Approved February 16, 19
Date

MINUTES OF THE SENATE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS.

The meeting was called to order by Sen. Neil H. Arasmith at
Chairperson

9:00 a.m./~~p.m.~~ on February 15, 1984 in room 529-S of the Capitol.

All members were present except:

Committee staff present:

Bill Wolff, Legislative Research
Myrta Anderson, Legislative Research
Bruce Kinzie, Revisor of Statutes

Conferees appearing before the committee:

Ron Todd, Kansas Insurance Department
Mark Heitz, Kansas Life Association and American Council of Life Insurance
Larry Magill, Independent Insurance Agents of Kansas

The mintues of February 14 were approved.

The chairman called on Ron Todd, Kansas Insurance Department, for his testimony on SB 551 which was introduced at the request of the Insurance Commissioner's Office. (See Attachment I.) Mr. Todd explained that the bill would not apply to insurance companies already established in the State of Kansas.

Sen. Hess asked if raising the fee for examination to $1000 would be detrimental to companies filing in Kansas. Mr. Todd replied that it would not but could slow down exploratory filings by companies which do not actually plan to do business in Kansas. Sen. Hess inquired further if the $1000 is the actual cost of handling an application. Mr. Todd answered that the figure is in the "ball park" area.

The chairman asked how many applications the insurance department receives from foreign companies. Mr. Todd said that they have been receiving 107 a year for the past four years. The chairman asked how long it takes to process an application, and Mr. Todd answered that it takes from approximately nine months to one and one half years.

The chairman called on Mark Heitz, Kansas Life Association and American Council of Life Insurance, to give his testimony on SB 551. Mr. Heitz began by stating that he has no objections to the fees and requirements in SB 551 because in his work at Security Benefit Life he has dealt with several other states which have similar requirements. However, he had an amendment to offer which would allow companies to continue paying premiums on annuities as they have done in the past. The new language in the amendment clearly spells this out. (See Attachment II.) Mr. Heitz explained that SB 505 contained the same language but that it had been tabled in the House Ways and Means Committee after having passed on the Senate floor.

The hearing on SB 551 was concluded, and the chairman began the hearing on HB 2485 which had been carried over from last session. He called on Larry Magill, Independent Insurance Agents of Kansas, to give his testimony in support of HB 2485. (See Attachment III.)

The chairman asked Mr. Magill if there would be a possibilty that there would be an interim period where a loss could occur and not be covered because of cancellation. Mr. Magill replied that the company must give a ten day notice of cancellation to the insured. The ten day period would begin from the date the insurance company sent the notice to the insured and not from the time when the agent sent in the request for cancellation.

Sen. McCray inquired if HB 2485 would entail changes in the cancellation law. Mr. Magill answered that this would not occur and explained that the bill merely clarifies the situation when an agent can request cancellation. The present law would still apply. Sen. McCray inquired further if the bill would allow another reason for an agent to cancel auto insurance. Mr. Magill answered that the bill would have no effect on auto insurance cancellations.

Sen. Feleciano asked if the Insurance Commissioner had seen the amendment. Mr. Todd replied that he had seen it and could see no problems with it. With this, the hearing on HB 2485 was concluded.

The chairman announced that discussion on SB 673, the multi-bank holding company bill, would begin. Sen. Pomeroy said that he had several amendments to offer.

Sen. Pomeroy made a motion to amend line 185 to change "proper county" to "District Court of Shawnee County or the county where the bank is to be acquired". Sen. Reilly seconded the motion. The motion carried.

Sen. Pomeroy made a motion to amend line 227 by striking "and" and inserting "or". He explained that this is necessary because no institution is insured by all three corporations mentioned, and the word "and" would, therefore, make it apply to no one. Sen. Werts seconded the motion. The chairman said that this would be limiting to what the 11% applies, and Sen. Pomeroy replied that it would deal only with what is lawful to acquire. The motion carried.

Sen. Pomeroy made a motion to amend line 232 by inserting "in Kansas" after "institutions" to make it clear that it applies to Kansas institutions and not all others. Sen. Reilly seconded the motion. The motion carried.

