The transfer from loans to the ORE account should be made when any one of the following three conditions are present: 1) the bank has received title or deed to the property; 2) the property is in a redemption period following the bank's purchase at sheriff's sale,[2] or 3) the bank has actual control of the property.

## HOLDING PERIODS FOR ORE

A) Any real estate, which is not necessary for the accommodation of the bank's business, must be disposed of or charged off not later than seven (7) years after its acquisition. If the real estate is necessary and the bank has a plan approved by the Board, the bank may carry the real estate in Premises and Equipment; otherwise, it must be transferred to ORE. The Commissioner may grant an extension for a period of up to three (3) additional years.
B) Real estate acquired in satisfaction of any debts (DPC)[3] may be carried on the bank's books for a period of 10 years. The Commissioner may grant extensions not to exceed four years. The Commissioner is required to review such extensions on an annual basis. In cases involving a sheriff's sale, the holding period begins immediately after the redemption period. If a bank reacquires ORE property through a default on a prior bona fide sales contract, the time period for holding the property starts over.

## ORE ACCOUNTING TREATMENT

Banks acquire a majority of their ORE property for debts previously contracted, otherwise known as DPC. Typically, this property is acquired through foreclosure, or by deed in lieu of foreclosure. In either case, the property should be booked at its fair market value or cost (see definitions below), whichever is less. At the time the property is acquired, any excess of book value over fair market value should be charged off through the loan loss reserve. Subsequent changes in market value are discussed below under "ORE Reserves."

Fair Market Value - is defined as that amount which could reasonably be expected to be received in a current sale (within one year) from a willing buyer. This amount must be supported by an acceptable written appraisal.

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[1] Updated 2019. New statutory cite is K.S.A. 9-1102(a).
[2] Updated 2019. Reference should be judicial sale.
[3] Updated 2019. DPC stands for Debt Previously Contracted.

Cost - includes book amount of the loan, unpaid balance of any senior liens on the property (including back taxes) which are assumed or paid in full by the bank, plus accrued interest receivable.*

* The accrued interest receivable added to the cost figure consists only of that balance on the books at the time the ORE is acquired. Previously charged off accrued interest or lost interest since placing the loan on nonaccrual should not be reinstated.

**OTHER ACCOUNTING ISSUES**

Capitalize or Expense

Any funds expended by the bank for real estate taxes or property insurance prior to foreclosure may be capitalized providing the fair market value of the property supports the addition. Otherwise, such amounts should be expensed immediately regardless of any right to recover these costs from proceeds of a potential future sale.

Legal fees and other direct expenditures (recording fees, abstracts, etc.) paid by the bank to foreclose and acquire clear title should be expensed when incurred.

The treatment of holding costs, or cost associated with ORE during the period it is held by the bank, and whether those costs are capitalized or expensed, hinges on whether or not the property is "substantially complete." That is, is the property in such condition so as to be generally marketable under ordinary conditions.

Holding costs which are associated with property that is not substantially complete and which are required to bring the property up to a saleable condition may be capitalized, provided there is sufficient value in the property. Examples would include major structural repairs, etc. Holding costs associated with a property which is substantially complete should be expensed when incurred. Examples would include minor fix-up repairs, maintenance painting, etc. Other typical holding cost which should be expensed when incurred include current real estate taxes, utility fees, property insurance, routine maintenance, property management fees, and so forth.

Prior Liens

When a bank acquires ORE subject to a prior existing lien and assumes contractual liability for that lien, the balance is added to the cost for comparison against fair market value, and a corresponding liability (mortgage indebtedness) on the bank's books for the lien balance is necessary. As payments are made, the bank should debit the mortgage indebtedness account for the principal portion, and the noninterest expense account for the interest portion. The compensating credit entry would be to cash.

