

Approved April 1, 1986
Date

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS

The meeting was called to order by Lloyd D. Polson at
Chairperson

9:00 a.m./~~p.m.~~ on March 27, 1986 in room 423-S of the Capitol.

All members were present except:

Committee staff present:

Raney Gilliland, Legislative Research Department
Norman Furse, Revisor of Statutes Office
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

John Rempe, Corning
Senator Jim Allen
Father John Stitz, Catholic Rural Life
Howard Tice, Kansas Association of Wheat Growers
Stephen Anderson, Alma
Harold Stones, Kansas Bankers Association

Continuation of hearing on S.B. 696—Authorizing the stay of certain fore-
closure judgments relating to agricul-
tural properties. (Family Farm
Rehabilitation Act)

John Rempe testified he has been foreclosed on and strongly supports S.B. 696. He has tried all of the other options with no success and hopes S.B. 696 will help him.

Senator Allen testified S.B. 696 is the best bill, covers the largest area and speaks to the problems of some of the people in the rural area. He recommended the Committee make whatever amendments they find are necessary and pass this bill. Senator Allen said this bill will not solve all of the farmers' problems, but is the cornerstone bill to come out of the legislature this year to help farmers.

Father John Stitz testified in support of the goal of saving the family farm in S.B. 696.

Howard Tice agreed with Senator Allen that S.B. 696 is a good cornerstone bill, and added to the other farm bills will help keep the family farmer on the farm.

Stephen Anderson asked the Committee to pass S.B. 696 in its present form. This bill will help not only farmers but the rural communities as well.

Harold Stones explained the Kansas Bankers Association will not oppose this bill. He proposed seven amendments to S.B. 696, Attachment I.

Representative Jenkins moved to approve the minutes of March 6, 1986. Representative Apt seconded and the motion passed.

The Committee meeting was adjourned at 10:00 a.m.

The next meeting will be Friday, March 28, 1986 at 9:00 a.m., in Room 423-S.

GUEST REGISTER

DATE March 27, 1986

HOUSE OF REPRESENTATIVES
COMMITTEE ON AGRICULTURE AND SMALL BUSINESS

NAME	ORGANIZATION	ADDRESS
Kari Schmidt	Farm Credit Council	Wichita
Wm Fuhrman	FARMER FIDA	SEVERANCE
Del Albrecht	Farm Credit Service	Wichita
Ron Wilson	Farm Credit Council	Wichita
John D. Dues	Merchants Natl BK	Topeka
Harold Stonas	KBA	"
Jim Massey	"	"
Ernest Koch	Farmer	Centralia
Clay Basso	Farmer	Conroy
Howard Wallace	KAWG	Hutchinson
Donna Smith	Ks. Bar Assoc.	Topeka
Jeff Bradhoff	Farmer	Hiawatha
Lawman Kitcher	Farmer	La Pryor
Damon Debusch	Interested in Farming	Paduca
Gabe Deiger	Free Lance cowboy	Robinson
John Stutz	Catholic Rural Life	K. C. Ks.
Max Murray	Observer	Hatch
Raymond Fowler	Farmer Union	Emporia
Jessie W. Wyatt	Ks Farmers Union	McPherson
Kenneth Wallingford Jr.	Kansas Rural Center	Effingham, Ks
Mary Harper		Hoady K
Keith Young	Kansas Rural Center (Farmer)	Effingham Ks
Del Koch	Farmer	Centralia, Ks.
Steven Koch	Farmer	Centralia
Myron Koch	Farmer	Centralia Ks.

KANSAS BANKERS ASSN.

707 MERCHANTS NTL. BLDG--TOPEKA KS 66612

March 27, 1986

TO: House Committee on Agriculture and Small Business

FROM: Harold Stones, Kansas Bankers Association

RE: Senate Bill 696

Thank you, Mr. Chairman, and Members of the Committee for this opportunity to appear and express our concerns over some of the possible directions of the Kansas Legislature.