Sen. Pomeroy made a conceptual motion to amend line 242 by striking "local area" and inserting the local community dileneated in Section 4 where it speaks of the community reinvestment act. Sen. Hess began a discussion as to if this could be too broad of an area. Sen. Pomeroy withdrew his original motion and made a new motion to strike "local area" and insert "county". A discussion followed as to how this would apply to banks on county lines. Sen. Pomeroy made a new motion to strike "local area" and insert "county and adjacent counties". Sen. Werts seconded the motion. The motion carried.

Sen. Pomeroy made a conceptual motion to amend lines 275 and 276 by striking "period of five years" and inserting language to the effect of "until after five years have passed after the date on which it was chartered." Sen. Werts seconded the motion. The motion carried.

Sen. Pomeroy also made a motion that the bill be amended to include language which would require that the expense incurred to make the investigation would be paid by the applicant (users fee). Sen. Werts seconded the motion. The motion carried.

Sen. Werts made a motion to report SB 673 favorably as amended. Sen. Hess seconded the motion.

Sen. Karr made a substitute motion to place SB 673 on the table for further consideration at a later time since he felt that the committee had not had enough time to study the new portions of the bill. Sen. Harder seconded the motion.

The chairman ruled that Sen. Karr's motion was not for a time certain, and, therefore, it would take a two thirds vote to bring the bill off the table.

Sen. Hess disagreed with the chairman's ruling feeling that Sen. Karr had referred to a definite time--when the study of the bill was completed. He referred to the Roberts Rules of Order which states that if a motion to table a bill is for a time certain, a majority vote is needed to bring the bill off the table.

The chairman asked Sen. Karr what he had intended in his motion. Sen. Karr answered that he had intended to lay the bill on the table until the committee thoroughly understands it. Sen. Werts noted that the committee could not discuss the bill until it is brought off the table, and a majority vote would be required to do this.

Sen. Werts moved the previous question.

Sen. Hess said that the practical effect of Sen. Karr's motion would be to kill the bill even though Sen. Karr may not have had that intent in mind when he made the motion. Sen. McCray added that he opposed Sen. Karr's motion because it would delay action on the bill. Sen. Hess told the committee that they should view the vote on Sen. Karr's motion as whether it wants to send the bill to the Senate floor or not due to the required eight votes to bring it off the table.

MINUTES OF THE SENATE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS,

room 529-S, Statehouse, at 9:00 a.m./~~p.m.~~ on February 15, 1984.

Sen. Karr said that he felt that the other alternative would be to kill the bill. He reiterated that the committee needs more time to discuss the new concepts in the bill and possibly come to a compromise. Also, the additional time is needed for the financial industry to discuss these new concepts and become involved.

The chairman called for a vote on Sen. Karr's substitute motion to place SB 673 on the table. The chairman called for a show of hands. The motion carried with a six to five vote.

The meeting was adjourned.

SENATE COMMITTEE

ON

COMMERCIAL AND FINANCIAL INSTITUTIONS

OBSERVERS
(Please print)

| DATE | NAME | ADDRESS | REPRESENTING |
|---|---|---|---|
| 2/15 | Bud Grant | Topeka | KCCI |
| 2/15 | Pauline Mills | Topeka | Meade Ins. |
| 2/15 | Margaret Gartner | Topeka | K. Council Comp Ins |
| 2/15 | Beth Easum | Topeka | Insurance Women of Greater K |
| 2/15 | Dawn Bradley | Topeka | Insurance Women |
| 2/15 | Linda Heitz | " | KIBA |
| 2/15 | Denny Burgess | Wamego | KAEG |
| 2/15 | CHARLES BELT | WICHITA | WICHITA CHAMBER OF COMMERCE |
| 2/15 | MARK HEITZ | TOPEKA | Security Benefit |
| 2/15 | Joe Stout | Emporia | KAEG |
| " | Jacque Oakes | Yates Center | KASB |
| " | John Peterson | Topeka | KAEG |
| " | Larry Magaw | Topeka | IIAK |
| " | Ron Todd | " | Ins dept. |
| " | [illegible] | " | KBA |
| " | James S Myers | Emporia | KAEG |
| " | Wylie Rine | " | KAEG |
| " | Sanford Seaton | Topeka | Sen. Hensley |
| " | Larry Kimball | " | KAEG |
| " | Con Smith | " | KIBA |
| " | Tom Wilder | " | KLSI |
| " | Janet L Wilke | Topeka | KAEG |
| | TOM PALACE | " | KLSI |