If the bank does not assume contractual liability for the prior lien, the balance is not added to the cost for comparison against fair market value. If the bank chooses to voluntarily make payments in order to forestall foreclosure, etc., the interest portion of the loan payment should be expensed (other noninterest expense) and the principal portion may be expensed or capitalized, based on the assumption that principal payments reduce the prior lienholder's interest in the property and increases the bank's equity position. Again, principal payments

may only be capitalized to the extent they are supported by the fair market value of the property.

Adjustments to Book Value of ORE

The book value of ORE may be increased to reflect subsequent increases in fair market value, but only to the extent of the outstanding loan balance at the time the property was moved to ORE. When the bank has foreclosed on the entire indebtedness of a borrower and ORE is acquired through foreclosure in partial satisfaction of a borrower's indebtedness, the debtor's total liability to the bank is compared against the fair market value of the property to determine the carrying amount of the ORE. The total liability includes all debt, whether or not secured by the real estate. Example: A borrower has two notes, one for $100,000 unsecured and one for $50,000 secured by a REM on property with a fair market value of $70,000. The bank forecloses and obtains the property. The ORE is booked at the lower of cost or market, in this case $70,000 since that is less than the total foreclosed debt of $150,000. In this example, the remaining $80,000 of debt would be charged against the loan loss reserve.

In any event, the amount at which ORE is booked may only be increased to the extent it offsets loan losses the bank would otherwise incur.

Short Term Charge Offs

When a bank receives property through foreclosure, any charge offs within 90 days may be taken through the loan loss reserve. Subsequent losses or gains should be treated as other noninterest income or expense, or a credit/debit to the ORE reserve (see below).

**PROPER DOCUMENTATION**

Proper documentation on ORE shall consist of a legal description of the property, the name of the original debtor, total amount of indebtedness for which the property was acquired, the cost of acquisition, the cost of alterations, the assessed valuation of the property, the book value, the amount and expiration of insurance, and the fair market value supported by an appraisal.** The bank's failure to maintain this documentation will be cited as a violation of K.A.R. 17-11-17.

** Per department policy, adequate ORE appraisal documentation shall consist of a current appraisal (within 90 days) when the property is moved to ORE. Every year thereafter, the fair market value shall be supported by an appraisal or appraisal update. The appraisal may be generated internally or one obtained from an independent source.

**OTHER REAL ESTATE SWAPS**

Swaps involve the bank trading an ORE property to some other entity for another property. In general terms, such arrangements are permissible, provided the proposed swap would be in the bank's best interest and adequate documentation exists which justifies that conclusion. Time limits for holding the property will not restart after the swap. The merits of any swap will be reviewed on a case-by-case basis.

**SALE OF ORE BY BANK**

In addition to a straight forward cash sale, there are several "sale on contract" methods by which a bank may reflect the sale of ORE property. These methods are defined under FASB 66[1]. The appropriate method for the bank to use largely depends upon various factors and conditions relating to the structure of the sale agreement. These methods involve timing on recognition of income from the sale, and to some extent, related tax implications. In the past, Call Report instructions provided two basic criteria necessary to move the ORE to the loan or contracts receivable category. These criteria are "Buyer's Initial Investment" or down payment, and the likelihood of collection of the receivable by way of a reasonable amortization period, or "Buyer's Continuing Investment". They were defined as follows:

Buyer's initial investment: or down payment, must equal or exceed 10% of the sale price of the ORE. The payment must be in the form of cash, either from personal sources or a lending institution unrelated to the selling bank; or, direct payments by the buyer to third parties to reduce existing indebtedness (liens) on the property. Other consideration provided by the buyer will only qualify as part of the initial investment when it is sold or otherwise converted to cash without recourse to the seller.

Payments by the buyer to third parties for improvements to the property; a permanent loan commitment by an independent third party to replace a loan made by the seller; any funds that have or will be loaned, refunded, or directly or indirectly provided to the buyer by the seller; or, any loans guaranteed or collateralized by the seller for the buyer will not count toward the initial investment requirement.