The KBA commends Sen. Winter and Rep. Sprague for a sincere, good faith effort to be of assistance to troubled farmers without unduly harming other farmers, or other "links in the ag credit chain". There may be a division of opinion as to whether SB 696 accomplishes this, but there is unity in these two gentlemen's motives and method of seeking all input possible while conceiving this legislation.

We ask all members of the Committee to understand that Kansas banks are the **LARGEST HOLDERS OF FARM DEBT** in our state. Our latest figures show Kansas banks hold some \$2.7 billion of agricultural outstanding debt. This is larger than any other single lender, so anything you do to remedy any lending practice **AFFECTS COMMUNITY BANKS MORE THAN ANYONE ELSE**. How much of that \$2.7 billion will never be repaid? We do not know, but we know it will be a substantial amount. Therefore, it is absolutely imperative that you not interrupt the very delicate balance which many rural agricultural banks now have with their farm customers. To transfer the burden from the farmer to his banker (while having no power over the bank regulators) will certainly create many more hardships in rural communities and adversely affect many more Kansans than such legislation would help. We must not adopt a philosophy of helping the few if the burdens placed on the many seem untenable, even though there is great temptation to do so.

Kansas bankers do not view SB 696 the same. It can safely be said that no one is an ardent advocate of the bill-----and it makes such **MAJOR** changes that every time we visit with another group of bankers, some of them spot certain technical problems which we had not encountered before.

For example, Amendment No. 7 which is explained on Page 4 of this Testimony Document, and "ballooned" on Page 10 has been only recently "uncovered", and is one of THE SINGLE MOST

Attachment I
3-27-86 Hs. ASB

IMPORTANT ISSUE IN THE BILL. We can only hope that the day after SB 696 should become effective we don't all discover another problem of near-disastrous proportion!

Again, we have not yet found any enthusiastic supporters, but when compared to the very devastating results to both farmers and lenders of alternatives, then the majority of Kansas bankers with whom we have talked believe this to be the best alternative.

Some Kansas bankers, however, strongly disagree with the above assessment, and have forcefully communicated their concern to us. I have promised that I would state their concerns to the Committee.

By and large, their concern centers on the fact that before banks file for foreclosure on insolvent farmers, which is required before SB 696 takes effect, then all kinds of workouts and possible solutions have already been tried----and the farm customers who prove they have the management ability, the honesty and the financial possibility to work out have already been given the chance to do so----and only those cases with virtually no chance remain.

These bankers believe, therefore, that SB 696 is not workable, and will not help insolvent farmers, while imposing considerable damage to the lender and decreased credit plus increased costs to all other borrowers. They believe that SB 696 will:

- Reduce available lending funds, and make credit more expensive, because of the mandatory charge-offs of the difference between the amount of the obligation and the current market value of the property. Good, solid operators with little debt will always be able to get credit. But this Bill will adversely affect farmers who are now able to cash flow, but have very little "breathing room".

- Encourage lenders to file foreclosure proceedings earlier---before the farmer reaches the "insolvency" stage as defined in SB 696.

- Delay real estate value recovery, because the majority of property subject to the remedy of SB 696 will ultimately revert to bankruptcy and foreclosure, hitting the market at the exact time when recovery might be possible.

- Compound the farmers' tax problems further, because IRS will demand the amount of "loan forgiveness" be included as income in the immediate tax year, and no such "rental agreement" is possible with Uncle Sam.

- Result in unfair discrimination among lenders, because Farmers Home Administration will almost certainly be exempt from this statute, as a federal instrumentality. These are the farmers in the absolute worst financial condition, as a group, and the ones you are hearing from the most. Yet SB 696 will do nothing for them.

- Cause unforeseen problems. How can a District Court Judge determine in advance whether machinery and equipment will be maintained. The only depreciation he can foresee is "book depreciation", not that which could occur if the equipment is poorly maintained.

Some of the bankers who subscribe to the above points of view will

no doubt speak for themselves to members of the Committee.

