Approved February 28, 1984
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 27, 1984 in room 529-S of the Capitol.

All members were present except:

Senators Gannon, Reilly, McCray, and Hess - Excused

Committee staff present:

Bill Wolff, Legislative Research
Myrta Anderson, Legislative Research
Bruce Kinzie, Revisor's Office

Conferees appearing before the committee:

Marvin Steinert, Savings and Loan Department
Ralph Skoog, Kansas Trial Lawyers Association
L. M. Cornish, Kansas Association of Property and Casualty Companies

The minutes of February 24 were approved.

The meeting began with the testimony of Marvin Steinert of the Savings and Loan Department giving testimony in support of SB 743 dealing with the redefining of "impairment of capital". (See Attachment I.)

The chairman asked if the current 2½% net worth provision in the law would be allowed to go to zero if the bill is put in effect. Mr. Steinert said that this would be true.

Sen. Werts asked if there would be no formula under the bill, and Mr. Steinert agreed. Sen. Werts noted that under this bill if the capital is impaired, the corporation is insolvent also which differs from present law.

Sen. Pomeroy asked how "impairment of capital" is used and what the consequences of "impairment of capital" are. Mr. Steinert answered that when the capital is impaired, the Savings and Loan Commissioner would have to appoint a deputy to take over the corporation. Sen. Pomeroy asked staff to prepare a memo as to where in the statutes "capital impairment" is used.

Sen. Werts asked Mr. Steinert to confirm if the present applicable policy is what the bill includes which is the federal language, and Mr. Steinert concurred.

With the chairman noting that staff would prepare the memo requested by Sen. Pomeroy, the hearing on SB 743 was concluded.

The chairman called on Kathleen Sebelius, Kansas Trial Lawyers Association, to begin testimony on SB 765 regarding direct action against an insurance company when the insured files bankruptcy. She introduced Ralph Skoog, President of the Kansas Trial Lawyers Association, to present his testimony in support of the bill. He began by explaining that the bill has its origin in a set of general circumstances existing and coming to people's attention in the last few years. Mr. Skoog said that his organization became particularly concerned when the John Mansfield Chapter 11 bankruptcy was filed in which case although the corporation was insured, the bankruptcy brought about a stay for creditors to collect on the insurance. He added that the new bankruptcy code of 1978 has brought about many concerns including allowances for such as the breaking of contracts with unions and the discharge of punitive damages. Mr. Skoog continued that the bankruptcy of the insured should not do away with the obligation to pay on claims. He feels that claimants ought to be able to proceed as far as what is covered by the insurance policy of the bankrupt. He said that a 1962 Louisiana statute (22-655) has the provision that if someone has a claim against a bankrupt, direct action can be taken against the insurance company as far as the coverage. Mr. Skoog concluded that at present in Kansas the statutes say that the insurance company is not relieved of responsiblity in bankruptcy cases but that there is no procedure defined to proceed to bring action against the insurance company.

Sen. Pomeroy asked Mr. Skoog what is intended by "right to substitute" in lines 31

and 32 of the bill. Mr. Skoog said that the terms used here have been used before to make clear by statute that it is not permissible to substitute a party to make some claim outside what the policy covers. Sen. Pomeroy asked then if the name of the insurance company can be substituted as the defendant, but recovery is limited to the amount of the policy. Mr. Skoog agreed. Mr. Skoog concurred with the chairman that the statute of limitations would not be changed.

The chairman asked if there have been instances in Kansas where this is needed. Mr. Skoog replied that it has been needed in asbestosis cases where they could not proceed because of the stay granted in court in the John Mansfield bankruptcy. Mr. Skoog added that it is the present policy that insurance does not cease upon the filing of bankruptcy by the insured, but no one can figure out how to proceed in these cases.

Sen. Karr asked if Louisiana is the only state which has a statute of this type and if it has been effective. Mr. Skoog answered that he came across Louisiana's statute early in his investigation and, therefore, had not looked further. As to the effectiveness, he could not answer with any specific statistics.

L. M. Cornish, Kansas Association of Property and Casualty Companies, began his testimony on SB 765. He began by saying that he was not aware of the problem the sponsors of the bill say it is to address. However, he said that the bankruptcy court has never interfered with claimants in the state. He said that all of his policies have a clause to the effect that bankruptcy of the insured shall not relieve the insurance company of payment of claims under the provisions of the policy. Mr. Cornish stated that his concern with and opposition to the bill was that insurance companies are going to be named in a law suit as the defendant which makes the insurance companies the target when they are only the contracting agent with the insured to pay on what the policy covers. He called the committee's attention to lines 23-24 which he said seems to indicate that the insurance companies would have the responsibility for all damages. In reference to line 32 of the bill, Mr. Cornish said that the terms of the policy say that the insurance company will not become a first party in law suit claims agianst the insured.

The chairman asked Mr. Cornish if at present insurance companies are not already named in practically all law suits and perform the defense. Mr. Cornish answered that they are not named by company name and that they are required to defend, but bankruptcy of the insured does not change this. He told the chairman that the bill will change the present law because it will make insurance companies the named defendant rather than naming the wrong doer as defendant. Mr. Cornish feels that the present system has been working well and that requiring that the insurance company be the named defendant makes a difference.