SENATE COMMITTEE

ON

COMMERCIAL AND FINANCIAL INSTITUTIONS

OBSERVERS
(Please print)

| DATE | NAME | ADDRESS | REPRESENTING |
|---|---|---|---|
| 2-15-84 | JEREL WRIGHT | Topeka | KCUL |
| | L.M. CORNISH | " | Ks Assoc of P/C |
| 2-15 | CARL D. BASWELL | TOPEKA | INS. WOMEN WESTERN KS |
| 2-15 | Jean Shannon | Topeka | Ins Women of Topeka |
| 2-15 | Lita Cole | Topeka | Ins. Women of Topeka |
| 2-15 | Dixie A. Radford CPIW | Topeka | Ins Women of Topeka |
| | Glenna Walton | Lyndon | Ins Women of Topeka |
| 2-15 | Janet Lacy | Cimarron | Ins Women of Western Ks |
| | Rita Cunningham | " | " " " " |
| 2-15 | Norma J Pruitt | Wichita | Ins Women of Wichita |
| 2-15 | Debbie Cline | Garden City | Ins. Women of Western KS |
| 2-15 | John Myers | Topeka | Budget |
| 2-15 | Patrick J Hurley | Topeka | KAEG |

EXPLANATORY MEMORANDUM FOR SB 551
~~LEGISLATIVE PROPOSAL NO. 7~~

This proposal establishes some specific requirements which foreign insurance companies would have to meet in order to be granted a Kansas certificate of authority.

Currently, if it can be established that an insurer complies with the minimum financial requirements, we have little alternative but to issue a certificate. This has resulted in companies being admitted who are immediately deemed to be in a hazardous financial condition; companies whose senior management included persons who had been convicted of felonies; and insurers who were doing business in such a way that their fiscal integrity was suspect but the burden of proof to prove our suspicions was on the department and was therefore unattainable. Enactment of this proposal would provide the commissioner with some statutory authority to avoid grants of authority when concerns of this kind are present.

In addition, the department is increasingly faced with applications for admission from companies who are interested in being admitted to a large number of states but actually do business in very few. Other applications seem to be purely exploratory with no real commitment to pursuing an active business life in the Kansas community. These applications take a great deal of time to review and process. Yet under the existing structure, the fees for the work involved are collected only if a certificate of authority is issued. In order to address this problem, this proposal increases the fee for examining a charter and other documents from ~~$100~~ to $1,000; requires the fee to be paid upon initial application for admission; and, provides that it is not refundable for any reason.

$55

Attachment I

In addition to the above fees and as a condition precedent to the continuation of the certificate of authority provided in this code, all such companies shall pay a fee of $2 for each agent certified by the company and shall also pay a tax annually upon all premiums received on risk located in this state at the rate of 1% per annum less any taxes paid on business in this state pursuant to the provisions of K.S.A. 40-1701 and 75-1508, and any amendments thereto.

new language

Funds accepted by a life insurer under an agreement which provides for an accumulation of funds to purchase taxable annuities at later dates shall be taxable premiums either when received or when actually applied to the purchase of annuities, at the option of the insurer. If the funds are declared upon receipt, any interest or other gain that accrues thereon shall not be taxable as premium income, but if the funds are declared when applied to the purchase of annuities, the premium tax shall be paid on the entire amount so applied. Any such funds declared upon receipt which are thereafter withdrawn before application to the purchase of annuities may be deducted from tax base as "premiums" returned on account of cancellations.