But Mr. Chairman, the majority of Kansas bankers with whom we have discussed this bill, including the Board of Directors, and the Task Force on Agriculture believe it is not prudent for the KBA to oppose the bill with any high priority so long as the amendment package presented herein is adopted. Admittedly, this decision was based on some legislative, political, and public relations concerns, rather than purely on the merits of the legislation. But those **same bankers, however, believe the bill does need some further amending. It is such a major change, and affects so many ways of doing business, it is impossible to think of all the "What if's" until after considerable reading, consultation and consideration.**

Included in this testimony is a ballooned mark-up of SB 696 with the amendments numbered. A brief explanation of each of the six amendment topics follows:

- **Amendment No. 1** exempts livestock and growing crops from the provisions of the act. These farm products are subject to rapid deterioration and loss, they can disappear easily, and the Congress has already taken away the lender's ability to enforce lien rights. SB 696 is concerned with property the farmer wishes to **retain**, whereas farm products are mostly produced for sale. This amendment would insure that simply staying an order of execution of foreclosure would not alter already existing contractual agreements between the farmer and lender regarding perishable crops and livestock.
- **Amendment No. 2** exempts the farmer who is now in a Chapter 11 bankruptcy proceeding, or who has just finished one. The authors of the act have insisted that the intent of SB 696 is not to "string out" one delay after another, but to provide suitable alternatives. That being the case, this amendment would insure that SB 696 not in tandem follow a lengthy bankruptcy proceeding.
- **Amendment No. 3** is technical and for clarification only.
- **Amendment No. 4** insures that if there is more than one defendant in the lawsuit, such as a non-farmer guarantor or co-signor, the lender is not prevented from seeking recovery from such person.
- **Amendment No. 5** is technical and for clarification only.
- **Amendment No. 6** makes the Bill much more fair. If the lender is going to be required to write down a substantial sum of money in principal forgiveness, then to also write down the interest rate is a tremendous "double whammy". We believe, after careful consideration, the Committee will see the logic in believing this to be a matter of fairness, not only to the lender, but to the vast majority of other borrowers who will not fall under the act, and whose interest rates

will be substantially higher than their neighbors. If there is to be a "resentment" of one borrower against another, this feature alone will strongly encourage it.

•**Amendment No. 7** is tremendously important, and just recently came to our attention, after many meetings and scores of telephone calls from bankers on SB 696. KBA and Farmers Home Administration (FmHA) have held over 25 seminars during the last 18 months on urging banks to get as many farm loans as possible guaranteed by the FmHA. This is a large benefit to the borrower as well as to the lender, because the bank will have to renegotiate the loan to forgive principal or interest, or both to the point where the farm customer cash flows. The bank has been benefited, because once it takes the "hit" of forgiveness, then we FINALLY convinced the federal regulatory agencies that the amount of the principal guaranteed by a federal agency should NOT be included in the amount of the loan classified.

This has saved ag banks literally millions of dollars of capital restitution, and we all know when capital cannot be restored, insolvency follows. If this Act will not apply to FmHA (and we do not believe this Legislature has any authority over any agency of the U. S. Government), then what happens when the farmer enters into an agreement pursuant to this Act? It seems logical to us that the guarantee of the FmHA will be in jeopardy. If this is true, then immediately after this Act becomes effective we would expect the federal regulators to "nullify" all existing subtractions from classification which involve ag loans which might, at some point in the future become subject to this Act.

Mr. Chairman, Members of the Committee **PLEASE** do not think I am exaggerating when I say that such action would cause the immediate insolvency of a large wave of agricultural banks. I strongly urge the Committee to adopt Amendment No. 7 unless it receives written assurance from the FmHA, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Federal Reserve Board and the State Banking Department that current guarantees in place from the FmHA (and SBA) will not in any way be affected by the terms of SB 696; and from the bank regulators above mentioned that SB696 will not adversely affect any current classification and/or capital restitution practice.

Mr. Chairman, members of the Committee, we urge adoption of the amendments and thank you for this opportunity to testify. Following are the six pages of amendment mark-up, and at the end, two letters from bankers who strongly believe such legislation to be against the best interests of both bankers and their agricultural customers.

