

SENATE BILL No. 20

By Committee on Financial Institutions and Insurance

1-12

1 AN ACT concerning financial institutions; relating to the state banking
2 code; amending K.S.A. 2016 Supp. 9-1101, 9-1102, 9-1104 and 9-1114
3 and repealing the existing sections.
4

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

6 Section 1. K.S.A. 2016 Supp. 9-1101 is hereby amended to read as
7 follows: 9-1101. (a) Any bank hereby is authorized to exercise by its board
8 of directors or duly authorized officers or agents, subject to law, the
9 following powers:

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

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

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

20 (4) (A) to buy and sell:

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

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

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

28 (B) No bank shall invest in bonds, securities or other evidences of
29 indebtedness if:

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

34 (ii) any bond, security, or evidence of indebtedness of any such
35 municipality or quasi-municipality that has been in default in the payment
36 of principal or interest within 10 years prior to the time that any bank

1 acquires any such bonds, security or evidence of indebtedness;

2 (5) to buy and sell investment securities which are evidences of
3 indebtedness limited to buying and selling without recourse marketable
4 obligations evidencing indebtedness of any state or federal agency,
5 including revenue bonds issued pursuant to K.S.A. 76-6a15, and
6 amendments thereto, or the state armory board in the form of bonds, notes
7 or debentures or both. The total amount of such investment securities of
8 any one obligor or maker held by such bank shall at no time exceed 25%
9 of the capital stock, surplus, undivided profits, 100% of the allowance for
10 loan and lease loss, capital notes and debentures and reserve for
11 contingencies of such bank, except that this limit shall not apply to
12 obligations of the United States government or any agency thereof;

13 (6) to buy and sell investment securities which are evidences of
14 indebtedness limited to buying and selling without recourse marketable
15 obligations evidencing indebtedness of any person, copartnership,
16 association or corporation. The total amount of such investment securities
17 of any one obligor or maker held by such bank shall at no time exceed
18 25% of the capital stock surplus, undivided profits, 100% of the allowance
19 for loan and lease loss, capital notes and debentures and reserve for
20 contingencies of such bank;

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

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

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

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

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

31 (8) to subscribe to, buy and own stock in one or more small business
32 investment companies in Kansas as otherwise authorized by federal law,
33 except that in no event shall any bank acquire shares in any small business
34 investment company if, upon the acquisition, the aggregate amount of
35 shares in small business investment companies then held by the bank
36 would exceed 5% of the bank's capital and surplus;

37 (9) to subscribe to, buy and own stock in any agricultural credit
38 corporation or livestock loan company, or its affiliate, organized pursuant
39 to the provisions of the laws of the United States providing for the
40 information and operation of agricultural credit corporations and livestock
41 loan companies, in an amount not exceeding either the undivided profits or
42 10% of the capital stock and surplus and undivided profits from such bank,
43 whichever is greater;

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

5 (11) to act as escrow agent;

6 (12) to subscribe to, acquire, hold and dispose of stock of a
7 corporation the purpose of which is to acquire, hold and dispose of loans
8 secured by real estate mortgages, and to acquire, hold and dispose of the
9 debentures and capital notes of such corporation. No bank's investment in
10 such stock, debentures and capital notes shall exceed 2% of its capital
11 stock, surplus and undivided profits;

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

14 (14) to subscribe to, acquire, hold and dispose of any class of stock,
15 debentures and capital notes of MABSCO agricultural services, inc. or any
16 similar corporation the purpose of which is to acquire, hold and dispose of
17 agricultural loans originated by Kansas banks. No bank's investment in
18 such stock, debentures and capital notes shall exceed 2% of its capital
19 stock, surplus and undivided profits;

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

24 (16) to subscribe to, buy and own stock in a bankers' bank organized
25 under the laws of the United States, this state or any other state, or a one
26 bank holding company which owns or controls such a bankers' bank,
27 except no bank's investment in such stock shall exceed 10% of its capital
28 stock, surplus and undivided profits;