Buyer's continuing investment: or amortization period, must be such that the buyer is contractually required to pay each year on the total debt for the purchase price an amount at least equal to the amount that would be necessary to amortize the debt within: A) 20 years for farm ground or unimproved land, or B) the normal first mortgage amortization period an independent institution would use for other types of real estate. If the buyer's initial investment (down payment) exceeds the 10% minimum requirement, the excess may apply toward the buyer's required annual continuing investment (amortization).

The FFIEC Interagency Guideline on Accounting for Dispositions of Other Real Estate (July 16, 1993)[2] revised call report instructions, beginning with the 6-30-93 report date, and eliminated the minimum down payment requirement previously contained in the instructions. The result was that, in theory, the financed sale of ORE property without a minimum 10% down payment and normal amortization period could, under certain FASB 66[3] options, be reported as a loan rather than continuing to be carried as ORE. In actual practice, however, it is unlikely most banks would choose this option for the following reasons: The accounting structure associated with these options may dictate the resulting booked loan be carried as nonaccrual or have an amortization period substantially in excess of similar type loans, both strong factors for potential adverse classification. Secondly, the holding period for ORE properties, as referenced previously, diminishes the possible pressure a bank may feel to move the asset out of the ORE category in order to avoid a mandated write off. Given the choice of continuing to report as ORE property sold under terms which do not qualify it for

[1] Updated 2019. Accounting Standards Codification 360.20.

[2] Updated 2019. FDIC Call Report Instructions, December 31, 2018.

[3] Accounting Standards Codification 360.20.

treatment under the "full accrual method" vs. reporting it as a loan with high potential for adverse classification under one of the other FASB 66 methods, it appears most banks may opt for the former. In cases where the bank has chosen to record the financed sale ORE property which lacks a minimum 10% down payment and normal amortization period as a loan rather than ORE, examiners will request appropriate documentation from the bank which demonstrates compliance with the FASB 66 method utilized. Normal credit evaluation standards will apply.

## ORE RESERVES

Subsequent to the initial recording of ORE at the lower of fair market value or cost (see definition above), AICPA statement of position "Accounting for Foreclosed Assets" (SOP 92-3) describes the use of valuation allowances for ORE (similar to the reserve for loan losses) for additional changes in the fair market value of the property. Historically banks have reflected subsequent changes in market value by a direct charge to earnings, or the postponement of gains until the property is sold. While this method is more conservative, Call Report instructions encourage the use of an ORE valuation reserve. Under this method, changes in value are recognized by a debit or credit to the reserve with a corresponding increase or decrease to income. Banks may have either a general ORE reserve based on some percentage of the total ORE balance, etc., or a specific ORE reserve tied to individual properties, or both.

The following guidelines should be followed for ORE reserves:

- ORE reserves (general or specific) are not counted as part of Part 325 risk based or leveraged capital components. General ORE reserves will be included for legal lending limit computations, while specific reserves will not;
- ORE reserves may be established for potential losses only. As with loan reserves, any actual losses should be taken as they become apparent; and
- For report of examination purposes, general ORE reserves will not be netted against the carrying value of individual ORE properties to determine the amount subject to classification. Specific ORE reserves, however, will be netted from amounts classified. The ORE balance reflected on page 2 of the report will be a balance net of both general and specific ORE reserves. This is consistent with the Call Report instructions for valuation of reserves.

## CLASSIFICATION OF ORE

Any portion of ORE booked above the current fair market value of the property shall be listed as "Loss" for report purposes. All ORE parcels which do not, or are not reasonably projected to generate a level of earnings comparable to the bank's overall cost of funds shall, with limited exceptions, be listed as "Substandard". However, the property will be excluded from Substandard classification if the estimated fair market value of the property is such that, upon its liquidation in a reasonable period of time (generally not to exceed 2 years from the date of acquisition), the sale proceeds are expected to be sufficient for the bank to recoup both its principal investment and a rate of return of at least the overall cost of funds.

The cost of funds may be determined by use of a current UBPR (within 3 months), or calculated from Call Report data.