[As Amended by Senate Committee of the Whole]

As Amended by Senate Committee

Session of 1986

SENATE BILL No. 696

By Committee on Agriculture

2-25

0021 AN ACT concerning agriculture; relating to land and property
0022 used in a farming operation; authorizing the stay of enforce-
0023 ment of certain judgments relating to such property; estab-
0024 lishing procedures relating thereto; providing for redemption
0025 of certain property.

0026 *Be it enacted by the Legislature of the State of Kansas:*

0027 *Section 1. This act shall be known and may be cited as the*
0028 *family farm rehabilitation act. The purpose of this act is to*
0029 *provide a procedure to effectuate a broad program of rehabili-*
0030 *tation of distressed farmers faced with forced sales of their*
0031 *farming operations and oppressive debt burdens and to this end*
0032 *the provisions of this act should be liberally construed to provide*
0033 *distressed farmers with the relief authorized under this act.*

0034 *Section 1 Sec. 2. As used in this act:*

0035 (a) "Agricultural land" means land used in a farming opera-
0036 tion.

0037 (b) "Farming operation" includes farming, tillage of the soil,
0038 dairy farming, ranching, production or raising of crops, poultry or
0039 livestock, and production of poultry or livestock products in an
0040 unmanufactured state.

0041 (c) "Farmer" means a person who received more than 80% of
0042 such person's gross income during the taxable year of such
0043 person, immediately preceding the taxable year of such person
0044 during which the case under this act concerning such person was
0045 commenced, from a farming operation owned or operated by
0046 such person.

0047 (d) "Agricultural property" means personal property used as
0048 part of a farming operation including, but not limited to, farm

No. 1

The definition does not include farm products, as defined in K.S.A. 84-9-109 (3).

0049 machinery and equipment.

0050 (e) "Insolvent" means a person has no equity in property
0051 other than exempt property under other provisions of Kansas law
0052 with exception of cash or cash equivalent essential for family
0053 consumption and farming operations for a period of no more than
0054 six months.

0055 Sec. 23. All proceedings for the foreclosure of a mortgage on
0056 agricultural land, the cancellation of a contract for the purchase
0057 of agricultural land or the repossession of or collection against
0058 agricultural property commencing on and after the effective date
0059 of this act shall be subject to the provisions of this act.

0060 Sec. 34. The defendant-owner [or purchaser] of agricultural
0061 land in case of an action for mortgage foreclosure or cancellation
0062 of a contract for purchase or the defendant-owner [or purchaser]
0063 of agricultural property in case of an action for repossession or
0064 collection against such property may make application by motion
0065 to the district court which has jurisdiction of the matter at least 20
0066 days prior to trial or hearing on such matter for protection under
0067 this act. The applicant shall within three days from the time of
0068 filing the motion mail or serve written notice of such motion
0069 upon the mortgagee or judgment creditor, or the attorney of
0070 record for such person, and shall attach to such notice a copy of
0071 such motion. *The applicant shall within 10 days from the time of*
0072 *filing the motion file with the court [and serve upon the parties]*
0073 *a schedule of all the assets and liabilities of the applicant, the*
0074 *truthfulness of which shall be verified by the applicant under*
0075 *oath. Any applicant who intentionally misrepresents assets or*
0076 *liabilities, or both, on such schedule shall be guilty of a class A*
0077 *misdemeanor.*

No. 2

provided that such defendant-owner or purchaser is not in a Chapter 11 bankruptcy proceeding and provided that a Chapter 11 bankruptcy proceeding affecting such defendant-owner or purchaser has not been dismissed or otherwise terminated with the previous 12 months from the date of application

0078 Sec. 45. At the time of the trial or hearing on the petition in
0079 an action described under section 34, the court shall hear the
0080 motion as provided in section 34 and [as part of the judgment]
0081 shall make an order determining:

0082 (a) The current fair market value of the [agricultural land
0083 and agricultural] property as a whole, and if the property is
0084 agricultural land and is divided into parcels, the court shall
0085 determine the fair market value of each parcel in addition to the

0086 value of the whole;

0087 (b) the value of each piece of agricultural property and the
0088 value of all the agricultural property;

0089 (c) whether the defendant-owner [or purchaser] is an insol-
0090 vent farmer as defined in this act; and

0091 (d) whether the provisions of this act are applicable to the
0092 case.

