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Chapter 9 - BANKS AND BANKING; TRUST COMPANIES

KANSAS MONEY TRANSMITTER ACT

K.S.A. 9-508 – K.S.A. 9-513

ARTICLE 5 – MISCELLANEOUS PROVISIONS

K.S.A. 9-508. Transmission of money; definition.

As used in this act,

- (a) “Agent” means a person designated by a licensee to receive funds from a Kansas resident in order to forward such funds to the licensee to effectuate money transmission at one or more physical locations throughout the state or through the internet, regardless of whether such person would be exempt from the act by conducting money transmission on such person’s own behalf;
- (b) “commissioner” means the state bank commissioner;
- (c) “control” means the power directly or indirectly to direct management or policies of a person engaged in money transmission or to vote 25% or more of any class of voting shares of a person engaged in money transmission;
- (d) “electronic instrument” means a card or other tangible object for the transmission or payment of money, including a prepaid access card or device which contains a microprocessor chip, magnetic stripe or other means for the storage of information, that is prefunded and for which the value is decremented upon each use, but does not include a card or other tangible object that is redeemable by the issuer in goods or services;
- (e) “licensee” means a person licensed under this act;
- (f) “nationwide multi-state licensing system and registry” means a licensing system developed and maintained by the conference of state bank supervisors, or its successors and assigns, for the licensing and reporting of those persons engaging in the money transmission;
- (g) “monetary value” means a medium of exchange, whether or not redeemable in money;
- (h) “money transmission” means to engage in the business of the sale or issuance of payment instruments or of receiving money or monetary value for transmission to a location within or outside the United States by wire, facsimile, electronic means or any other means, except that money transmission does not include currency exchange where no transmission of money occurs;
- (i) “outstanding payment liability” means:

- (1) With respect to a payment instrument, any payment instrument issued or sold by the licensee which has been sold in the United States directly by the licensee, or any payment instrument that has been sold by an agent of the licensee in the United States, which has been reported to the licensee as having been sold and which has not yet been paid by or for the licensee; or
 - (2) with respect to the transmission of money or monetary value, any money or monetary value the licensee or an agent of the licensee has received from a customer in the United States for transmission which has not yet been delivered to the recipient or otherwise paid by the licensee;
- (j) “payment instrument” means any electronic or written check, draft, money order, travelers check or other electronic or written instrument or order for the transmission or payment of money, sold or issued to one or more persons, whether or not such instrument is negotiable. The term “payment instrument” does not include any credit card voucher, any letter of credit or any instrument which is redeemable by the issuer in goods or services;
- (k) “permissible investments” means:
- (1) Cash;
 - (2) deposits in a demand or interest bearing account with a domestic federally insured depository institution, including certificates of deposit;
 - (3) debt obligations of a domestic federally insured depository institution;
 - (4) any investment bearing a rating of one of the three highest grades as defined by a nationally recognized organization that rates such securities;
 - (5) investment grade bonds and other legally created general obligations of a state, an agency or political subdivision of a state, the United States or an instrumentality of the United States;
 - (6) obligations that a state, an agency or political subdivision of a state, the United States or an instrumentality of the United States has unconditionally agreed to purchase, insure or guarantee and that bear a rating of one of the three highest grades as defined by a nationally recognized organization that rates securities;
 - (7) shares in a money market mutual fund, interest-bearing bills or notes or bonds, debentures or stock traded on any national securities exchange or on a national over-the-counter market, or mutual funds primarily composed of such securities or a fund composed of one or more permissible investments as set forth herein;

- (8) receivables that are payable to a licensee, in the ordinary course of business, pursuant to contracts which are not past due and which do not exceed in the aggregate 40% of the total required permissible investments pursuant to K.S.A. 9-513b, and amendments thereto. A receivable is past due if not remitted to the licensee within 10 business days; or
- (9) any other investment or security device approved by the commissioner.
- (l) “person” means any individual, partnership, association, joint-stock association, trust, corporation or any other form of business enterprise; and
- (m) “resident” means any natural person or business entity located in this state;
- (n) “service provider” means any person that provides services as described in K.S.A. 9-511(a)(2)(A), and amendments thereto, that are used by an exempt entity or its agent to provide money transmission services to the exempt entity’s customers. A service provider does not contract with the customers of an exempt entity on its own or on behalf of an exempt entity or the exempt entity’s agent; and
- (o) “tangible net worth” means the physical worth of a licensee, calculated by taking a licensee’s assets and subtracting its liabilities and its intangible assets, such as copyrights, patents, intellectual property and goodwill.

History: L. 1967, ch. 73, § 1; L. 1995, ch. 18, § 1; L. 2006, ch. 113, § 5; L. 2012, ch. 161, § 4; L. 2013, ch. 45, § 1; L. 2014, ch. 120, § 2; L. 2015, ch. 33, § 1; L. 2017, ch. 52, § 5; July 1.

K.S.A. 9-509. Transmission of money; financial statement by person engaging in business; deposit of security or bond; conditions; powers and duties of state bank commissioner.