# Office of the State Bank Commissioner
## Regulatory Mailing RM2008-01

TO: All State Chartered Banks
FROM: Tom Thull, State Bank Commissioner
DATE: October 20, 2008
SUBJECT: Disclosure of Confidential Examination Report Information

There has been a recent increase in requests to disclose confidential regulatory information to companies underwriting excess deposit insurance, or guaranty bonds. Many banks need to replace the guaranty bonds currently offered by Kansas Bankers Surety Company with another carrier. As banks file bond applications with different companies, these underwriters are requesting specific confidential information from the Office of the State Bank Commissioner's (OSBC) Reports of Examination. Pursuant to K.S.A. 9-1712, "All information the state bank commissioner generates in making an investigation or examination of a state bank or trust company shall be confidential information.", and "All confidential information shall be the property of the state of Kansas and shall not be subject to disclosure except upon the written approval of the state bank commissioner.". As used in K.S.A. 9-1712, "information" means but is not limited to, all documents, oral and written communication, and all electronic data.

The OSBC has reviewed the banks' needs to not only purchase guaranty bonds, but also comply with K.S.A. 9-1115 and the requirement to provide good and sufficient corporate surety bond. K.S.A. 9-1115 states "The board of directors shall require all officers and employees having the care or handling of the funds of the bank or trust company to give a good and sufficient bond to be executed by an approved corporate surety authorized to do business in this state."

Therefore, in an effort to expedite the process of purchasing guaranty and/or surety bond coverage and alleviate the burden of seeking written approval from the OSBC, the State Bank Commissioner is granting approval for all banks to disclose, to corporate sureties only, the following specific confidential information from State examinations:

- Adversely Classified Items Coverage ratio (Tier 1 plus ALLL)
- Total Adversely Classified Assets to Total Assets ratio
- Adversely Classified Loans and Leases to Total Loans ratio
- Aggregate dollar amounts for Substandard, Doubtful and Loss classifications

Such disclosures should only be made if required by the surety in order for the bank to obtain coverage. All other disclosures, besides those mentioned above, still require written approval from our office. Written commentary, the Composite rating, individual CAMELS component ratings, apparent violations, and customer/borrower information should remain confidential. Additionally, permission to disclose confidential information from federal (FDIC and Federal Reserve) examinations should be obtained from the respective agency.

# Office of the State Bank Commissioner
## Regulatory Mailing RM2009-01

TO: All State-Chartered Banks
From: J. Thomas Thull, Bank Commissioner
Date: January 26, 2009

Re: K.S.A. 9-1104, Legal Lending Limit Combination Rules and Common Enterprise

The purpose of this memorandum is to discuss the Legal Lending Limit requirements of K.S.A. 9-1104(f)(3)(A), Combination Rules, specifically the determination of common enterprise.

Pursuant to the above-cited section of the lending limit statute, a common enterprise is deemed to exist and loans to separate borrowers will be aggregated when the expected source of repayment for each loan or extension of credit is the same for each borrower and neither borrower has another source of income from which the loan, together with the borrower's other obligations, may be fully repaid.

The Office of the State Bank Commissioner (OSBC) has considered this section of the statute (as well as paragraph (f)(6) of the statue, which allows the Commissioner additional discretion to find that debts should be combined) and determined that if a bank has non-affiliated loans on the books, but the loan payments for each entity are derived from a general account of a third party or financial institution, the non-affiliated loans may be deemed a common enterprise and the debt would be aggregated for legal lending limit purposes.

Situations where this could apply include loan participations where the lead institution or third party is collecting payments from various debtors into a general account and then applying the payments to the participant(s) out of the general account. This situation could also apply to the purchase of leases where various lessee payments are collected by the leasing company and placed into a general account and the leasing company then distributes payments to the bank(s) out of the general account. In both of these scenarios, the payments are being distributed to the banks at the sole discretion of the lead institution or third party.

The primary issue is whether a lead institution or third party is collecting a debtor's payment and properly allocating the same payment proportionately and directly to the debtor's debt. Based on recent events, the OSBC has a concern when payments are aggregated into a general account and distributed by someone other than the debtor. The manner of distribution may not be consistent with the debtor's intention that their specific loan payment be applied to their specific loan.

