

MINUTES OF THE Senate COMMITTEE ON Agriculture

The meeting was called to order by Senator Allen at
Chairperson

10:10 a.m./~~p.m.~~ on March 24, 1986 in room 423-S of the Capitol.

All members were present except: Senator Doyen (excused)

Committee staff present: Raney Gilliland, Legislative Research Department
Arden Ensley, Revisor of Statutes Department

Conferees appearing before the committee: Representative Melvin Neufeld
Representative Dale Sprague
Bill Fuller, Kansas Farm Bureau
Ivan Wyatt, Kansas Farmers Union
Ed Reznicek, Kansas Rural Center
Ron Wilson, Farm Credit Council
Sam Eberly, Farm Credit Council
Jim Maag, Kansas Bankers Association
Jim Dobbins, farmer, Nemaha County
Ray Edwards, Deere Company, Des Moines, Iowa

Senator Allen called the Committee to order and called for approval of Committee minutes.

Senator Norvell made a motion the Committee minutes of March 19 be approved. Senator Karr seconded the motion. Motion carried.

The Chairman called the Committees' attention to HB 2691 and called on Representative Neufeld, the first proponent, to testify.

Representative Neufeld explained that section 1 and section 2 of the present HB 2691 were the original bill that he and several other representatives co-sponsored. He stated those two sections pertain to buy back provisions for farmers who have lost their farms because of debt; the provisions allow that if the lender subsequently sells the land at private sale, the farmer would have the right of first refusal to buy back at the highest bona fide offer. He stated this bill passed the House on a vote of 122 to 0.

During Committee discussion Representative Neufeld stated he felt the legislature could decide policy for Federal Land Bank and FHA but that FHA does not think they need to abide by state policies. He also stated that researchers had found no court cases to support this proposed legislation. He said he supported the changes that had been made to the bill and that the difference was the payment was divided into quarterly payments instead of listing a yearly payment, the effective date is different and the definition section is worded more clearly. Representative Neufeld said he did not see that people would take advantage of HB 2691.

The Chairman thanked Representative Neufeld and called on Representative Sprague to testify.

Representative Sprague reminded the Committee that SB 696 had already passed the Senate Agriculture Committee and the Senate and that on the House Floor SB 696 was amended into HB 2691. The only change made was that the farmer payments were divided into four payments instead of listing a yearly payment. Representative Sprague stated that later in the day he had an appointment with the Federal Land Bank to explain to them how HB 2691 will work and will also meet with the Kansas Bankers Association to discuss how the bill will work.

In answer to Committee questions, Representative Sprague said he felt HB 2691 from an administrative, from an agriculture standpoint, from the banking standpoint and from a judges standpoint will be a bill that will work. He stated that as an attorney he wanted only a bill that will

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Agriculture,
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work. He stated this bill is a new area of law being put into Kansas law if it passes. Representative Sprague stated that the lenders involved in the program of this legislation would not lose any money.

The Chairman thanked Representative Sprague and called on Bill Fuller to testify.

Mr. Fuller gave copies of his testimony to the Committee (attachment 1) and expressed support for the present form of HB 2691.

During Committee questions Mr. Fuller stated that there is always someone that will try and take advantage of legislation but he expressed support for this bill because it will help some farmers but he stated he did not want to see farmers blamed for hurting our credit system. He also stated that, with HB 2691, the lenders will not lose money.

The Chairman thanked Mr. Fuller and called on Ivan Wyatt to testify.

Mr. Wyatt stated that, hopefully, by letting a farmer in trouble stay on his land another three years that by that time farm policy and farm prices will have changed so that the farmer is able to make payments on his deficiency. He stated that he felt HB 2691 would work well with HB 2996. Mr. Wyatt stated that a farmer out of business helps no one; Mr. Wyatt stated that he felt, in the long run, that HB 2691 would help everyone; he urged Committee approval of HB 2691.

The Chairman thanked Mr. Wyatt and asked Ed Reznicek for any comments he would like to make.

Mr. Reznicek stated he felt there needed to be a better understanding among lenders; then they would be able to work better with farmers. Mr. Reznicek expressed support for HB 2691.

The Chairman thanked Mr. Reznicek and then called on the first opponent for HB 2691, Ron Wilson, to testify.