- (a) No person shall engage in the business of selling, issuing or delivering its payment instrument, check, draft, money order, personal money order, bill of exchange, evidence of indebtedness or other instrument for the transmission or payment of money or otherwise engage in the business of money transmission with a resident of this state, or, except as provided in K.S.A. 9-510, and amendments thereto, act as agent for another in the transmission of money as a service or for a fee or other consideration, unless such person files a complete application and obtains a license from the commissioner.
- (b) Each license shall expire December 31 of each year. A license shall be renewed by filing with the commissioner a complete application and nonrefundable application fee at least 30 days prior to expiration of the license. Renewal applications received between December 1 and December 31 of each year and incomplete renewal applications as of December 1 of each year shall be assessed a late fee. Expired licenses may be reinstated through the last day of February of each year by filing a reinstatement application and paying the appropriate application and late fees.

- (c) It shall be unlawful for a person, acting directly or indirectly or through concert with one or more persons, to acquire control of any person engaged in money transmission through purchase, assignment, pledge or other disposition of voting shares of such money transmitter, except with the prior approval of the commissioner. Request for approval of the proposed acquisition shall be made by filing a complete application with the commissioner at least 60 days prior to the acquisition.
- (d) All applications shall be submitted in the form and manner prescribed by the commissioner. Additionally, the following shall apply to all applications:
 - (1) The commissioner may use a nationwide multi-state licensing system and registry for processing applications, renewals, amendments, surrenders, and any other activity the commissioner deems appropriate. The commissioner may also use a nationwide multi-state licensing system and registry for requesting and distributing any information regarding money transmitter licensing to and from any source so directed by the commissioner. The commissioner may establish relationships or contracts with the nationwide multi-state licensing system and registry or other entities to collect and maintain records and process transaction fees or other fees related to applicants, licensees, as may be reasonably necessary to participate in the nationwide multi-state licensing system and registry. The commissioner may report violations of the law as well as enforcement actions and other relevant information to the nationwide multi-state licensing system and registry. The commissioner may require any applicant or licensee to file reports with the nationwide multi-state licensing system and registry in the form prescribed by the commissioner.
 - (2) An application shall be accompanied by nonrefundable fees established by the commissioner for the license. The commissioner shall determine the amount of such fees to provide sufficient funds to meet the budget requirements of administering and enforcing the act for each fiscal year. Any person using the multi-state licensing system shall pay all associated costs.
 - (3) (A) The commissioner may require fingerprinting of any individual, officer, director, partner, member, shareholder or any other person related to the application deemed necessary by the commissioner. If the applicant is a publicly traded corporation or a subsidiary of a publicly traded corporation, no fingerprint check shall be required. 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 jurisdiction.
 - (B) The commissioner 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 person, or in the case of an applicant company, the persons associated with the company.

- (C) For purposes of this section and in order to reduce the points of contact which the federal bureau of investigation may have with the individual states, the commissioner may use a nationwide multi-state licensing system and registry for requesting information from and distributing information to the department of justice or any governmental agency.
 - (D) Whenever the commissioner requires fingerprinting, any associated costs shall be paid by the applicant or the parties to the application.
- (4) Each application shall include audited financial statements for each of the two fiscal years immediately preceding the date of the application and an interim financial statement, as of a date not more than 90 days prior to the date of the filing of an application. The audited and interim financial statements shall be prepared in accordance with United States generally accepted accounting principles or in any other form or manner approved by the commissioner. Any person not in business two years prior to the filing of the application shall submit a statement in the form and manner prescribed by the commissioner sufficient to demonstrate compliance with subsection (e).
- (e) In addition, each person submitting an application shall meet the following requirements:
- (1) The tangible net worth of such person shall be at all times not less than \$250,000, as shown by an audited financial statement and certified to by an owner, a partner or officer of the corporation or other entity filed in the form and manner prescribed by the commissioner. A consolidated financial statement from an applicant's holding company may be accepted by the commissioner. The commissioner may require any person to file a statement at any other time upon request;
 - (2) such person shall deposit and at all times keep on deposit with a bank in this state approved by the commissioner, cash or securities satisfactory to the commissioner in an amount not less than \$200,000. The commissioner may increase the amount of cash or securities required up to a maximum of \$1,000,000 upon the basis of:
 - (A) The volume of money transmission business transacted in this state by such person; or
 - (B) the impaired financial condition of a licensee, as evidenced by a reduction in net worth or financial losses;
 - (3) in lieu of the deposit of cash or securities required by this subsection, such person may give a surety bond in an amount equal to that required for the deposit of cash or securities,

in a form satisfactory to the commissioner and issued by a company authorized to do business in this state, which bond shall be payable to the office of the state bank commissioner and be filed with the commissioner; and

