Approved March 21, 1986
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

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

9:00 a.m.~~p.m.~~ on March 20, 1986 in room 529-S of the Capitol.

All members were present except:

Sen. Strick - Excused

Committee staff present:

Bill Wolff, Legislative Research
Bruce Kinzie, Revisor of Statutes

Conferees appearing before the committee:
Jim Turner, Kansas League of Savings Institutions
Ron Todd, Kansas Insurance Department

The minutes of March 19 were approved.

The hearing began on HB 2751 dealing with guarantee stock of savings and loan associations. Jim Turner, Kansas League of Savings Institutions, testified in support of the bill. (See Attachment I.)

The chairman asked what the effect of the suggested amendment is. Mr. Turner said it modifies the House amendment. The House amendment took out Section I, and the suggested amendment restores Section I but with new language changing six months to eleven.

Sen. Werts inquired as to what the origin of the term "guarantee stock" is. Marvin Steinert, Savings and Loan Commissioner, said it is common stock and that he did not know from where the term came. Sen. Werts felt the term should be changed in the statutes. Mr. Turner and Mr. Steinert had no objection to the change but said that it would involve a lot of work.

Sen. Burke made a motion to adopt Mr. Turner's suggested amendments and that the necessary changes be made in the title. Sen. Harder seconded, and the motion carried.

Sen. Burke made a motion to recommend HB 2751 as amended favorable for passage. Sen. Harder seconded, and the motion carried.

Attention was turned to HB 3088 regarding the Kansas life and health insurance guaranty association act which was introduced at the request of the insurance department.

Ron Todd, Kansas Insurance Department, testified on the bill highlighting the main sections of the bill. (See Attachment II.) Also, he offered three amendments. (See Attachement III.) He said the first two amendments on page sixteen change $100,000 back to $300,000. He feels that it should remain at $300,000 because it has been this way in the statute for a long time and makes more sense. The third amendment offered concerns an editorial error. If the first two amendments are not made, he advised that this one should not be made either.

With regard to "Kansas residents" in the first paragraph of Mr. Todd's hand out, the chairman asked if a person who had bought a policy while living in Kansas but who had moved out of state at the time the company goes under would still be considered as a Kansas resident. Mr. Todd answered that that person would not be considered a resident. The reason for this is to encourage other states that have no guaranty law to pass one.

Sen. Werts had a question regarding the relation of malpractice to this bill. Mr. Todd said that the guaranty association is made liable to the full extent of any annuity that comes from the Health Care Stabilization Fund. He also said that there are no circumstances which would eliminate an association from getting benefits from a guarantee fund.

Sen. Burke asked Mr. Todd what would be the down side if Kansas residents who move from the state were protected. Mr. Todd said there is no way to put a dollar value on this, but it would get away from the model. There being no further time, this concluded the hearing on HB 3088.

The meeting was adjourned.

SENATE COMMITTEE

ON

FINANCIAL INSTITUTIONS AND INSURANCE

OBSERVERS
(Please print)

DATE	NAME	ADDRESS	REPRESENTING
3/20/86	Marvin Steinert	Topeka	S+L Dept.
"	Jim Turner	Topeka	KLSI
"	Ron Todd	"	Ks. Ins. Dept.
"	Charles Blankenship	Topeka	Victory Life Ins.
"	Terry Liede	Topeka	Ks. Ins. Dept.
"	Jack Wright	Topeka	KS Credit Union League

Kansas League of Savings Institutions

JAMES R. TURNER, President • Suite 612 • 700 Kansas Ave. • Topeka, KS 66603 • 913/232-8215

March 20, 1986

TO: SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

FROM: JIM TURNER, KANSAS LEAGUE OF SAVINGS INSTITUTIONS

RE: H.B. 2751 (CONVERSION MUTUAL TO STOCK FORM)

House Bill No. 2751 repeals K.S.A. 17-5424 and replaces it with language that will facilitate conversions of a state-chartered association from mutual to stock form. The original bill also amends K.S.A. 17-5306 to further facilitate this process.

This proposal is patterned after model legislation, similar to what was recently enacted in Missouri, and would eliminate the need for state-chartered associations to convert to federal charters in order to avoid the present cumbersome stock conversion process. This statute was last amended in 1955.