Mr. Wilson explained that he was only introducing Sam Eberly, the new Chairman of the board of the Wichita District Farm Credit Council and Farm Credit Services.

Mr. Eberly gave copies of his testimony to the Committee (attachment 2). Mr. Eberly expressed the concern that this bill would put more burden on lenders. He expressed he felt as the cost of the lender increases so does the interest charge so that this bill will be more of a detriment to farmers and could put more farmers in jeopardy than already are.

During Committee discussion Mr. Eberly stated that 93% of the farmers that have loans with Farm Credit Services are servicing their loans, that only 7% of the farmers with loans are behind in their payments. Mr. Eberly stated that later this day a meeting was planned with the co-sponsors of this bill to work on differences of opinions on this legislation.

The Chairman thanked Mr. Eberly and called on Jim Maag to testify.

Mr. Maag gave copies of his testimony to the Committee (attachment 3). Mr. Maag stated that banks in Kansas are working as hard as they can to help farmers and expressed the concern that his proposed legislation might have serious ramifications on the safety and soundness of many community banks in Kansas and could have a restrictive effect on the availability of agricultural credit.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Agriculture,
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The Chairman thanked Mr. Maag and called on Jim Dobbins to testify.

Mr. Dobbins expressed the concern that this legislation will increase costs for lenders and thus interest rates will also increase. He stated that he could not afford any increase in interest rate as he struggles to keep in the farming business.

The Chairman thanked Mr. Dobbins and asked if any one else in the room would like to comment on HB 2691.

Ray Edwards stated that he represented the Deere and Company and that he had come from Des Moines to suggest an amendment to HB 2691. That amendment is to request and urge Committee support to change on line 215 on page 6 of HB 2691 the 2% to 3% or more. Mr. Edwards stated that if this legislation is passed with the 2% that his company will lose money.

In answer to Committee questions, Mr. Edwards said this bill would probably not have any effect on the good creditors, but it will reduce the availability for farmers that are in financial trouble. Mr. Edwards urged the 2% be changed to a higher percentage.

The Chairman declared the hearing closed on HB 2691 and then adjourned the Committee at 11:04 a.m.

GUEST LIST

COMMITTEE: SENATE AGRICULTURE

DATE: March 24, 1986

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Rep Melvin Newfeld	115th District	
Ivan W. Wyatt	On Pherson	Ks Farmers Union
James DeLaney	Coff	
Pauline Rome	Corning	
Robert Beck	Corning	Kc
James Norris	NORWAY K.S.	FARM CREDIT SAVINGS
Rhea Wilgers	Washington Ks	
Kenn Schutte	Tipton, Ka	Farm Credit Center - Salina
John V. Spang	Dodge City, Ks.	1st Nat'l Bank
Larry R. Meyers	Dodge City	First National Bank
Harold Stover	Topeka	ICBP
Jimmie	"	"
Joe McCoolley	Delia	Farm Credit, Manhattan
Cecilia Wilgers	Washington	Farm Credit
Emmett Koch	farm Centralia	Farm
John Rempel	Corning, Ks	Farmers
Ed Ryznick	Whiting, Ks	Ks Rural Center
Richard Gustason	White City, Ks	Farm Credit Center - NE
Bob Kaufman	Enterprise Ks	Farm Credit Center NE Ks
Larry Kesley	Ulysses Kan.	FLBA Garden City
Kari Schmidt	Wichita	Farm Credit Council
Kath Peterson	Topeka	CKP
Kick McKee	Topeka	Ks Livest. Assn.
Joe Lieber	" "	Ks Co-op Council
Jim Johnson	Topeka	Budget Division



PUBLIC POLICY STATEMENT

SENATE COMMITTEE ON AGRICULTURE
Senator Jim Allen, Chairman
March 24, 1986

RE: H.B. 2691 - Requires Creditors Who Acquire Agricultural Land to Offer Debtor or Prior Owner First Opportunity to Buy-Back the Land for Farming and Creates the Family Farm Rehabilitation Act

Presented by:
Bill R. Fuller, Assistant Director
Public Affairs Division
KANSAS FARM BUREAU

Mr. Chairman and Members of the Committee:

I am Bill Fuller, Assistant Director of the Public Affairs Division of Kansas Farm Bureau. I am speaking on behalf of the farmers and ranchers who are members of our organization. We are PROPONENTS of H.B. 2691 which passed the House on a unanimous vote of 121 yeas, 0 nays.