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

33 (18) subject to the prior approval of the commissioner and subject to
34 such rules and regulations as are adopted by the commissioner pursuant to
35 K.S.A. 9-1713, and amendments thereto, to promote safe and sound
36 banking practices, a bank may establish a subsidiary which engages in the
37 following securities activities:

38 (A) Selling or distributing stocks, bonds, debentures, notes, mutual
39 funds and other securities;

40 (B) issuing and underwriting municipal bonds;

41 (C) organizing, sponsoring and operating mutual funds; or

42 (D) acting as a securities broker-dealer;

43 (19) to subscribe to, buy and own stock in an insurance company

1 incorporated prior to 1910, under the laws of Kansas, with corporate
2 headquarters in this state, which only provides insurance to financial
3 institutions. The investment in such stock shall not exceed 2% of the
4 bank's capital stock, surplus and undivided profits;

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

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

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

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

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

32 (21) act as an agent and receive deposits, renew time deposits, close
33 loans, service loans and receive payments on loans and other obligations
34 for any company which is a subsidiary, as defined in K.S.A. 9-519, and
35 amendments thereto, of the bank holding company which owns the bank.
36 Nothing in this subsection shall authorize a bank to conduct activities as an
37 agent which the bank or the subsidiary would be prohibited from
38 conducting as a principal under any applicable federal or state law. Any
39 bank which enters or terminates any agreement pursuant to this subsection
40 shall within 30 days of the effective date of the agreement or termination
41 provide written notification to the commissioner which details all parties
42 involved and services to be performed or terminated;

43 (22) to make loans to the bank's stockholders or the bank's controlling

1 holding company stockholders on the security of the shares of the bank or
2 the bank's controlling bank holding company, but loans on the security of
3 the shares of the bank may occur only if the bank would have extended
4 credit to such stockholder on exactly the same terms without the bank
5 shares pledged as collateral;

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

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

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

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

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

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

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

24 (iv) operating a travel agency; and

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

27 (B) Such activities do not include:

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

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

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

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

36 (i) Directly or indirectly owning, controlling or having power to vote
37 25% or more of any class of the voting shares of a financial subsidiary;

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

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

43 (26) to maintain and operate a postal substation on banking premises,

1 in accordance with the rules and regulations of the United States postal
2 service. The bank may advertise the services of the substation for the
3 purpose of attracting customers to the bank and receive income therefrom.
4 The bank shall keep the books and records of the substation separate from
5 the records of other banking operations;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 Sec. 2. K.S.A. 2016 Supp. 9-1102 is hereby amended to read as
34 follows: 9-1102. (a) Any bank or trust company may own, purchase, lease,
35 hold, encumber or convey real property, including any building or
36 buildings necessary for the bank's or trust company's accommodation in
37 the transaction of its business. Real property shall be disposed of or
38 charged off the bank's or trust company's books not later than seven years
39 after the real property's intended use for bank or trust purposes ends.
40 Before the end of the holding period, a bank or trust company may request
41 authorization from the commissioner to hold the real property for an
42 additional year. No bank or trust company shall be granted more than three
43 requests for additional time to hold any one parcel of real property.

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

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

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

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

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

22 (1) The book value of real estate plus all encumbrances thereon;
23 (2) the book value of furniture and fixtures;
24 (3) the book value of stock in a safe deposit company;
25 (4) the book value of stock in a trust company; or
26 (5) the book value of stock in a corporation organized under the laws
27 of this state owning real estate occupied by the bank or trust company and
28 advances to such corporation acquired or made after July 1, 1973, except
29 that any real estate not necessary for the accommodation of the bank's or
30 trust company's business shall be disposed of or charged off its books
31 according to subsection (a).

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

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

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

40 (3) At the termination of the 10 years such real estate shall be charged
41 off. The commissioner may grant an extension not to exceed four years, if
42 in the commissioner's judgment, carrying the real estate as an asset for
43 such extended period will be to the advantage of the bank or trust

1 company. Any such extensions issued shall be reviewed by the
2 commissioner on an annual basis.