If payments are not being applied as intended by the debtor, a situation could arise where a bank might have a past due loan where the borrower actually made their payments, or a bank might have a current loan where the borrower did not make their payments. In either case, credit risk is increased because it will prove difficult for bank management to properly identify the true condition

of the borrower.

The OSBC is requesting bank management be cognizant of and research situations where the collection and distribution of payments are pooled. If bank management determines the expected source of repayment for non-affiliated borrowers is tied to the same repayment source, the debts should be combined for legal lending limit purposes. In the case of an aggregated account, unless adequate records are kept to show that a particular borrower's payment is being applied to their specific loan upon receipt of that payment into the aggregated account, the position of OSBC examination staff will be that the non-affiliated borrowers' payments are coming from the same repayment source (the aggregated account), and their debts will be combined.

The combination of debt in these scenarios will limit exposure to the bank and should assist in identifying and decreasing the associated credit risk. If you have any questions, please contact your Review Examiner at 785-296-2266.

# Office of the State Bank Commissioner

# Guidance Document

## SAVINGS PROMOTIONS 2017-01

*Savings Account Promotion*

**Purpose**

The purpose of this guidance document is to provide users with guidelines regarding the adoption and implementation of a savings promotion in which participants deposit money into a savings account or other savings program in order to obtain entries and participate in the promotion as authorized by K.S.A. 2016 Supp. 9-1142, and any relevant regulatory expectations by the Office of the State Bank Commissioner (OSBC). These Guidelines apply to all Kansas-chartered banks, savings banks, and savings and loan associations, subject to any limitations and conditions stated herein and any other statutory limitations imposed by the Kansas Banking Code, K.S.A. 2016 Supp. 9-514 et seq.

**Savings Promotion Accounts may be implemented by Banks, Savings Banks, and Savings and Loan Associations**

K.S.A. 2016 Supp. 9-1142(a) reads as follows:

> A bank, savings bank, or savings and loan association or credit union may conduct a savings promotion in which promotion participants deposit money into a savings account or other savings program in order to obtain entries and participate in the promotion, provided that the bank, savings bank, savings and loan association or credit union:
>
> (1) conducts the promotion in a manner to ensure that each entry has an equal chance of winning the designated prize;
>
> (2) fully discloses the terms and conditions of the promotion to each of its account holders;
>
> (3) maintains records sufficient to facilitate an audit of the promotion;
>
> (4) ensures that only account holders 18 years of age and older are permitted to participate in the promotion;

(5) does not require any consideration; and

(6) offers an interest rate and charges fees on any promotion-qualifying account that are approximately the same as those on a comparable account that does not qualify for the promotion.

**Additional Guidance for Adopting and Implementing Savings Promotion Programs**

Consistent with K.S.A. 2016 Supp. 9-1142, a bank, savings bank, or savings and loan association shall, if the bank, savings bank, or savings and loan association implements a savings promotion program, make available at the time of an examination the following information to the Office of the State Bank Commissioner:

(1) a copy of the savings promotion rules, conditions, and requirements of the program;

(2) documents illustrating that the program complies with the savings promotion rules, conditions, and requirements of the program, that the program does not jeopardize the safety and soundness of the bank, savings bank, or savings and loan association, that the program does not mislead participants about the nature of the program, and that the program is compliant with K.S.A. 2016 Supp. 9-1142;

(3) an acknowledgement by the bank, savings bank, or savings and loan association that any savings promotion program is subject to examination by the Commissioner;

(4) an acknowledgment that the Commissioner may, through the use of a cease and desist order, cause the institution to cease offering the savings promotion program if it is in violation of K.S.A. 2016 Supp. 9-1142;

The OSBC may consider adopting additional regulations expounding on savings promotions as necessary in accordance with K.S.A. 2016 Supp. 9-1142.

Effective: July 1, 2017

# KANSAS BANKING STATUTES – INDEX



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