- (4) such person shall submit a list to the commissioner of the names and addresses of other persons who are authorized to act as agents for transactions with Kansas residents.
- (f) The commissioner has the discretion to determine the completeness of any application submitted pursuant to this act. In making the determination, the commissioner shall take into consideration compliance with all requirements set out in this section and any other facts and circumstances that the commissioner deems appropriate.
 - (1) If the applicant fails to complete the application for a new license or for a change of control of a license within 60 days after the commissioner provides written notice of the incomplete application, the application will be considered abandoned and the application fee will not be refunded. An applicant whose application is abandoned under this section may reapply to obtain a new license.
 - (2) If the applicant fails to file a complete renewal application on or before December 31 of the year, the license will be deemed to expire on December 31 of the year.
- (g) The deposit of cash, securities or surety bond required by this section shall be subject to:
 - (1) Payment to the commissioner for the protection and benefit of purchasers of money transmission services, purchasers or holders of payment instruments furnished by such person, and those for whom such person has agreed to act as agent in transmission of monetary value and to secure the faithful performance of the obligations of such person in respect to the receipt, handling, transmission and payment of monetary value; and
 - (2) Payment to the commissioner for satisfaction of any expenses, fines, fees or refunds due pursuant to this act, levied by the commissioner or that become lawfully due pursuant to a final judgment or order.
- (h) The aggregate liability of the surety for all breaches of the conditions of the bond, in no event, shall exceed the amount of such bond. The surety on the bond shall have the right to cancel such bond upon giving 30 days' notice to the commissioner and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of the cancellation. The commissioner or any aggrieved party may enforce claims against such deposit of cash or securities or surety bond. So long as the depositing person is not in violation of this act, such person shall be permitted to receive all interest and dividends on the deposit and shall have the right to substitute other securities satisfactory to the commissioner. If the deposit is made with a bank, any custodial fees shall be paid by such person.

- (i) (1) The commissioner shall have the authority to examine the books and records of any person operating in accordance with the provisions of this act, at such person's expense, to verify compliance with state and federal law.
 - (2) The commissioner may require any person operating in accordance with the provisions of this act to maintain such documents and records as necessary to verify compliance with this act, or any other applicable state or federal law or regulation.
 - (3) For purposes of investigation, examination or other proceeding under this act, the commissioner may administer or cause to be administered oaths, subpoena witnesses and documents, compel the attendance of witnesses, take evidence and require the production of any document that the commissioner determines to be relevant to the inquiry.
- (j) Except as authorized with regard to the appointment of agents, a licensee is prohibited from transferring, assigning, allowing another person to use the licensee's license, or aiding any person who does not hold a valid license under this act in engaging in the business of money transmission.

History: L. 1967, ch. 73, § 2; L. 1986, ch. 55, § 1; L. 1992, ch. 62, § 1; L. 2006, ch. 113, § 6; L. 2012, ch. 161, § 5; L. 2013, ch. 45, § 2; L. 2014, ch. 120, § 3; L. 2015, ch. 33, § 2; L. 2017, ch. 52, § 6; July 1.

K.S.A. 9-510. Same; engaging in business; locations; list of agents.

A licensee may engage in the business of money transmission at one or more locations in this state and through or by means of such agents as such licensee may designate and appoint from time to time subject to the following provisions:

- (a) No agent of a licensee shall be required to comply with the licensing provisions of this act.
- (b) Only a licensee may designate an agent. A licensee must obtain prior approval from the commissioner to designate an agent that conducts money transmission business through the internet without a physical location in this state.
- (c) No agent shall appoint a subagent.
- (d) A person acting as an agent for an exempt entity or any other person accepting funds for transmission through an exempt entity is a money transmitter and subject to the provisions of this act.
- (e) In conjunction with filing a renewal application, each applicant shall provide in the form and manner prescribed by the commissioner a complete list of its proposed or existing agents. At the end of each calendar quarter each licensee shall provide in the form and manner prescribed by the commissioner any additions or deletions in the licensee's agents.

- (f) A written contract between a licensee and agent shall be maintained for inspection by the commissioner upon request and the written contract must contain provisions to the following effect:
 - (1) The agent must operate in full compliance with this act and the rules and regulations adopted thereunder.
 - (2) The agent is prohibited from using subagents or conducting money transmission business from locations that have not been approved by the licensee.
 - (3) A description of the specific money services the licensee has permitted the agent to perform on behalf of the licensee.
- (g) The agent may only conduct activities authorized by the licensee in the written agreement, unless the agent is also a licensee.
- (h) A licensee may contract with another licensee to use that other licensee's existing authorized agents only for the purpose of loading funds onto existing prepaid access cards. The licensee with the direct contractual relationship with the agents shall record the transactions as such licensee's own. If a shared agent sells new prepaid access cards on behalf of the licensee, then such licensee must directly contract with the agent and comply with all other requirements for designating an agent.

History: L. 1967, ch. 73, § 3; L. 2006, ch. 113, § 7; L. 2012, ch. 161 § 6; May 31; L. 2013, ch. 45 § 3; July 1; L. 2015, ch. 33, § 3, July 1.

K.S.A. 9-511. Inapplicability of act to certain businesses and activities.

The following persons shall be exempt from the provisions of this act:

- (a) (1) Banks, building and loan associations, savings and loan associations, savings banks or credit unions, organized under the laws of and subject to the supervision of this state, another state or the United States;
- (2) service providers that: (A) By written agreement with the exempt entities listed in (a)(1), provide for receipt and delivery of funds, network access, processing, clearance or settlement services in support of money transmission activities; and (B) allow the state or federal regulators with regulatory jurisdiction over the exempt entity to examine and inspect the applicable records, books and transactions relating to the service provider;
- (3) the government of the United States and its agencies, including agents of the government and its agencies; or

- (4) the state of Kansas and its agencies, including agents of the state of Kansas and its agencies.
- (b) This act also shall not apply to the distribution, transmission or payment of money as a part of the lawful practice of law, bookkeeping, accounting or real estate sales or brokerage or as an incidental and necessary part of any lawful business activity.