The version of H.B. 2691 we are considering today contains provisions of 2 bills combined through an amendment on the House floor ... H.B. 2991 and S.B. 696. We have testified in support of both bills at earlier hearings, and continue to support the proposals today.

We believe H.B. 2691 will carry out the needed cooperation between farmers and lenders expressed by the voting delegates at the 67th Annual Meeting of Kansas Farm Bureau when they adopted this policy statement:

Agricultural Credit

"... In these difficult times neither farmers nor lenders will succeed by themselves if the other fails. We need credit programs that are mutually beneficial for farmers and lenders, programs that will assist farmers and ranchers to maintain viable operations, and programs that will give lenders sufficient latitude to work with producers who have credit or debt difficulties..."

3/24/86

Sen. Ag.

attachment 1

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Based upon other KFB policy, we have supported legislation this session to assist banks in dealing with these very difficult times in agriculture: S.B. 555 - allowing banks to amortize loan losses over 5 years and S.B. 432 - providing banking services in rural communities with stressed banks. Now, it is refreshing to appear as a proponent of this bill which will allow some farmers up to three years to work out of their financial problems. **We believe this bill will assist in keeping a number of farmers on the farm.** The proposal allows a legitimate, but insolvent farmer, up to three years to retain his land and equipment, keep farming and gives him an opportunity to make a profit as he again becomes established as the farm economy improves. The bill addresses the very critical problem of "paper insolvency" ... the result of declining land and equipment values ... which farmers have no control, yet is fatal to their financial stability. In addition, the bill requires creditors who acquire agricultural land in settlement of debt to offer the debtor or prior owner first opportunity to ~~lose~~^{buy-back} the land for farming.

We believe the safeguards in H.B. 2691 limiting the proposal to ... insolvent farmers and farmers who receive more than 80 percent of their gross income from farming ... will direct the assistance to the legitimate farmers. However, we recommend you consider reducing the "80 percent of gross income from farming" requirement to perhaps 70 percent. This would allow assistance to some farmers forced to acquire off-farm employment.

On the other hand, H.B. 2691 appears to be balanced with protection for lenders. The land and property must be adequately protected and the Act shall not apply to:

1. Land not occupied in good faith; and
2. Farms abandoned by the owner.

The lender controls the implementation of the provisions of this bill since a borrower cannot apply to the court for participation until the lender initiates foreclosure procedures. Also, the proposal will allow some cash flow to the lender through the interest and depreciation payments required in the bill ... perhaps sooner than would be received through regular procedures in foreclosure or bankruptcy.

We believe H.B. 2691 can be a cornerstone of a meaningful, possible and acceptable program to assist farmers during these most troubled times.

Thank you for this opportunity to express our **SUPPORT** of H.B. 2691. I will attempt to respond to any questions the committee may have.

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TESTIMONY FOR SAM EBERLY

CHAIRMAN OF THE BOARD

WICHITA DISTRICT FARM CREDIT COUNCIL

FOR

SENATE AGRICULTURE COMMITTEE

TOPEKA, KANSAS

MARCH 24, 1986

3/24/86 Sen. Ag.

attachment 2

MR. CHAIRMAN, I AM SAM EBERLY, A FARMER/STOCKMAN FROM THE WICHITA, KANSAS AREA. I AM CHAIRMAN OF THE BOARD OF THE NINTH FARM CREDIT DISTRICT AND THE WICHITA DISTRICT FARM CREDIT COUNCIL, WHICH REPRESENTS COOPERATIVE AGRICULTURAL LENDERS.