House Bill 2751 would provide for the issuance of rules and regulations by the State Savings and Loan Commissioner governing the conversion process. Such regulations could encompass federal regulations but could not include provisions that would preclude FSLIC insurance.

The plan of conversion would have to be approved by the State Savings and Loan Commissioner, the FSLIC, the majority of the Board of Directors of the Association, and by a majority of the members of the association at an annual or special meeting.

The conversion to stock associations has in recent years been an extremely valuable tool for many associations to increase their capitol and improve their net worth. The modernization of Kansas statutes will allow state-chartered associations to avail themselves of this opportunity in a manner similar to what is now available to federally-chartered associations.

Unfortunately, H.B. 2751 was amended on the House floor to eliminate the repeal of K.S.A. 17-5306 thus restoring a six month limit on proxies. This has the effect of rendering the bill as ineffectual in creating parity between federal and state chartered associations as federal associations have the ability to utilize continuous proxies in the conversion process.

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Attachment I

We are requesting that the committee consider restoring Section 1 of the original form of the bill on page one, but with amendatory language which would create conformity in the utilization of proxies among federal and state-chartered associations.

Further, the bill needs to be amended on page four to eliminate the "in person" language so as to be consistent with the amendatory language pertaining to proxies. Also, the FSLIC does not accord legal recognition to actions taken only by a majority of those present in person. We have attached amendments to accommodate these recommendations.

Accordingly, we would appreciate the committee's consideration of reporting H.B. 2751 in this amendatory form favorably for passage.

James R. Turner
President

JRT:bw

Encl.

Amendment 1 - p. 1, lines 22-26

Section 1. K.S.A. 17-5306 is hereby amended to read as follows: 17-5306. Voting may be by proxy, provided the proxy instrument authorizing the proxy to vote shall have been executed in writing by the member. No proxy shall be effective more than ~~six~~ eleven months after the date of its execution, except for conversion procedures under the provisions of K.S.A. 17-5425.

Amendment 2 - p. 1, line 27

Restore Section 2.

Amendment 3 - p. 4, line 134

Amend on line 134 after the word "association" by deleting "present in person or by proxy."

House Bill No. 3088 As Amended

This proposal suggests a number of changes in the life and health insurance guaranty fund act; however, there are three that are particularly significant.

First, the proposal would amend the guaranty fund law so that it would generally apply only to Kansas residents. If a Kansas domestic life insurer became insolvent, this amendment would provide protection to Kansas residents. Similarly, the law, as amended, would protect Kansas residents with respect to contracts issued by a foreign insurer even though the insurer's state of domicile had no guaranty fund law.

Second, annuity contracts are again proposed to be covered by the life and health guaranty fund. By action of the 1984 legislature, annuity contracts were removed from coverage effective July 1, 1985; however, this proposal, in effect, suggests a reversal of the 1984 legislative action except that unallocated annuities will continue to be excluded from coverage.

Finally, a number of limitations on coverage under the guaranty fund are suggested by this proposal. There seems to be a growing belief that guaranty funds should provide reasonable protection from the adverse results of an insurance company insolvency but that such protection should not be so comprehensive that extraordinary profits from quasi-speculative purchases are guaranteed. The restrictions suggested are intended to accommodate this concept.

Section by Section Description

Section 1. The basic purpose of this act is to protect policyowners, insureds, beneficiaries, annuitants, payees, and assignees against losses (both in terms of paying claims and continuing coverage) which might otherwise occur due to an impairment or insolvency of an insurer. Unlike the property and liability situations, life and annuity contracts in particular are long term arrangements for security. An insured may have impaired health or be at an advanced age so as to be unable to obtain new and similar coverage from other insurers. The payment of cash values alone does not adequately meet such needs. Thus, it is essential that coverage be continued. In like manner, an insured may be unable to obtain new health insurance or, at least, he or she may lose protection for prior illness.

Section 2. Protection of this act is primarily extended to resident persons but certain nonresidents under specific circumstances will be protected by this act if the insolvent insurer was domiciled in this state.