History: L. 1967, ch. 73, § 4; L. 1989, ch. 48, § 10; L. 1990, ch. 53, § 1; April 12; L. 2006, ch. 113, § 8; L. 2012, ch. 161 § 7; May 31; L. 2013, ch. 45 § 4; July 1; L. 2015, ch. 33, § 4, July 1.

K.S.A. 9-512. Same; penalties for violations.

- (a) The commissioner, after notice and an opportunity for hearing, may issue an order to address any violation of this act:
 - (1) Assessing a fine against any person who violates this act, or rules and regulations adopted thereto, in an amount not to exceed \$5,000 per violation;
 - (2) assessing the agency's operating costs and expenses for investigating and enforcing this act;
 - (3) requiring the person to pay restitution for any loss arising from the violation or requiring the person to disgorge any profits arising from the violation;
 - (4) barring the person from future application for licensure pursuant to the act; and
 - (5) requiring such affirmative action as in the judgment of the commissioner which will carry out the purposes of this act.
- (b) The commissioner may enter into a consent order at any time with a person to resolve a matter arising under this act, rules and regulations adopted thereto, or an order issued pursuant to this act.
- (c) Any person who knowingly violates any provision of this act shall be guilty of a severity level 9, nonperson felony. Each transaction in violation of this act and each day that a violation continues shall be a separate offense. Whenever a corporation violates any provision of this act, such violation shall be attributed to individual directors, officers, and agents who have authorized, ordered, or performed any of the acts constituting such violation.
- (d) A corporation and its directors, officers, and agents may each be prosecuted separately for violations of this act and the acquittal or conviction of one such director, officer or agent shall not abate the prosecution of the others.

- (e) Whenever it appears that a person has violated, or is likely to violate, this act, rules and regulations adopted thereunder, or an order issued pursuant to this act, then the commissioner may bring an action for injunctive relief to enjoin the violation or enforce compliance, regardless of whether or not criminal proceedings have been instituted. Any person who engages in activities that are regulated and require a license under this act shall be considered to have consented to the jurisdiction of the courts of this state for all actions arising under this act.

History: L. 1967, ch. 73, § 5; L. 2006, ch.113, § 9; L. 2012, ch. 161 § 8; May 31.

K.S.A. 9-513. Same; invalidity of part.

The commissioner shall rely on the deputy commissioner of the banking division established pursuant to K.S.A. 75-3135, and amendments thereto, and such deputy's staff to administer, interpret and enforce this act for the purpose of protecting the citizens of this state, against financial loss, who purchase payment instruments or who give money or control of their funds or credit into the custody of another person for transmission, regardless of whether the transmitter has any office, facility, agent or other physical presence in the state.

History: L. 1967, ch. 73, § 6; L. 2006, ch. 113, § 10; L. 2012, ch. 161 § 9; May 31; L. 2013 ch. 45 § 5; July 1.

K.S.A. 9-513a. Same; issuance of license; revocation of license, when.

The commissioner, after notice and an opportunity for a hearing, may deny, suspend, revoke or refuse to renew or approve a license issued pursuant to this act, or issue a cease and desist order if the commissioner finds any of the following are applicable to any person who is required to be licensed under this act or such person's agent:

- (a) The financial responsibility, character, reputation, experience and general fitness of the person, such person's senior officers, directors and principal stockholders are such to warrant the belief that the business may not be operated efficiently, fairly and in the public interest;
- (b) the person may be financially unable to perform such person's obligations or that the person has willfully failed without reasonable cause to pay or provide for payment of any of such person's obligations related to the person's money transmission business;
- (c) the person no longer meets a requirement for initial granting of a license;
- (d) the person has filed with the commissioner any document or statement falsely representing or omitting a material fact;

- (e) The person concealed a fact or a condition exists which would clearly have justified the commissioner's refusal to grant a license had the fact or condition been known to exist at the time the application for the license was made;
- (f) the person or a senior officer, director or a stockholder who owns more than 10% of the money transmission business' outstanding stock has been convicted of a crime involving fraud, dishonesty or deceit;
- (g) there has been entry of a federal or state administrative order against the person for violation of any rule and regulation applicable to the conduct of the person's money transmission business;
- (h) the person refused to provide information requested by the commissioner or refused to permit an examination or investigation by the commissioner;
- (i) a failure to pay to the commissioner any fee required by this act;
- (j) the person has engaged in any transaction, practice or business conduct that is fraudulent or deceptive in connection with the business of money transmission;
- (k) the person advertises, displays, distributes, broadcasts or televises any false, misleading or deceptive statement or representation with regard to rates, terms or conditions for the transmission of money;
- (l) the person fails to keep and maintain sufficient records to permit an audit to satisfactorily disclose to the commissioner the licensee's compliance with the provisions of the act;
- (m) the person has been the subject of any disciplinary action by this or any other state or federal agency;
- (n) a final judgment has been entered against the person in a civil action and the commissioner finds the conduct on which the judgment is based indicates that it would be contrary to the public interest to permit such person to be licensed;
- (o) the person has violated any order issued by the commissioner, any provision of this act, any rule and regulation adopted thereto, or any other state or federal law applicable to money transmission; or
- (p) the person has refused or otherwise failed to provide, after a reasonable time as determined by the commissioner, any information necessary to approve or renew an application or license issued pursuant to this act.