0093 Sec. 5-6. (a) If the court finds that the defendant-owner [or
0094 purchaser] is an insolvent farmer as defined in this act and that
0095 the provisions of this act are applicable, the court shall order a
0096 stay of the execution of the judgment for 30 days. The running of
0097 the period of redemption shall be tolled until the court makes its
0098 order upon the application. If the defendant-owner [or pur-
0099 chaser] pays into court during this period of time in cash or by
0100 certified check an amount equal to the interest for one year on
0101 the fair market value of the property, or any parcel of property if
0102 agricultural land: (1) In the case of agricultural land, the interest
0103 for one year on the fair market value of the land or any parcel of
0104 the land or (2) in the case of agricultural property, the interest
0105 and depreciation for one year on the fair market value of the
0106 property or (3) both such amounts if agricultural land and
0107 agricultural property are involved, the court for a period of one
0108 year after such payment shall stay execution of the judgment on
0109 the property, or parcel of property if agricultural land, or parcel
0110 thereof, or agricultural property, upon which such interest pay-
0111 ment was made and also stay execution of any money judgment.
0112 As a part of the order, the court shall specify the methods of
0113 providing adequate protection of the agricultural land or agri-
0114 cultural property [upon which execution of judgment has been
0115 stayed] and that failure to provide adequate protection as or-
0116 dered by the court will result in the stay being extinguished and
0117 the judgment enforced.

0118 (b) Within 10 days before the end of such one-year period,
0119 the defendant-owner [or purchaser] may apply for and the court
0120 may grant an additional one-year stay of execution of the judg-
0121 ment upon payment [into court] by the defendant-owner [or
0122 purchaser], in cash or by certified check, of an amount equal to:

No. 3

the next

No. 4

against the defendant-owner or purchaser

No. 5

in the case of agricultural land,

0123 (1) the interest for one year on the then current fair market value
0124 of the property, or any parcel of the property if agricultural land,
0125 or parcel thereof, ~~[or agricultural property, or both]~~ and (2) the
0126 depreciation, if any, during the preceding one-year period, as
0127 determined by the court, on the fair market value of the agri-
0128 cultural land, or parcel thereof, or ~~[agricultural property, or~~
0129 ~~both]~~ Within 10 days before the end of such second one-year

No. 5

(2) in the case of agricultural property, the interest and depreciation for the next one year on the fair market value of the agricultural property or (3) both such amounts if agricultural land and agricultural property are involved.

0130 period, the defendant-owner [or purchaser] may apply for and
0131 the court may grant an additional one-year stay of execution of
0132 judgment upon payment [into court] by the defendant-owner [or
0133 purchaser], in cash or by certified check, of an amount equal to:

No. 5

in the case of agricultural land,

0134 (1) the interest for one year on the then current fair market value
0135 of the property, or any parcel of the property if agricultural land,
0136 or parcel thereof, ~~[or agricultural property, or both]~~ and (2) the
0137 depreciation, if any, during the preceding one-year period, as
0138 determined by the court, on the fair market value of the agri-
0139 cultural land, or parcel thereof, ~~[or agricultural property, or~~
0140 ~~both]~~ After a third one-year stay of execution of the judgment

No. 5

(2) in the case of agricultural property, the interest and depreciation for the next one year on the fair market value of the agricultural property or (3) both such amounts if agricultural land and agricultural property are involved.

0141 under this section, no further one-year stays may be granted.
0142 [Interest so paid into court shall be paid to the judgment credi-
0143 tor and credited to the amount of the judgment.]