WE STRONGLY SUPPORT FARM CREDIT SERVICES, AN AGRICULTURAL LENDING COOPERATIVE WHICH INCLUDES: THE FEDERAL LAND BANK OF WICHITA, WHICH PROVIDES LONG-TERM REAL ESTATE LOANS THROUGH THE FEDERAL LAND BANK ASSOCIATIONS; THE FEDERAL INTERMEDIATE CREDIT BANK OF WICHITA, WHICH PROVIDES FUNDS TO PRODUCTION CREDIT ASSOCIATIONS FOR SHORT- AND INTERMEDIATE-TERM FARM OPERATING LOANS; AND THE BANK FOR COOPERATIVES, WHICH OFFERS LOANS TO AGRICULTURAL AND RURAL UTILITY COOPERATIVES. AS OF FEBRUARY 28, 1986, FARM CREDIT SERVICES PROVIDED MORE THAN 5.5 BILLION DOLLARS FOR NEARLY 70,000 FARMERS, RANCHERS AND COOPERATIVES THROUGHOUT KANSAS, OKLAHOMA, COLORADO AND NEW MEXICO.

MR. CHAIRMAN, AS WE CONSIDER LEGISLATIVE PROPOSALS, WE MUST NEVER LOSE SIGHT OF THE FACT THAT THE FUNDAMENTAL PROBLEM FACING BOTH FARMERS AND FARM LENDERS IS INADEQUATE FARM INCOME. AS FARMERS HAVE AN OPPORTUNITY FOR PROFIT, THEY ARE BETTER ABLE TO SERVICE THEIR DEBTS AND TO GENERATE ECONOMIC GROWTH WHICH BENEFITS ALL OF RURAL AMERICA. WE NEED TO WORK ON OUR CREDIT PROBLEMS, BUT WE MUST REMEMBER THAT FARM INCOME IS THE KEY.

BECAUSE OF THE WEAK FARM ECONOMY, WE MUST ALSO RECOGNIZE THAT MANY FAMILY FARMERS ARE FACING THEIR MOST SERIOUS ECONOMIC CHALLENGES. WE MUST ACKNOWLEDGE THE UNFORTUNATE HUMAN TRAGEDY OF THOSE FARMERS WHO DO LEAVE THE BUSINESS, AND DO WHAT WE CAN TO HELP.

MR. CHAIRMAN, WE HAVE REVIEWED HOUSE BILL 2691 AND ALSO HOUSE BILL 2996, BOTH OF WHICH HAVE ALREADY PASSED THE HOUSE. I KNOW THAT YOU HAVE HEARINGS SCHEDULED ON THE SECOND OF THESE BILLS TOMORROW, BUT IT WILL BE IMPOSSIBLE FOR ME TO BE HERE AT THAT TIME. RON WILSON WILL BE HERE TOMORROW, BUT SINCE SOME OF OUR CONCERNS ARE THE SAME FOR BOTH BILLS, I WOULD LIKE TO BRIEFLY POINT OUT THOSE CONCERNS AT THIS TIME.

WE ARE OPPOSED TO BOTH H.B. 2691 AND H.B. 2996. THE FIRST BILL WOULD REQUIRE THE LENDER TO LEASE AN ACQUIRED PROPERTY TO A PREVIOUS OWNER AND THE SECOND WOULD REQUIRE THE LENDER TO OFFER AN ACQUIRED PROPERTY FOR SALE BACK TO THE PREVIOUS OWNER.

WE RECOGNIZE THESE MEASURES ARE WELL INTENDED. IN FACT, THE SPONSORS OF THE LEGISLATION HAVE A VALID POINT TO THIS EXTENT: THERE ARE CASES WHERE IT IS PRACTICAL AND WORKABLE FOR THE PREVIOUS OWNER TO REPURCHASE THE PROPERTY, AND THERE ARE CASES WHERE IT IS IN EVERYONE'S BEST INTEREST TO LEASE THE PROPERTY BACK TO THE PREVIOUS OWNER. HOWEVER, IT IS NOT PRACTICAL OR WORKABLE IN EVERY CASE.

THE POLICY OF FARM CREDIT SERVICES IS SUFFICIENTLY BROAD TO ALLOW A REPURCHASE AND/OR A LEASEBACK WHERE PRACTICAL AND APPROPRIATE. WE DO HAVE STRONG OBJECTIONS TO THE ADDITIONAL REQUIREMENTS OF THESE BILLS, WHICH WILL MANDATE THESE PRACTICES IN EVERY CASE.