History: L. 2006, ch. 113, § 2; L. 2012, ch. 161, § 10; L. 2015, ch. 33, § 5; L. 2017, ch. 52, § 7; July 1.

K.S.A. 9-513b. Money transmitter; permissible investments; requirements.

- (a) Each licensee under this act shall at all times possess permissible investments having an aggregate market value, calculated in accordance with United States generally accepted accounting principles, of not less than the aggregate amount of the outstanding payment liability held by the licensee in the United States. This requirement may be waived by the commissioner if the dollar volume of a licensee's outstanding payment liability does not exceed the bond or other security devices posted by the licensee pursuant to K.S.A. 9-509, and amendments thereto.
- (b) In the event of the bankruptcy of the licensee, the permissible investments shall be deemed by operation of law to be held in trust for the benefit of all persons whose money or monetary value is considered outstanding, even if such permissible investments are commingled with other assets of the licensee.

History: L. 2006, ch. 113, § 3; July 1; L. 2015, ch. 33, § 6, July 1.

K.S.A. 9-513c. Same; confidential information; release of, when.

- (a) Notwithstanding any other provision of law, all information or reports obtained and prepared by the commissioner in the course of licensing or examining a person engaged in money transmission business shall be confidential and may not be disclosed by the commissioner except as provided in subsection (c) or (d).
- (b) (1) 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.
(2) The provisions of this subsection shall expire on June 30, 2019, unless the legislature acts to reenact such provisions. The provisions of this paragraph shall be reviewed by the legislature prior to July 1, 2019.
- (c) (1) The commissioner shall have the authority to share supervisory information, including reports of examinations, with other state or federal agencies having regulatory authority over the person's money transmission business and shall have authority to conduct joint examinations with other regulatory agencies.
(2) (A) The requirements under any federal or state law regarding the confidentiality of any information or material provided to the nationwide multi-state licensing system, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the system. Such information and material may be shared with all state and federal

regulatory officials with financial services industry oversight authority without the loss of confidentiality protections provided by federal and state laws.

- (B) The provisions of this paragraph shall expire July 1, 2018, unless the legislature acts to reenact such provisions. The provisions of this section shall be reviewed by the legislature prior to July 1, 2018.
- (d) The commissioner may provide for the release of information to law enforcement agencies or prosecutorial agencies or offices who shall maintain the confidentiality of the information.
- (e) The commissioner may accept a report of examination or investigation from another state or federal licensing agency, in which the accepted report is an official report of the commissioner. Acceptance of an examination or investigation report does not waive any fee required by this act.
- (f) Nothing shall prohibit the commissioner from releasing to the public a list of persons licensed or their agents or from releasing aggregated financial data on such persons.
- (g) The provisions of subsection (a) shall expire on July 1, 2021, unless the legislature acts to reauthorize such provisions. The provisions of subsection (a) shall be reviewed by the legislature prior to July 1, 2021.

History: L. 2006, ch. 113, § 4; L. 2011, ch. 11, § 1; L. 2012, ch. 161 § 11; May 31; L. 2013 ch. 45 § 6; July 1; L. 2014 ch. 120 § 4; July 1.

K.S.A. 9-513d. Citation of Kansas money transmitter act.

- (a) The provisions of K.S.A. 9-508 through 9-513, and amendments thereto, K.S.A. 2013 Supp. 9-513a through 9-513d, and amendments thereto, and section 1, and amendments thereto, shall be known as and may be cited as the Kansas money transmitter act.
- (b) The commissioner is hereby authorized to adopt rules and regulations necessary to administer and implement the Kansas money transmitter act.

History: L. 2006, ch. 113, § 1; July 1; L. 2013, ch. 45 § 7; July 1; L. 2014 ch. 120 § 5; July 1.

K.S.A. 9-513e. Same; change in executive officer or director; fingerprinting.

- (a) Each licensee under this act shall within 30 days report to the commissioner any change, for whatever reason, in the executive officers or directors, including in its report a statement of the past and current business and professional affiliations of the new executive officers or directors.

- (b) The commissioner may require fingerprinting of any new executive officer or director, deemed necessary by the commissioner. 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 jurisdiction.
- (c) The commissioner 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 person.
- (d) For purposes of this section and in order to reduce the points of contact which the federal bureau of investigation may have with the individual states, the commissioner may use a nationwide multi-state licensing system and registry for requesting information from and distributing information to the department of justice or any governmental agency.
- (e) Whenever the commissioner requires fingerprinting, any associated costs shall be paid by the applicant or the parties to the application. If the applicant is a publicly traded corporation or a subsidiary of a publicly traded corporation, no fingerprint check shall be required.
- (f) The provisions of this section shall be part of and supplemental to the Kansas money transmitter act.

History: L. 2014 ch. 120 § 1; July 1.

Chapter 9 - BANKS AND BANKING; TRUST COMPANIES

ARTICLE 5 – MISCELLANEOUS PROVISIONS

K.S.A. 9-514. Suspension of business by banks and trust companies in emergency; definitions.