0144 (c) For the purpose of this section, the interest rate shall be
0145 ~~[fixed by the court in an amount equal to the average yield before~~
0146 ~~taxes received on 52-week United States treasury bills as deter-~~
0147 ~~mined by the federal reserve banks as fiscal agents of the United~~
0148 ~~States at its most recent public offering of such bills prior to the~~
0149 ~~time of such payment plus 2%]~~

No. 6

terms of the existing instrument of indebtedness

0150 (d) If upon application of the defendant-owner [or purchaser
0151 the execution of] the judgment is stayed under this act for a
0152 one-year or longer period of time, the defendant-owner [or
0153 purchaser] shall be deemed to have waived any right to redeem
0154 the [agricultural land or agricultural] property otherwise pro-
0155 vided by law but shall have a right to redeem the property as
0156 provided under this act. If application is made under this act to
0157 stay execution of the judgment and the application is denied or if
0158 the defendant-owner [or purchaser] is unable to make the inter-
0159 est payment required under subsection (b), the judgment shall

0160 be executed as otherwise provided by law.

0161 Sec. 6 7. ~~Within 10 days~~ [At any time] before the end of any
0162 such one-year period during which a stay of execution of the
0163 judgment has been granted under section 5 6 ~~or at any time~~
0164 ~~during any such one-year period~~, the defendant-owner [or pur-
0165 chaser] may redeem the [agricultural land or agricultural]
0166 property, or any parcel of the property if agricultural land, upon
0167 which execution of judgment has been stayed by paying to the
0168 judgment creditor [into court] an amount equal to: (a) the fair
0169 market value of the property as determined by the court under
0170 section 4 ~~together with 5~~ [at the time of judgment] or the fair
0171 market value of the property as determined by the court at the
0172 time of redemption, whichever is greater, less any amounts paid
0173 for depreciation on such property under section 6, but in no case
0174 an amount larger than the original judgment, and (b) costs, taxes
0175 and any other charges approved by the court to the date of
0176 redemption, and the court at the time of redemption may deter-
0177 mine the rights of the junior creditors, if any, to any such
0178 payment. If the defendant-owner [or purchaser] is unable to
0179 redeem the property, fails to apply for an additional one-year
0180 period of stay of execution of the judgment or fails to qualify for
0181 an additional one-year period of stay of execution of the judg-
0182 ment, the [court shall order the] stay shall be extinguished and
0183 the judgment shall [may] be executed as otherwise provided by
0184 law.

0185 Sec. 7 8. If the defendant-owner [or purchaser] who has
0186 been granted a stay of execution of the judgment under this act
0187 fails to provide adequate protection of the agricultural land or
0188 agricultural property as ordered by the court, the judgment
0189 creditor may make application to the district court for a hearing
0190 on the matter. Upon five days' written notice to the defendant-
0191 owner [or purchaser] a hearing shall be held by the court. If the
0192 court finds that the defendant-owner [or purchaser] has failed to
0193 provide adequate protection of the agricultural land or agricul-
0194 tural property as ordered by the court, the court shall extinguish
0195 the stay and ~~order that~~ the judgment [may] be executed as
0196 otherwise provided by law.

0197 Sec. 89. The provisions of this act shall not apply to: (a) Any
0198 agricultural land which is not occupied in good faith; (b) any
0199 agricultural land where the premises have been abandoned by
0200 the owner thereof; or (c) ~~an owner~~ [a defendant] who [since
0201 January 1, 1986,] has acquired title since January 1, 1986; to [or
0202 contracted to buy] the agricultural land or agricultural property.

0203 Sec. 9. This act shall be known and may be cited as the
0204 family farm rehabilitation act.

0205 Sec. 10. The provisions of this act shall expire on July 1,
0206 1991[, except that the stay of any judgment under this act in
0207 effect immediately prior to July 1, 1991, shall continue until the
0208 end of the one-year period of such stay and the provisions of this
0209 act shall continue to be applicable to all the parties to such stay
0210 until the end of such one-year period].

0211 Sec. 10 II. This act shall take effect and be in force from and
0212 after its publication in the Kansas register.

No. 7

; or (d) any agricultural land or agricultural property upon which any judgement creditor has received a guarantee for payment issued by the United States government or any agency thereof



LARRY R. HEYKA, PRESIDENT

619 SECOND AVENUE • P.O. BOX 59 • DODGE CITY, KANSAS 67801 • 316-227-8500

March 20, 1986

Mr. Harold A. Stones
Executive Vice President
Kansas Bankers Association
707 Merchants National Bank Bldg.
Topeka, Kansas 66612

Dear Harold:

I am writing concerning recent proposed legislation in both the House (HB 2691) and Senate (SB 696) commonly referred to as the Family Farm Rehabilitation Act. We have reviewed both bills and would like to record our opposition to their enactment.