IN FACT, FARM CREDIT SERVICES HAS A FORBEARANCE POLICY WHICH CAN HELP QUALIFYING BORROWERS TO STAY ON THE PROPERTY IN THE FIRST PLACE. OUR POLICY PROVIDES FOR US TO REACH AN AGREEMENT WITH THE BORROWER TO RENEW, RESCHEDULE, DEFER PAYMENT, REAMORTIZE AND AVOID FORECLOSURE AS LONG AS HE:

1. IS DOING HIS HONEST BEST TO FULFILL HIS OBLIGATION;
2. IS BEING COOPERATIVE WITH HIS LENDERS; AND
3. IS CAPABLE OF WORKING OUT OF HIS DEBT-BURDEN AS DETERMINED BY A CAREFUL CREDIT ANALYSIS OF BOTH HIS PRESENT AND PROJECTED FINANCIAL CONDITION.

THIS POLICY INVOLVES A COST TO AGRICULTURAL LENDERS, BUT WE BELIEVE IT IS ONLY FAIR THAT THESE FARMERS AND RANCHERS HAVE THIS ADDITIONAL OPPORTUNITY TO SUCCEED. HOWEVER, WE ARE CONCERNED ABOUT THE ADDITIONAL, BURDENSOME REQUIREMENTS OF H.B. 2691 AND H.B. 2996.

H.B. 2691 REQUIRES THE LENDER TO ALLOW A REPURCHASE ON THE "SAME TERMS AND CONCESSIONS." UNDER THE BILL, LENDERS WOULD BE REQUIRED TO OFFER THE SAME TERMS TO HIGH RISK BORROWERS AS TO LOW RISK BORROWERS, WHICH IS UNFAIR, IMPRACTICAL AND UNSOUND. THE ALTERNATIVE IS THAT LENDERS COULD ONLY OFFER EXTREMELY HIGH INTEREST RATES IN TRYING TO MOVE ACQUIRED PROPERTIES, WHICH WOULD FURTHER REDUCE INTEREST IN THE LAND MARKET AND DEPRESS LAND VALUES.

THE SECONDARY EFFECTS OF THESE REQUIREMENTS CAN HAVE SUBSTANTIAL ADVERSE AFFECT ON AGRICULTURAL CREDIT. GENERALLY SPEAKING, THE REQUIREMENTS OF THESE BILLS WILL EXTEND OR DELAY THE TIME PERIOD IN WHICH AN ACQUIRED PROPERTY IS MOVED INTO THE HANDS OF ANOTHER PRODUCING FARMER. CURRENTLY, THE COST OF THESE ACQUIRED PROPERTIES IS A SUBSTANTIAL BURDEN ON KANSAS FARMERS AND RANCHERS.

ADDITIONAL DELAY CAN BE VERY COSTLY. BY ONE UNOFFICIAL ESTIMATE, OUR CURRENT ACQUIRED PROPERTIES ARE COSTING KANSAS FARMERS AND RANCHERS 34 THOUSAND DOLLARS A DAY. EVERY DAY WHICH THE PROCESS IS DELAYED COSTS FARMERS AND RANCHERS HEAVILY. THAT AMOUNT ADDS UP TO APPROXIMATELY ONE MILLION DOLLARS A MONTH. OUR FARMER AND RANCHER MEMBERS CANNOT AFFORD ADDITIONAL DELAYS AND RESTRICTIONS.

BEYOND THAT, THE FARM CREDIT AMENDMENTS ACT OF 1985 AUTHORIZED A CAPITAL CORPORATION TO, AMONG OTHER THINGS, PURCHASE ACQUIRED PROPERTIES FROM FARM CREDIT INSTITUTIONS. AS ADDITIONAL RESTRICTIONS ARE PLACED ON THESE PROPERTIES, THE CAPITAL CORPORATION WILL PAY LESS FOR THEM -- WHICH WILL LIMIT THE EFFECTIVENESS OF THE NEW LEGISLATION AND REDUCE THE BENEFITS TO KANSAS FARMERS AND RANCHERS.

THE TWO HOUSE BILLS DO ALLOW SUBSTANTIAL PRIVILEGES TO THE PREVIOUS OWNER. IN EFFECT, THEY ALLOW A WRITE-DOWN OF DEBT THROUGH THE BACK DOOR. IF WE START TO FORGIVE DEBT THROUGH THIS METHOD, WHERE DO WE STOP? A MORE FAIR AND REASONABLE POLICY IS TO ALLOW REPURCHASE AND LEASEBACK TO THE PREVIOUS OWNER ON A CASE-BY-CASE BASIS AS WE CURRENTLY PROVIDE.