In the computation of the gross premiums all such companies shall be entitled to deduct any premiums returned on account of cancellations, all premiums received for reinsurance from any other company authorized to do business in this state, dividends returned to policyholders and premiums received in connection with the funding of a pension, deferred compensation, annuity or profit-sharing plan qualified or exempt under sections 401, 403, 404, 408, 457 or 501 of the United States internal revenue code. Should any such company remove or maintain, or both, either their home, principal or executive office or offices from this state, every such company shall be subject to the provisions of subsection D of this section.

Attachment II

Testimony on HB 2485
By: Larry W. Magill, Jr., Executive Vice President
Independent Insurance Agents of Kansas

Thank you for this opportunity to appear in support of HB 2485, a measure we requested the House Insurance Committee introduce during the 1983 session. Basically, HB 2485 amends K.S.A. 40-282, a statute which provides insurance agents the ability to extend credit to customers either: 1) on less than 30 days at no interest; 2) for more than 30 days at a rate of interest of 1½% per month without a written instrument on open account or; 3) as provided in a written instrument so long as the interest rate does not exceed that allowed by K.S.A. 16-207. Our amendment simply adds a clarification that an agent who has not been paid may cancel an insured's policies to collect any unpaid amount with the excess unearned premium, if any, paid to the insured.

Independent insurance agents represent a number of insurance companies. The agent generally pays for their insured's policies monthly on what is known as an "account current" or consolidated billing covering all policies issued through that company that month. If the agent extends open account credit to an insured it very often happens that the agent pays or advances, the insured's premium to the company before the agent is fully paid. If the insured later refuses to pay or is unable to pay according to their agreement, the agent should have the option of cancelling the coverage according to the policies' terms, and applying and unearned premium for the remainder of the policy period to the insured's balance. Any excess unearned premium would be returned to the policyholder.

Attachment III

Most personal insurance, homeowners, auto, life and health is on a "direct billed" basis where the insurance company bills the insured direct and provides whatever payment plan it desires. These direct billed policies would be excluded from the provisions of HB 2485 under our proposed amendment. Some miscellaneous personal insurance such as floaters and umbrella liability policies are billed by the agent as well as virtually all commercial insurance coverages.

A typical commercial account may have 3 to 4 policies all with different expiration dates. The insured may owe some on all policies at any one time or only one. If the insured, for example, buys another business, it would cause additional premiums on all policies when coverage is added for the new entity. If the insured then gets into financial difficulty and is unable to pay the additional premiums, the agent needs to be able to cancel coverage and have a lien on the return premiums to the extent of the earned premium the agent has advanced to the company. After all, it was the agent's money paid to the insurance company in the first place.

Audits under workers' compensation or general liability present a particularly difficult problem for the agent where additional premium is due. An audit compares actual payrolls, sales, etc., at the end of the policy term with those estimated when the policy was issued. If it is not returned to the company (generally) within 30 days, it is the responsibility of the agent to collect or absorb as a bad debt. This is all <u>earned</u> premium on an audit and cannot be "cancelled." The only protection the agent has is the unearned premiums on other policies for that insured.

Other examples include various state mandated "assigned risk" plans such as the "FAIR Plan" for property insurance covering fire and other perils, the Kansas Auto Insurance Plan and the Health Care Providers Insurance Availability Plan. Occasionally an agent may advance his own money for an insured to one of these plans and the agent should have the right to request cancellation for nonpayment of the account.

We would like to ask the committee to amend the bill as illustrated by the balloon copy attached to my testimony. In discussing the proposal with various interested parties, we agreed last year to exclude from the provisions of HB 2485: 1) policies paid by an escrow agent - these would normally be homeowners policies paid by a mortgage company; 2) policies paid under insurance company direct bill plans - most homeowners and personal auto; 3) policies where the insured specified payment for a specific policy - rather than to their open account with the agent; and 4) policies financed under a premium financing agreement. The amendment also requires the agent to notify the insured of their request to the company for cancellation due to nonpayment.