Sen. Pomeroy asked Mr. Cornish if the problem he expressed concerning line 24 could be solved by adding "subject to the terms of the policy", and Mr. Cornish answered that it would solve the problem.

Mr. Skoog commented that statutorily the matter could be brought against a bankrupt company by prosecuting in the name of the insurance company.

Sen. Werts questioned Mr. Skoog regarding the use of "insolvency" insofar as it not having ramifications that follow as in the case of bankruptcy. Mr. Skoog said that the only reason "insolvency" was included is because it is part of the language which has been previously used.

The hearing on SB 765 was concluded.

The chairman announced that he would like to work SB 560 and others as soon as possible because he had been told that to insure bills getting placed on the calendar, they should be worked by March 1.

The meeting was adjourned.

SENATE COMMITTEE

ON

COMMERCIAL AND FINANCIAL INSTITUTIONS

OBSERVERS
(Please print)

DATE	NAME	ADDRESS	REPRESENTING
2/27	Marvin Steinert	Topeka	S+L Dept
	Bruce Skoog	Topeka	KTLA
	Ron Todd	"	Ins. Dept.
	Jim Wang	"	KBA
	David Hanson	"	KAPC Insur.
	L M Corns	"	KAPC Coo.
	Joel Wright	"	KCUL
	Marvin Umholtz	"	KCUL
	TJ Wilder	"	KLSI

In 1943 when the original Savings and Loan Code was adopted by the Legislature there were 90 state-chartered associations of which the majority were uninsured, the impairment of capital language was a very useful supervisory tool, as well as a deterrent for management and directors to engage in business activities of a doubtful nature in which potential losses would restrict payment of dividends or interest on savings and subjected officers, directors and employees to civil and criminal penalties as provided by K.S.A. 17-5412 and K.S.A. 17-5811.

With the passage of K.S.A. 17-5824 requiring that all Kansas state-chartered associations be insured by June 30, 1980 which in our state means insured by F.S.L.I.C. as this is the only insuring agency available in the State of Kansas to cover savings and loan deposits. We as a State have, therefore, delegated some of our supervision powers to F.S.L.I.C. as they, by Federal Insurance Regulations, set certain reserve and net worth requirements for obtaining and also maintaining an insurance contract. Kansas by the adoption of K.S.A. 17-5824 has provided protection for all depositors (savers) with amounts up to 100,000 dollars and in my estimation replaces the necessity of the 1943 Code provisions which used the impairment of capital to provide this protection.

Attachment I

Also, the process of deregulation of depository institutions as mandated by the Depository Institutions Deregulation and Monetary Control Act of 1980 and supervised by the Depository Institutions Deregulation Committee or DIDC, has radically altered the competitive position of savings and loan associations and equally influenced individual association management's perception of the desirability of state chartered status as compared to federally chartered status.

Since the enactment of HR4986, or the DIDMCA, there have been five associations with total assets, as of the date of conversion, of $1,100,000,000 that have converted to federal charters. A sixth institution with assets of $200,000,000 has merged into a federally chartered association. One other savings and loan association with assets of $74,846,000 has applied for a federal charter and will soon be converted.

The passage of the Garn-St. Germain bill in 1982 has also dramatically changed savings and loan operations. The effect of the Garn-St. Germain bill as passed permits savings and loans to restructure their assets as well as their liabilities. We in supervision are finding that the associations are attempting to do exactly just that. They are finding ways to attract new funds by offering various savings plans to more evenly match maturities of deposits and loans; however, in order to do this

and take advantage of sound business opportunities, the association may at times need to attract large amounts of deposits. However, the competitive position of state chartered associations which are experiencing rapid savings growth, has been seriously restricted by the definition of "Impairment of Capital" as meaning that the new worth accounts do not exceed 2½ percent of withdrawable capital in K.S.A. 17-5101(k). Federal associations have the more flexible definition contained in Federal Home Loan Bank Board Regulation 547.1(a)(1) which states that one of the grounds for appointing a conservator or receiver is: "The association's assets are less than its obligations to others, including its members."

In order to equalize the competitive status of state chartered associations, a Special Order (which was approved by the Savings and Loan Board at a meeting on December 2, 1983) was issued on December 5, 1983, substituting the language of FHLBB Regulation 547.1(a)(1) for the language currently in K.S.A. 17-5101(k). This Special Order was issued under authority of K.S.A. 17-5601.

We are requesting that the statutory definition of impairment of capital be revised as follows: K.S.A. 17-5101(k) "Impairment of Capital" shall mean the association's assets are less than its obligations to others, including its members. A

determination of impairment of capital may be made by the board of directors or the commissioner.

It is not this Commissioner's belief that the perception of greater relative desirability of federal charters, which apparently motivated the conversions, is based on objective analysis of all the factors that are relevant. Whether the decisions were based on an exhaustive analysis of all factors or not, if we believe a dual system of financial institutions is desirable and possible for the future, we should make every reasonable move to create both the reality and image of progressive adaptation of state statutes to the challenges of a deregulatory environment.