This act does not apply to reinsurance unless assumption certificates were issued to the direct insureds. Furthermore, it applies only to direct individual or group certificate insurance issued by insurers licensed to transact insurance in this state at any time. Coverage issued by insurers or other entities which have not submitted to the application of a state's regulatory safeguards applying to insurers is excluded from protection by this act.

The act covers life, health, and annuity policies and contracts and contracts supplemental thereto. The term health insurance includes "accident and health" insurance, "sickness and accident" insurance, "disability" insurance, etc. Certificateholders under group contracts are explicitly covered, but group contractholders are not covered; this avoids the possibility of double coverage and indirect coverage of non-resident certificateholders through a resident group contractholder.

Section 3. This section contains the definitions. Of particular interest are the definitions of "insolvent" and "impaired" insurers. This act covers "insolvent insurers" which are defined to include an insolvent insurer under an order of liquidation issued by a court of competent jurisdiction. An "impaired insurer" is an insurer deemed by the Commissioner to be unable or potentially unable to fulfill its contractual obligations. As will be noted in section 6 on the powers and duties of the association, this bill enables the association to become involved prior to an actual court order. The finding by the Commissioner that an insurer is impaired, even though not

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Attachment II

subject to a court proceeding, serves as a triggering mechanism enabling the association to function.

Section 4. Subsection 9(a) creates three accounts, for both administration and assessment purposes, the health insurance account, the life insurance account and the annuity account. These three categories of coverage are significantly different, so that persons protected by virtue of one account should not be required to pay for the protection afforded persons protected by the other accounts.

Supplementary contracts would be covered under the account in which the basic policy is covered for purposes of assessment. For example, settlement options under a life insurance contract would be covered under the life insurance account.

Section 5. Subsection (a) provides for the number and term of the members of the board of directors.

Section 6. Along with section 2, this section is a key to the specific responsibilities of the association toward covered persons. That responsibility varies by type of policy or contract involved.

The association is primarily intended to act after the entry of an order of liquidation with the finding of insolvency against a member insurer. However, the association may act in the case of an impaired member insurer to guarantee, assume or reinsure any or all policies or otherwise provide money to the member insurer. Action under this subsection is not limited to resident policyholders but to all policies or contracts issued by the insurer.

The association must act under this section (section 6 (b)(1)) even without an order of liquidation if several conditions exist, (section (b)(2)) the most important being a statutory provision for the repayment of the association prior to the return of the company to shareholder or private control. The association's role here is the payment of benefits and "hardship" cash withdrawals to covered persons.

Subsection 6 (c) through (e) details the main role of the association in the instance of an order of liquidation against an insolvent member insurer. The responsibilities of the association vary depending on the kind of coverage and type of policy -- group or individual. The association may offer alternative policies or change the premiums or benefits of existing contracts. "New contracts" shall be offered without new underwriting and with coverage for most existing conditions. In order to facilitate the sale of blocks of business for which the association is responsible, the cooperation of the domestic receiver will be necessary.

Subsections (g) through (i) relate to the imposition of policy and contract liens, moratoriums, etc.

Subsections (j) and (k) permit the Commissioner to assume the role of the association if it (the association) fails to act with respect to an impairment or insolvency within a reasonable period of time.

Subsection (l) enables the association to protect its interest and the best interests of the policyholders in the handling of an impairment or insolvency, provides that the association shall have standing to appear in courts with jurisdiction over an insolvent insurer and such standing will extend to any matters concerning the duties of the association.

Subsection (m) gives the association the rights possessed by a person receiving benefits under the act to bring an action or intervene in any court proceeding against the liquidation or rehabilitation of the impaired or insolvent insurer.

Subsections (n) and (o) sets forth the exclusions and limitations of coverage. $100,000 death benefit -- $100,000 per account -- $100,000 total except no limit applies with respect to structured settlements.

Subsections (p) and (q) permit the association to sue or be sued, joint with other associations in administrative functions, etc.

Section 7. When an insurer is impaired or insolvent the member insurers will be assessed on the basis of the premiums they write in the state. This corresponds to the association's liability which, in most cases, is limited to covered polices of residents. This assessment system provides a base broad enough to meet fairly large demands on the association. Equally important, since it reflects the market share of each member in the state considered, it is an equitable method of apportioning the burden of the assessments.