Providing "open account" credit to insureds is a customer service independent agents want to offer. It makes it easy to bind coverage over the phone and is the only way to properly handle commercial (business) accounts. HB 2485 protects the agent extending "open account" credit by allowing the agent to cancel coverage if necessary to use the unearned premium on the insured's policies to pay the debt owed. It gives the agent a clear lien against the unearned premium - the money the agent advanced for the client. We urge the committee's support of HB 2485.

request the company to

and except for policies paid by an escrow agent, or paid direct by an insured to an insurance company, or where the insured specified that payment apply to a specific policy and all premiums due on that policy have been paid, or where the unearned premium is collateral for a loan under K.S.A. 40-2601 et req.

Such insurance agent shall notify the policyholder of the requested cancellation in writing at the time the request is made to the insurance company.

*(b) Any insurance agent* ~~*or broker*~~ *extending credit to policyholders as provided in* subsection (a) (1) or (2) of *this section may cancel such insurance according to the terms of the policies* ~~*on a pro rata basis*~~ *for nonpayment of the policyholders' accounts, except as provided in K.S.A. 40-277 and amendments thereto.* ~~Any such cancellation shall be construed as cancellation by the insurance company such agent represents~~.

*Such insurance agent* ~~*or broker*~~ *shall have a lien on any return premium for* ~~*the*~~ all *policies* of the same policyholder *to the extent of* ~~*the amount*~~ amounts *owed by the policyholder.*

Sec. 2. K.S.A. 40-282 is hereby repealed.

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

to be used in connection with the proposed acquisition;

(h) the information required in section 4; and

(i) any additional relevant information in such forms as the commissioner may require by specific request in connection with any particular notice.

New Sec. 6. (a) The commissioner shall be given at least 60 days' prior written notice of any proposed bank acquisition. If the commissioner does not issue a notice disapproving the proposed acquisition within that time or extend the period during which a disapproval may issue for another 30 days, the proposed acquisition shall stand approved. The period for disapproval may be further extended only if the commissioner determines that any acquiring party has not furnished all the information required under section 5 or that in the commissioner's judgment any material information submitted is substantially inaccurate. An acquisition may be made prior to expiration of the disapproval period if the commissioner issues written notice of the commissioner's intent not to disapprove the action.

(b) Within three days after the commissioner's decision to disapprove any proposed acquisition, the commissioner shall notify the acquiring party in writing of the disapproval. The notice shall provide a statement of the basis for the disapproval.

(c) Within 10 days of receipt of such notice of disapproval, the acquiring party may request a hearing on the proposed acquisition with the board. At the conclusion, the board shall by order approve or disapprove the proposed acquisition on the basis of the record made at such hearing.

(d) Any person whose proposed acquisition is disapproved by the board may appeal to the district court of ~~the proper county~~ Shawnee county or the county where the proposed bank acquisition is located within 60 days from the date of the board's notice of disapproval.

New Sec. 7. The commissioner may disapprove any proposed acquisition if:

(a) The proposed acquisition of control 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 in any part of this state;

(b) the effect of the proposed acquisition of control in any

(e) Actual expenses incurred by the commissioner or board in carrying out any investigation that may be necessary or required by statute shall be paid by the person submitting the proposed acquisition.

section of this state may be substantially to lessen competition or to tend to create a monopoly or the proposed acquisition of control would in any other manner be in restraint of trade and the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;

(c) the financial condition of any acquiring person is such as might jeopardize the financial stability of the bank or prejudice the interest of the depositors of the bank;

(d) the competence, experience or integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the interest of the depositors of the bank or in the interest of the public to permit such person to control the bank;

(e) any acquiring person neglects, fails or refuses to furnish the commissioner all the information required by the commissioner;

(f) the record of performance in banks now controlled by an acquiring person, shows that such banks are not meeting the credit needs of their respective local communities; or

(g) the proposed community reinvestment act statement for the proposed bank acquisition required in section 4, does not satisfactorily address the credit needs of the local community for that particular proposed bank acquisition.