IN CLOSING, I WOULD LIKE TO MAKE SOME GENERAL COMMENTS. FIRST, AMERICAN FARMERS ARE FACING SERIOUS FINANCIAL STRESS TODAY. SINCE THE FARM CREDIT SYSTEM LENDS ONLY TO AGRICULTURE AND RURAL AMERICA, WE FEEL THE STRESS OF OUR FARMER/RANCHER OWNERS FIRST AND FOREMOST. FOR 1985, THE WICHITA DISTRICT REPORTED ITS LARGEST FINANCIAL LOSS IN HISTORY. WE BELIEVE WE ARE MANAGING THIS FINANCIAL DIFFICULTY, BUT WE ARE VERY CONCERNED ABOUT ADDITIONAL COSTS WHICH COULD BE IMPOSED BY SOME OF THE PENDING PROPOSALS AND WHICH MUST BE PASSED ON TO OUR OTHER BORROWERS.

SECOND, THESE PROPOSALS MIGHT BE COUNTERPRODUCTIVE IN THAT THEY WOULD ENCOURAGE FARMER/RANCHER BORROWERS TO DEFAULT ON THEIR OBLIGATIONS. I BELIEVE THAT OUR BORROWERS ARE DOING THEIR HONEST BEST, BUT IT IS ALL THE MORE DIFFICULT FOR THEM TO MEET THEIR OBLIGATIONS AS THEY ARE ASKED TO BEAR ADDITIONAL COSTS.

FINALLY, I AM A FARMER AND A BORROWER OF THE SYSTEM. TODAY, I AM REPRESENTING THE VAST MAJORITY OF OUR FARMER/RANCHER MEMBERS WHO ARE MAKING PAYMENTS. WE ALL KNOW THAT AGRICULTURE FACES HARD TIMES, AND WE ARE ALL FACING THE SAME DIFFICULT CONDITIONS.

THESE LEGISLATIVE PROPOSALS MAY BE WELL INTENDED, BUT THEY ARE INCREASING THE COST TO PAYING FARMERS. THIS HAS THE NET EFFECT OF PLACING EVEN MORE FARMERS AND RANCHERS INTO ECONOMIC DISTRESS, AND IT IS TIME TO DRAW THE LINE. WE URGE YOU TO BE FAIR TO THE VAST MAJORITY OF THESE BORROWERS WHO ARE MAKING THEIR PAYMENTS AND TO REJECT H.B. 2691 AND H.B. 2996.

AT THE SAME TIME, WE RECOGNIZE THE SEVERITY OF THE CREDIT PROBLEMS FACING FARMERS, AND WE WOULD LIKE TO FIND REASONABLE SOLUTIONS. OF COURSE, THE SENATE HAS ALREADY PASSED A VERSION OF A FARM CREDIT RELIEF PROPOSAL AND THE HOUSE HAS PASSED THE TWO BILLS WE ARE DISCUSSING TODAY. WE ARE DEEPLY CONCERNED ABOUT THE IMPACT ON AGRICULTURAL LENDING IF THESE MULTIPLE, COSTLY PROPOSALS WERE ALL TO BE ENACTED. WE WOULD LIKE TO WORK WITH YOU WHERE POSSIBLE, BUT WE BELIEVE THESE HOUSE BILLS SHOULD BE REJECTED.

MR. CHAIRMAN, I APPRECIATE THIS OPPORTUNITY TO MAKE COMMENTS ON BEHALF OF OUR FARMER AND RANCHER MEMBERS. THANK YOU.

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March 24, 1986

TO: Senate Committee on Agriculture
FROM: Kansas Bankers Association
RE: HB 2691

Mr. Chairman and members of the Committee:

Thank you for the opportunity to appear before the committee on the provisions of HB 2691. We are well aware of the problems faced by many agricultural producers today and the trauma of losing their farm land. In these troubled agricultural times bankers throughout Kansas are exhausting every possible avenue available to them to keep a farmer on his land before initiating legal action.