As used in this act unless the context otherwise requires:

- (1) “Commissioner” means the state bank commissioner and any other person lawfully exercising the powers of the state bank commissioner;
- (2) “Bank” includes banks and trust companies incorporated under the laws of this state, and to the extent that the provisions hereof are not inconsistent with and do not infringe upon paramount federal law, also includes national banks;
- (3) “Officers” means the person or persons designated by the board of directors of a bank to act for the bank 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;
- (4) “Office” means any place at which a bank transacts its business;
- (5) “Emergency” means any condition or occurrence which may interfere physically with the conduct of normal business operations at the offices of a bank, or which poses an imminent or existing threat to the safety or security of persons or property, or both. Without limiting the generality of the foregoing, an emergency may arise as a result of any one or more of the following: Fire; flood; earthquake; hurricane; wind, rain or snow storm; labor strike by bank employees; power failure; transportation failure; interruption of communication 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.

History: L. 1971, ch. 35, § 1; July 1.

K.S.A. 9-515. Same; powers of commissioner.

Whenever the commissioner is of the opinion that an emergency exists, or is impending, in this state or in any part or parts of this state, he or she may, by proclamation, authorize banks located in the affected area or areas to close their offices. In addition, if the commissioner is of the opinion that an emergency exists, or is impending, which affects, or may affect, a particular bank or banks, but not banks located in the area generally, he or she may authorize the particular

bank or banks to close. The bank or banks so closed shall remain closed until the commissioner proclaims that the emergency has ended, or until such earlier time as the officers of the bank determine that the bank theretofore closed because of the emergency, should reopen, and, in either event, for such further time thereafter as may reasonably be required to reopen as determined by the commissioner.

History: L. 1971, ch. 35, § 2; July 1.

K.S.A. 9-516. Same; powers of bank officers.

- (a) Whenever the officers of a bank are of the opinion that an emergency exists, or is impending, which affects, or may affect, a bank's offices, they shall have the authority, in the reasonable and proper exercise of their 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 offices so closed shall remain closed until such time as the officers determine that the emergency has ended, and for such further time thereafter as may reasonably be required to reopen; however, in no case shall such offices remain closed for more than forty-eight (48) consecutive hours, excluding other legal holidays, without requesting and obtaining the approval of the commissioner.
- (b) The officers of a bank may close the bank'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 special observance as in the reasonable and proper exercise of their discretion they feel the bank should observe.

History: L. 1971, ch. 35, § 3; L. 1975, ch. 44, § 4; July 1.

K.S.A. 9-517. Same; notice to commissioner.

A bank closing its offices pursuant to the authority granted under K.S.A. 9-516(a) shall give as prompt notice of its action as conditions will permit and by any means available to the commissioner, or in the case of a national bank, to the comptroller of the currency.

History: L. 1971, ch. 35, § 4; July 1.

K.S.A. 9-518. Same; effect of closing; act in addition to other laws.

Any day on which a bank is closed during all or any part of its normal banking hours pursuant to the authorization granted under this act shall be, with respect to such bank, a legal holiday for all purposes with respect to any banking business of any character. No liability, or loss

of rights of any kind, on the part of any bank, or director, officer, or employee thereof, shall accrue or result by virtue of any closing authorized by this act.

The provisions of this act 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 excusing the delay by a bank in the performance of its duties and obligations because of emergencies or conditions beyond the bank's control or otherwise.

History: L. 1971, ch. 35, § 5; July 1.

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

For the purposes of K.S.A. 9-520 through 9-524, and amendments thereto, 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) except the term shall 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, 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 shall not include any corporation the majority of the shares of which are owned by the United States or by any state or include 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, which 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; 2016, ch. 54, § 1; 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. 2015 Supp. 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. Same; 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 which is the subject of the proposed acquisition and in the public interest generally. Otherwise, the application shall be denied.
- (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; 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; Sept. 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. 2015 Supp. 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.

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" means a state 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.

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; July 1.

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 with articles of incorporation that have lapsed, or hereafter shall lapse, may renew and extend the bank'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; 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; reapplication required.

Any newly organized bank or trust company which 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.

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

K.S.A. 9-808. Stockholder vote for conversion to state bank; application to commissioner; investigation; capital and name; stock for stock or property; powers continued; assets transferred; same entity; divestiture 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 upon the affirmative vote of not less than 2/3 of the institution's outstanding voting stock. Any national bank, federal savings association or federal savings bank desiring to become a state bank shall apply to the commissioner for permission to convert to a state bank and:
 - (1) Shall submit a transcript of the minutes of the meeting of the institution's stockholders showing approval of the proposed conversion;
 - (2) the name selected for the bank shall not be the name of any other bank:
 - (A) Doing business in the same city or town; or

- (B) within a 15-mile radius of the location of the converted institution. The name shall be accepted or rejected by the commissioner, although any bank may request exemption from the commissioner from this paragraph; and
- (3) 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 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 will not adversely affect the interests of the depositors;
 - (3) the resulting state bank 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 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 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 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, and the resulting state bank 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 bank 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; July 1.

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

- (a) Any state bank may convert to a national bank upon the affirmative vote of not less than 2/3 of the bank's outstanding voting stock.
- (b) The state bank 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 applies for approval to convert to a national banking association from the office of the comptroller of the currency.
- (c) The state bank shall provide to the commissioner written notice of approval by the comptroller of currency to convert to a national bank within 10 days of receiving the approval.
- (d) Within 15 days following the issuance of a charter certificate to the bank by the comptroller, the bank 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; 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. 2016 Supp. 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.