New Sec. 8. From and after July 1, 1984, a company may have direct or indirect ownership or control of two or more banks or bank holding companies, subject to the limitation provided for in section 9.

New Sec. 9. From and after July 1, 1984, it shall be unlawful for a bank holding company to acquire direct or indirect ownership or control of any financial institution insured by the federal deposit insurance corporation (FDIC), federal savings and loan insurance corporation (FSLIC), ~~and~~ national credit union administration (NCUA) and located in this state if such acquisition results in the bank holding company having direct or indirect ownership or control of banks located in this state, the total

or

deposits of which at the time of such acquisition exceed 11% of the aggregate deposits of all financial institutions insured by the federal deposit insurance corporation (FDIC), federal savings and loan insurance corporation (FSLIC) and national credit union administration (NCUA) as determined by the state bank commissioner on the basis of the most recent reports of such institutions in Kansas to their supervisory authorities which are available at the time of the proposed acquisition.

New Sec. 10. The board of directors of each bank acquired by a bank holding company shall have not less than a majority of the total membership of the board of directors of the bank from the ~~local area in which the bank is located~~.

New Sec. 11. The limitation provided for in section 9 shall not apply in the following circumstances:

(a) Control of a bank by reason of ownership or control of shares acquired by a bank or by a bank holding company in good faith in a fiduciary capacity, except where such shares are held for the benefit of the shareholders of such bank or such bank holding company;

(b) control of a bank by reason of ownership or control of shares acquired by a bank or by a bank holding company in the regular course of securing or collecting a debt previously contracted in good faith. The deposits of the acquired bank shall not be included in computing the appropriate deposit limitation set forth in section 9 for a period of five years from the date of acquisition; or

(c) the acquisition of direct or indirect ownership or control of a bank or bank holding company at the request of or in connection with the exercise of regulatory authority by the state bank commissioner, the state banking board, the comptroller of the currency, the federal deposit insurance corporation or the board of governors of the federal reserve system for the purpose of preventing imminent failure of the bank or to protect the depositors thereof as determined by such authority in its sole discretion. The deposits of the acquired bank shall not be included in computing the appropriate deposit limitation as set forth in section 9 for a period of five years from the date of

in Kansas

county in which the bank is located or from any adjacent counties

acquisition. The regulatory authority shall give acquisition priority to qualified purchasers or bidders whose total deposit control at the time of acquisition does not exceed the appropriate deposit limitation as set forth in section 9.

New Sec. 12. A bank for which the application for charter was filed, received or granted by the appropriate authorizing agency after July 1, 1984, shall not be acquired by a bank holding company which controls or would control more than one bank for ~~a period of five years~~ until that bank has been in operation for five years from the date of receiving its charter.

New Sec. 13. A bank holding company shall not apply for or obtain a de novo charter.

New Sec. 14. A national bank in this state or a bank holding company seeking to acquire a state bank or national bank in this state, or a nonbanking company that submits an application for approval of such acquisition to the board of governors of the federal reserve system pursuant to the provisions of sections 1841 et seq. of title 12 of the United States Code Annotated shall also submit a copy of such application to the state banking board.

New Sec. 15. The district court shall have jurisdiction to determine all questions of compliance with the provisions of this act. The decision of the district court shall be appealable in the same manner as in other civil cases.

New Sec. 16. Each bank holding company which directly or indirectly owns, controls or has power to vote 25% or more of the voting shares of one or more banks shall furnish a copy of the annual report of the operations of the bank holding company which is submitted to the federal reserve bank for each fiscal year to the state bank commissioner.

New Sec. 17. Any company which intentionally and willfully violates any provision of sections 3 to 16, inclusive, upon conviction, shall be fined not less than $500 nor more than $5,000 for each day during which the violation continues. Any individual who intentionally and willfully participates in a violation of any provision of sections 3 to 16, inclusive, upon conviction, shall be fined not more than $10,000 or imprisoned not more than one year, or both such fine and imprisonment.

Sec. 18. K.S.A. 17-1252 is hereby amended to read as fol-