While we can appreciate and understand the intent of the original provisions of HB 2691 (i.e., Sections 1 to 3) we are concerned that enactment of such legislation would create far more problems than it would solve. We believe the end result of the debtor's pre-emptive repurchase rights in the bill will have the effect of furthering the decline in farmland prices because it will simply force more land to be sold at public auction. Potential buyers are going to be very reluctant to make serious offers for such land when they know there is the possibility of a pre-emption of their offer.

The bill really gives the debtor the power to determine the lending policies of the bank since the debtor is to be allowed to repurchase on the "same terms...and same concessions" as given to the highest bidder on the land. Thus lenders will not be able to offer credit-worthy producers reasonable financing terms if they are required to offer those same terms to the debtor who was obviously a high credit-risk producer. The end result will be that lenders will only be able to offer a higher rate of interest when trying to sell the land and this, in turn, will drive away potential buyers and further depress land values.

The present redemption laws in Kansas give the debtor a significant period of time in which to redeem the land before it can be offered for sale by the creditor. That redemption period already works a hardship in many instances on the lending institution and this bill accentuates the problem by giving the debtor additional time to redeem in addition to the existing redemption period.

The long-range impact of this legislation will be to diminish the availability of credit to marginal or new agricultural customers. Creditors

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attachment 3

simply cannot afford to make large loan commitments when they are faced with these kinds of impediments to the control of their collateral.

Sections 4 to 13 of HB 2691 incorporate the provisions of SB 696 - "The Family Farm Rehabilitation Act". As is noted in the attached testimony which we have presented on SB 696 in the House Committee on Agriculture and Small Business bankers throughout Kansas have serious concerns about the impact of that legislation on the availability of agricultural credit.

In closing, let me emphasize once again that Kansas banks are working more closely than ever before with their farm customers to keep them on their land and they see foreclosure actions as the last and most painful alternative. We believe existing state laws relating to foreclosure and post-foreclosure actions adequately protect the rights of the debtor and to significantly alter those laws - as contemplated in HB 2691 - could have serious ramifications on the safety and soundness of many community banks in Kansas and will undoubtedly have a restrictive effect on the availability of agricultural credit.

Your willingness to hear our deep concerns about this legislation is greatly appreciated.

KANSAS BANKERS ASSN.

707 MERCHANTS NTL. BLDG--TOPEKA KS 66612

March 24, 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. Again, we have not yet found any enthusiastic supporters, but when compared to the very devastating results to both farmers and lenders in such issues as total moratorium, or on extension of redemption periods, then the majority of Kansas bankers 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 and 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. 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. This will most directly affect farmers who are now barely able to cash flow.
- 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.
- Likely result in the courts finding the statute unconstitutional.

Some of the bankers who subscribe to the above points of view will no doubt speak for themselves this morning.

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. 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, 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 has a \$100m note which the farmer brings into this act, and later redeems for \$50m, this amendment insures that if the farmer sells the land within 5 years for more than the \$50m purchase price, the excess must be split 50-50 with the lender up to the amount of the \$50m difference between the note and the redemption price. Such sale should take place at public auction, so a "brother-in-law" transaction does not occur which could obscure the true price.

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, 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

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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. 33. 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.*

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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:

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the next

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against the defendant-owner or purchaser

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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, ~~for 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~~

in the case of agricultural land,

0129 ~~both~~ Within 10 days before the end of such second one-year
 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:

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(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.

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, ~~for 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, ~~for agricultural property, or~~

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in the case of agricultural land,

0140 ~~both~~ After a third one-year stay of execution of the judgment
 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.]

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(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.

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%.

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.

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If the defendant-owner or purchaser does redeem the agricultural land or agricultural property, such land or property may not be sold within five years unless such sale be held pursuant to public auction and 50% of the proceeds thereof in excess of the amount paid upon redemption, shall be paid to the party initiating action for repossession or foreclosure. The maximum limit of such proceeds shall be the difference between the amount of the judgement and the amount paid at redemption.

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~~ 11. This act shall take effect and be in force from and
0212 after its publication in the Kansas register.



**First
National
BANK AND TRUST CO.**

LARRY R. HEYKA, PRESIDENT

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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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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