The 2% maximum should produce an adequate amount while at the same time not impose an undue strain in any given year on the assessed companies and their policyholders.

In order to prevent further financial difficulties caused by an assessment, subsection (d) permits abatement of assessments when such financial difficulties might result. Subsections (d) and (e) provide some limitation on the amounts which can be assessed in any given year. If these limitations are reached, to fulfill its responsibilities the association is empowered to borrow funds which later can be repaid out of future assessments.

Subsection (g) provides that a member insurer may consider in its premium rates and dividend scale an amount reasonably necessary to meet its assessment obligations.

Section 8. Requires the association to submit a plan of operation which will set out the manner in which the association will fulfill its responsibilities.

Section 9. Subsection (a)(2) requires that the Commissioner give notice of an impairment to the impaired insurer.

Subsection (a)(3) provides that the Commissioner shall be appointed liquidator or rehabilitator of a domestic insurer and conservator of a foreign or alien insurer being liquidated or rehabilitated.

Section 10. This section sets forth various provisions and procedures the association and the Commissioner may follow in an effort to prevent future insolvencies.

Section 11. Subsection (a) will preserve the assessment liability of the insureds of assessment mutuals.

Subsection (b) requires that records be kept of negotiations and actions by the association. The association should be held publicly accountable for its actions. On the other hand, effective handling of the rehabilitation or liquidation effort requires minimum publicity. Thus, such records will be made public only after the liquidation, rehabilitation or conservation proceeding is terminated, the impairment or insolvency is terminated or there is a prior order by a court of competent jurisdiction.

Since this act imposes the obligation upon the association to continue coverage for policyholders of insolvent insurers, the assets of the insolvent insurer ought to be used, to the extent available, for the purpose of continuing such coverage. Subsection (c) is designed to accomplish this purpose.

Subsection (d), in conjunction with section 11 (1)(b), is intended to prevent the shareholders of an impaired insurer from sitting back and doing nothing and then reaping the benefits of funds put up by the association. These stockholders should not obtain a more advantageous position than they would have occupied in the absence of this act. The court is empowered to modify and distribute the ownership rights of an impaired insurer in order to do equity as between the interested parties.

Subsection (e) is designed to recapture excessive dividend payments to affiliates that exercised control over the insolvent insurer. The Holding Company Regulatory Act (Chapter 40, Article 33) in large measure prevents improper distribution of dividends by an insurer to its holding company since extraordinary dividends are subject to the prior approval of the Commissioner, and ordinary dividends are required to be reported to the Commissioner. If, however, dividends are paid under circumstances that the

insurer should have reasonably known that such payment could reasonably be expected to affect its ability to perform its contractual obligation to its policyholders, the holding company and affiliates should be required to repay such dividends subject to certain reasonable limitations.

Section 12. The association shall be subject to the examination and regulation by the Commissioner. The board of directors shall submit to the Commissioner each year, not later than 120 days after the association's fiscal year, a financial report in a form approved by the Commissioner and a report of its activities during the preceding fiscal year.

Section 13. This is the immunity section and has been amended only to recognize that associations of two or more states may cooperatively administer a particular impairment or insolvency.

Section 14. Provides for a stay of proceedings against an insolvent insurer in order to give the association time to exercise any rights it may have. All proceedings in which the insolvent insurer is a party in any court in this state shall be stayed 60 days from the date an order of liquidation, rehabilitation, or conservation is final to permit proper legal action by the association on any matters germane to its powers or duties. As to judgement under any decision, order, verdict, or finding based on default the association may apply to have such judgement set aside by the same court that made such judgement and shall be permitted to defend against such suit on the merits.

Section 15. Subsection (a) continues the prohibition of using the existence of the association in the inducement of sale of insurance. However, subsection (b) requires notification to new policyholders concerning the general parameters of the association article and responsibility thereunder.

Section 16. Repealer.

Section 17. Effective date.

Proposed Amendments to House Bill No. 3088
As Amended by House Committee
As Amended by House on Final Action

Page 16: Lines 0583 and 0584 strike "one hundred thousand" and insert "three hundred thousand".

Page 16: Line 0594 strike "$100,000" and insert "$300,000".

Page 19: Line 0677 strike "or" and insert "on".

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Attachment III