Article 9.-BANKING CODE; CAPITAL STOCK AND STRUCTURE

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

- (a) For purposes of this section:
 - (1) “Capital” means 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;
 - (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 banks organized on or after July 1, 2015, the minimum capital of a 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) 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. 2016 Supp. 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; July 1.

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

- (a) The common and preferred stock of any 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 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 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; July 1.

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

- (a) The shares of stock of any 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 bank or trust company so long as the registered owner thereof shall be liable as principal debtor, surety or otherwise to the 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 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; July 1.

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

- (a) With prior approval of the commissioner, a 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(a), 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 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 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; July 1.

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

The capital stock of any 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; July 1.

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

- (a) Whenever it shall appear that the capital stock of any bank or trust company is impaired, the commissioner shall notify the 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; July 1.

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

- (a) Whenever any stockholder of a 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; 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 bank or trust company, and with the prior approval of the commissioner, a 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 mail.
- (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; 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 bank or trust company. The current dividends of any bank or trust company 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; July 1.

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

- (a) The directors of any bank or trust company may declare cash dividends only from undivided profits. 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; 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 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; 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 if:
 - (i) The direct and overlapping indebtedness of such municipality or quasi-municipality is in excess of 10% of its assessed valuation, excluding therefrom all valuations on intangibles and homestead exemption valuation; 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 or 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; and
- (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.
- (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; July 1.

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

Upon approval of the stockholders owning 2/3 of the voting stock of the bank, the bank may issue convertible or nonconvertible capital notes or debentures in such amounts and under such terms and conditions as shall be approved by the 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) 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.
- (d) 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.

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

- (i) 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.

- (j) 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.

- (k) (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; 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 time deposit account in the lending bank. In the case of a time deposit which may be withdrawn in whole or in part prior to maturity, 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; 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 at which a depository institution, as defined by K.S.A. 9-701, and amendments thereto, receives deposits, renews time deposits, closes loans, services loans or receives payments on loans or other obligations, as agent, for a bank pursuant to 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, at which deposits are received, checks paid, money lent or trust authority exercised, if approval has been granted by the commissioner pursuant to K.S.A. 9-1602, and amendments thereto;
- (b) establishment of a new branch bank or relocation of an existing branch banks [bank]:
 - (1) After first applying for and obtaining the approval of the commissioner, 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;
 - (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 in which the applicant bank seeks to operate the branch bank. The applicant shall publish notice of the time, date and place of such hearing in a newspaper of general circulation in the county where the applicant bank proposes to locate the branch bank, not less than 10, nor more than 30, days prior

to the date of the hearing, and proof of publication shall be filed with the commissioner. At any such hearing, all interested persons shall be allowed to present written and oral evidence to the commissioner, or the commissioner's designee, in support of or in opposition to the branch bank. Upon completion of a transcript of the testimony given at any such hearing, the transcript shall be filed in the office of the commissioner;

- (6) if the commissioner determines a public hearing is not warranted, the commissioner shall approve or disapprove the application within 15 days after receipt of a complete application, but not prior to the end of the comment period. If a public hearing is held, the commissioner shall approve or disapprove the application within 60 days after consideration of the complete application and the evidence gathered during the commissioner's investigation. The period for consideration of the application may be extended if the commissioner determines the application presents a significant supervisory concern. 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 which 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, which remote service units shall not be considered to be branch banks. Any banking transaction effected by use of a

remote service unit shall be deemed to be transacted at a bank and not at a remote service unit;

- (g) as a condition to the operation and use of any remote service unit in this state, a state bank or national banking association, each hereinafter referred to as a bank, which desires to operate or enable its customers to utilize a remote service unit must agree that such remote service unit will be available for use by customers of any other bank or banks upon the request of such bank or banks to share 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 which, for activation and account access, is dependent upon the use of a machine-readable instrument in the possession and control of the holder of an account with a bank or is activated by a person upon verifiable personal identification. The term shall include "online" computer terminals which 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 so long as 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; July 1.

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. 2015 Supp. 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.

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 less than five nor more than 25 members who shall be elected by the stockholders at any regular annual meeting which 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.

- (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 have been given by first-class mail to the shareholders.
- (e) Any newly created directorship must 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 shall become 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 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 using an electronic means.
- (j) Every bank and trust company shall notify the commissioner of any change in the chief executive officer, president or directors, 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.

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; 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.

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. 9-1128. 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; Mar. 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. Deposits of minors.

Any bank may receive deposits from minors or in the name of minors and pay the same upon the order of such minors whether or not such minors are emancipated. Payments so made shall discharge the bank from any further liability on the account.

History: L. 1947, ch. 102, § 53; L. 2015, ch. 38, § 69; 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.