The legislation is a liberalized Chapter 11 Bankruptcy for insolvent farmers. It does little, if anything to really address the problem of the insolvent farmers. On the other hand, it can have a tremendously adverse effect on the agricultural banks which are trying their best to work with and assist their agricultural customers. Everyday, interested and concerned bankers are working with their agricultural customers to restructure and renegotiate debts, fine tune cash flows, improve marketing techniques, etc. in hopes that the family farmer can attain and/or retain profitability in an effort to be a survivor in today's troubled economic times. Many agricultural producers have succeeded through improved operations, and manageable debt levels to obtain profitability during these rough times. Others have had to obtain more painful means such as partial asset liquidations and/or off-farm income to achieve their survivor status.

The sad truth is that some family farmers have little or no change in today's economic environment of survival regardless of any feasible forbearance or rehabilitation plan. These conditions may be a result of numerous factors such as weather conditions, over-expansion of assets through borrowings, poor management practices, etc. The reality is that the insolvent farmer today has little chance of achieving profitability. Prolonging the liquidation process when liquidation is the only inevitable solution will accomplish little if any, real help to the farmer but could cause considerable other problems in the process.

NEGATIVE ASPECTS OF THE PROPOSED LEGISLATION

1.) Reduce Funds Available for Financing Agriculture

It would reduce funds available to finance agriculture. If farmers and lenders could not rely upon the enforceability of their contractual agreements, faith in the rights of each party would be diminished. Lenders would be reluctant to continue financing or expand financing relationships especially to the already troubled family farm. The level of risk would simply be unacceptable or increased to the level that many loan requests would be denied.

2.) Step-up in Foreclosure Proceedings before Insolvency

If legislation were passed which would materially change "the rules" when a farmer reaches a point of "defined insolvency", agricultural lenders would prudently be forced to step-up or accelerate liquidation of loans to avoid eligible farmers entering the "insolvency zone".

This will restrict many eligible borrowers from obtaining operating and restructuring loans in cases where the lender had been willing to accept the risk if financing of the continued farm operation. In other words, the leveraged or marginally profitable farm operation would cease to have operating money available.

Banks with heavy concentration of agricultural loans or excessive levels of classified loans in the agricultural sector would be the first to cease financing upon enactment of the proposed legislation.

3.) Regulatory Pressures and Bank Earnings

The legislation would force sizeable loan losses upon the lending industry. Institutions would be forced to accept losses upon the determination by the District Court of the amount of the debt that the borrower was no longer obligated to pay. The balance of the indebtedness would probably be classified by examining forces as a renegotiated problem loan.

The impact of loan losses and reduced loan volume (1) and (2) above could impair banks capital positions, result in excessively high classified asset ratios and severely affect future earnings of the institution.

Regulatory agencies should be contacted to voice their individual opinions of the effect of the proposed legislation prior to any vote.

4.) Higher Interest Rates

Actually, the proposed legislation will have a negative effect on others than just the lending institutions that now work so earnestly to help finance the family farm.

As outlined in (3) above, the lending community will be faced with increased loan losses, interest rate write-downs and earnings problems. These institutions will be forced to increase bank service charges and interest rates to new and existing small business customers, consumers and agricultural customers. The smallest change in interest rates alone can affect whether a profit is possible, or a new business or industry will locate or expand in a community. Profit margins are

very narrow in most businesses today and higher rates will surely create future problems for new and existing farmers and businesses.

5.) Is This Fair Legislation!