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (B) certify that the bank's loss exposure is limited, as a legal and
43 accounting matter, and that the bank does not have open-ended liability for

1 the obligations of the corporation or limited liability company;

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

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

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

10 Sec. 3. K.S.A. 2016 Supp. 9-1104 is hereby amended to read as
11 follows: 9-1104. (a) *Definitions*. As used in this section:

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

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

23 (3) "Loan" means:

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

26 (B) a contractual commitment to advance funds;

27 (C) an overdraft;

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

30 (i) Discharge in bankruptcy;

31 (ii) expiration of the statute of limitations;

32 (iii) judicial decision; or

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

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

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

43 (b) *General lending limit rule*. Subject to the provisions in

1 subsections (d), (e) and (f), loans to one borrower, including any bank
2 officer or employee, shall not exceed 25% of a bank's capital.

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

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

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

14 (d) *Exemptions.* (1) Overnight federal funds.

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

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

23 (B) a perfected interest in a ~~time~~ *segregated* deposit account in the
24 lending bank. In the case of a ~~time~~ deposit which may be withdrawn in
25 whole or in part ~~prior to maturity~~, the bank shall establish written internal
26 procedures to prevent the release of the deposit;

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (f) *Combination rules.*

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

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

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

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

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

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

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

39 (i) Loans are made to borrowers that are related directly or indirectly
40 through common control, including where one borrower is directly or
41 indirectly controlled by another borrower. Common control means to own,
42 control or have the power to vote 25% or more of any class of voting
43 securities or voting interests or to control, in any manner, the election of a

1 majority of the directors or to have the power to exercise a controlling
2 influence over the management or policies of another person; and

3 (ii) substantial financial interdependence exists between or among the
4 borrowers. Substantial financial interdependence is deemed to exist when
5 50% or more of one borrower's gross receipts or gross expenditures, on an
6 annual basis, are derived from transactions with the other borrower. Gross
7 receipts and expenditures include gross revenues, expenses, intercompany
8 loans, dividends, capital contributions and similar receipts or payments; or

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

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

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

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

29 (5) *Special rules for loans to partnerships, joint ventures and*
30 *associations.* (A) As used in this paragraph, the term "partnership" shall
31 include a partnership, joint venture or association. The term partner shall
32 include a partner in a partnership or a member in a joint venture or
33 association.

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

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

41 (D) Notwithstanding the provisions of subsections (f)(5)(B) and (f)(5)
42 (C), if by the terms of the loan agreement the liability of any partner is
43 different than delineated in the partnership agreement, for the purpose of

1 attributing debt to the partner, the loan agreement shall control.

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

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

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

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

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

18 Sec. 4. K.S.A. 2016 Supp. 9-1114 is hereby amended to read as
19 follows: 9-1114. (a) The business of any bank or trust company shall be
20 managed and controlled by such bank's or trust company's board of
21 directors.

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

29 (c) If for any reason the meeting cannot be held on the date specified
30 in the bylaws, the meeting shall be held on a subsequent day within 60
31 days of the day fixed, to be designated by the board of directors, or, if the
32 directors fail to fix the day, by the shareholders representing $\frac{2}{3}$ of the
33 shares.

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

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

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

42 (g) Any director of any bank or trust company who shall become
43 indebted to such bank or trust company on any judgment or whose

1 indebtedness is charged off or forgiven shall forfeit such person's position
2 as director.

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

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

18 (j) Every bank and trust company shall notify the commissioner of
19 any change in the chief executive officer, president or directors, including
20 in such bank's or trust company's report a statement of the past and current
21 business and professional affiliations of the new chief executive officer,
22 president or directors.

23 Sec. 5. K.S.A. 2016 Supp. 9-1101, 9-1102, 9-1104 and 9-1114 are
24 hereby repealed.

25 Sec. 6. This act shall take effect and be in force from and after its
26 publication in the statute book.