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 municipal corporation or quasi-municipal corporation of the state of Kansas with any bank, savings and loan association or savings bank, such municipal or quasi-municipal corporation 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, which 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 which 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 municipal corporation or quasi-municipal corporation 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 municipal corporation or quasi-municipal corporation 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 municipal corporation or quasi-municipal corporation 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 which under federal law may be accepted as security for public funds;
- (2) bonds of any municipal corporation or quasi-municipal corporation of the state of Kansas which 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 municipal corporation or quasi-municipal corporation of the state of Kansas;
- (5) revenue bonds of any municipal corporation or quasi-municipal corporation of the state of Kansas if approved by the commissioner;
- (6) temporary notes of any municipal corporation or quasi-municipal corporation of the state of Kansas which are general obligations of the municipal or quasi-municipal corporation issuing the same;
- (7) warrants of any municipal corporation or quasi-municipal corporation of the state of Kansas the issuance of which is authorized by the state board of tax appeals and which 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 which 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 paragraph (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 paragraph (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) No such bank, savings and loan association or savings bank may deposit and maintain for the benefit of the governing body of a municipal or quasi-municipal corporation of the state of Kansas, any securities which consist of:
 - (1) Bonds secured by revenues of a utility which 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 (d) or such bonds are rated at least Aa by Moody's investors service or AA by Standard & Poor's corp.
- (e) 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. 2016 Supp. 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.

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; 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 mail 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; 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. 2016 Supp. 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 trust funds.

- (a) Any bank or trust company authorized to act as fiduciary may establish common trust 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 common trust 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; July 1.

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. 2016 Supp. 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 bank who has been convicted, or who is hereafter convicted, of any felony or any crime involving dishonesty or a breach of trust.
- (b) Any bank which 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; 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) "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.
- (b) "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; 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 or indirectly or through concert with one or more persons, to acquire control of any bank or trust company;
 - (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) 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; July 1.

K.S.A. 9-1721. Application process; approval factors and criteria.

- (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 an 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 application within the 60-day time period, 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.
- (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; July 1.

K.S.A. 9-1722. Application requirements.

- (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 any proposed officer, director, shareholder or any other person deemed necessary by the commissioner. 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 any other jurisdiction. The commissioner 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 proposing to acquire the trust company. Whenever the commissioner requires fingerprinting, any associated costs shall be paid by the applicant or the parties to the application.
- (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. 2016 Supp. 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; 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) 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 in which 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 no 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; 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 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 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 at which 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.

- (b) Unless the bank or trust company shall appear 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 shall find 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 otherwise 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 shall dismiss 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; 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.

- (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. The provisions of this subsection shall expire on July 1, 2020, unless the legislature reviews and reenacts this provision pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2020.

History: L. 2015, ch. 38, § 3; 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 by district court; procedure.

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. 2015 Supp. 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. 2015 Supp. 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

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. 2015 Supp. 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.

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.

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.

K.S.A. 9-2011. Unlawfully engaging in the banking or trust company business; penalty.

It shall be unlawful for any individual, firm or corporation to advertise, publish or otherwise promulgate that the individual, firm or corporation is engaged in the banking business or trust business without first having obtained authority from the commissioner. 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; 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. 9-2101. Issuing certificate of authority as bank to trust company authorized to accept deposits; when.

Any trust company authorized to receive deposits under K.S.A. 17-2025, prior to its repeal, shall be issued a certificate of authority by the commissioner upon surrendering such trust company's charter and complying with the provisions of K.S.A. 9-804, and amendments thereto, and shall thereafter be subject to all of the requirements, limitations and terms of the state banking code.

History: L. 1989, ch. 48, § 1; L. 2015, ch. 38, § 142; July 1.

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; 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. 9-1602, 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, which 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 which has trust powers and its principal place of business is in this state and which 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 which has its principal place of business in this state but which 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 to and is substituted for the originating trustee as to all fiduciary powers, rights, duties, privileges and liabilities with respect to all accounts for which the originating trustee serves in any fiduciary capacity, except as may be provided otherwise in the agreement. Notwithstanding

the provisions of this section, no contracting trustee with a home office outside the state of Kansas shall enter into an agreement except with an originating trustee which is commonly controlled as defined in K.S.A. 9-1612, and amendments thereto, by the same bank holding company.

- (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, which pertain to the affected fiduciary accounts; and
 - (2) the originating trustee is absolved from all fiduciary duties and obligations arising under 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 which provides 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, which shall at a minimum include certified copies of the following documents:
 - (1) The agreement;

- (2) the written action taken by the board of directors of the originating trustee or financial institution approving the agreement;
 - (3) all other required regulatory approvals;
 - (4) 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 for two consecutive weeks and provide for a comment period of not less than 10 days after the date of the second publication; and
 - (5) 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 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) 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. 2016 Supp. 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.
- (h) 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.
- (i) The commissioner shall render approval or disapproval of the application within 90 days of receiving a complete application.
- (j) 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.
- (k) 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.
- (l) 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; 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 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 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. 2016 Supp. 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 less than one mile from the trust company's existing location, the commissioner may exempt such trust company from the requirements of this section:
- (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; July 1.

K.S.A. 9-2111. Prohibiting out-of-state entity to establish or operate trust facility; exceptions, reciprocity.

- (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, the home office of which is located outside the state 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 reciprocally 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.
- (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 has reciprocity with Kansas, must 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 at which trust 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. 2015 Supp. 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; 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

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.

Chapter 75 – STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

Article 13 – STATE BANK COMMISSIONER

K.S.A. 75-1304. State bank commissioner; appointment; term; qualifications.

- (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 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 a state or federal regulator.
 - (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; May 31.

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.