What about other industries, small businesses, other farmers and consumers? They often face similar circumstances in today's economy, such as having a home mortgaged for more than its value. Do they receive six months living expenses and a guaranteed write down of their contracted debt? No, but they may be next to ask. Most individuals, farmers and businesses analyze their individual financial situation and work closely with their lending institution in an effort to repay their obligations. They now have similar alternatives when faced with financial hardship as does the farmer. Although bankruptcies have been on the rise dramatically, most financial problems are presently worked out without use of the court or bankruptcy system. It appears the proposed legislation is requesting preferential treatment to the minority.

Where is the incentive to repay debt obligations when the legislature process has the right to cancel it in the court system?

6.) Prolong Real Estate Price Recovery

One of our bank's agricultural customers who studied the proposed legislation indicated that enactment would merely postpone and prolong any real chance for agricultural land prices to recover. He indicated that the majority of the property involved would ultimately end-up in bankruptcy or foreclosure and would continue to flood the market for the next several years. He saw little salvation for the insolvent farmer short of liquidation.

Although there is much sympathy for the insolvent farmer, the overall farm community does not feel the responsibility for saving all family farms. They recognize that some simply do not have the capital or management to operate in today's economic environment.

7.) Tax Problems for the Family Farmer

One of the biggest obstacles in family farm liquidation relates to the resulting capital gains taxes due and the "ordinary taxable income" created by a lender's forgiveness of debt. It appears that the debt reduction created by the evaluations determined by the District Court would result in taxable income. In most cases, the insolvent farmer would have no means to pay this tax.

It would be advisable that the legislature should consult with tax attorneys and accountants prior to any enactment of the proposed legislation.

8.) Is the Proposed Legislation Legal?

The proposed legislation will impair the enforceability of contracts already in effect. The States Attorney General's Office should be requested to grant a ruling concerning this prior to any vote on the matter.

SUMMARY

The proposed FAMILY FARM REHABILITATION ACT does little to really help the insolvent farmer of today. Other alternatives are available both in and out of the judicial system. Some work successfully and others simply prolong the situation. The bill is a modification of Chapter 11 Bankruptcy which will probably have a similar success rate of saving the assets of the insolvent farmer.

The bill will create other numerous problems as outlined above. These problems will be mounted on other farmers, small business, consumers and the agricultural lender. We can not afford to weaken their chances of financial survival because some of the other systems have failed to work. A more practical approach would be to seek reforms in the Bankruptcy Code which could benefit all sectors.

Very Truly Yours,

Larry R. Heyka
President

LRH/ds

 *The National Bank of America* ^{At} *Salina, Kansas*

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• DOWNTOWN BANK—SANTA FE AND IRON • GOLD STAR FACILITY—NINTH AND MAGNOLIA

March 18, 1986

Representative Bob E. Ott
Room 174-W
State Capital
Topeka, KS 66612

Dear Representative Ott:

As a Kansas Banker and farmer/rancher I am extremely concerned over Senate Bill No. 696. It is my understanding that the House has passed a similar moratorium on bank foreclosures on farmers for three years under certain circumstances. Although this will not, in my opinion, completely eliminate bank credit to farmers and ranchers, it will certainly be another major obstacle to any Kansas financial institution attempting to loan to a farmer with any significant amount of debt. There will probably be little effect on loans to the farmers who are very solid in their financial statements with debt of less than 30% of total assets. From my standpoint as a banker, I think that this may come close to totaling eliminating credit to farmers who have over 50% or 60% of their total assets in debt. As bank loan officer I have been struggling with the frustrations of our current ag economy and the difficulties in extending credit on reasonable grounds for lack of repayment to the troubled farmers with over 50% of their total assets in debt. I sympathize with the Legislature's concern for the troubled farmers in Kansas and have great empathy for these farmers and ranchers as I am engaged in farming and ranching operations myself. However, I feel very strongly that putting moratoriums on bank foreclosures will only worsen the situation as it will tend to make lenders avoid any loans to borrowers with any significant likelihood of not being able to meet their repayment schedules.

Please contact me if I can be of any assistance.

Sincerely,

Chris N. Hoffman III
Executive Vice President

Letters also sent to:
Governor John Carlin
Representative Larry Turnquist
Senator Ben Vidricksen
Representative Jane Aylward