

Approved \_\_\_\_\_

Date

1/25/89

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

The meeting was called to order by SENATOR RICHARD BOND at \_\_\_\_\_  
Chairperson

9:08 a.m. ~~p.m.~~ on Tuesday, January 17, 1989 in room 529S of the Capitol.

All members were present except:

Senator Eugene Anderson  
Senator Gerald Karr  
Committee staff present:  
Bill Edds, Revisors Office  
Bill Wolff, Research Department  
Myrta Anderson, Research Department  
Louise Bobo, Committee Secretary

Senator Nancy Parrish  
Senator Eric Yost

Conferees appearing before the committee:  
Jim Maag, Kansas Bankers Association  
Jim Turner, Kansas Savings & Loan Association  
Bill Edds, Revisor's Office

The Chairman called the meeting to order at 9:08 a.m. Senator Bond began the meeting by saying that various ones in the audience had indicated interest in presenting proposals for bill introduction. First to be recognized was Jim Maag, Kansas Bankers Association.

Mr. Maag presented testimony supporting proposed amendments to SB 535 which was passed during the 1988 session and which relates to lender liability. According to Mr. Maag, SB 535 was landmark legislation-- Kansas being the second state in the United States to pass such legislation. As with any new legislation, refinements need to be made and Mr. Maag said there was a need to further define "credit agreement".  
(attachment 1)

Senator Salisbury made the motion that the bill be introduced and the motion was seconded by Senator Strick. The motion carried.

The next bill request was presented by Jim Turner, Kansas Savings and Loan Association, who requested that a bill be introduced that would address those sections of Kansas statutes relating to duties of officers and directors of state-chartered savings and loan associations.  
(attachment 2)

The motion was made by Senator Salisbury and seconded by Senator David Kerr that this bill be introduced. The motion carried.

The Chairman then recognized Bill Edds, Revisors Office, who presented testimony in favor of a bill that would repeal two sections of the consumer credit code. (attachment 3)

Senator Bond remarked that this was strictly a "clean-up" bill and asked for a motion. The motion was made by Senator Salisbury and seconded by Senator David Kerr that this bill be introduced. The motion carried.

The meeting adjourned at 9:19 a.m.



Section 1. K.S.A. 1988 Supp. 16-117 is hereby amended to read as follows: 16-117. As used in this act:

(a) "Credit agreement" means an agreement by a financial institution to lend or delay repayment of money, goods or things in action, to otherwise extend credit or to make any other financial accommodation; For purposes of this act the term "Credit agreement" does not include the following agreements: promissory notes, real estate mortgages, security agreements, guaranty agreements, letters of credit, agreements in connection with student loans insured or guaranteed pursuant to the federal higher education act of 1965 and acts amendatory thereof and supplementary thereto, and agreements in connection with "lender credit cards" as defined in the uniform consumer credit code;

(b) "Creditor" means a financial institution which extends credit or extends a financial accommodation under a credit agreement with a debtor;

(c) "Debtor" means a person who obtains credit or receives a financial accommodation under a credit agreement with a financial institution; and

(d) "Financial institution" means a bank, savings and loan association, savings bank or credit union.

Sec. 2. K.S.A. 1988 Supp. 16-118 is hereby amended to read as follows: 16-118. (a) A debtor or a creditor may not maintain an action on a credit agreement unless the agreement is in writing and is signed by the creditor and the debtor.

(b) All credit agreements shall contain a clear, conspicuous and printed notice to the debtor that states that the written credit agreement is a final expression of the credit agreement between the creditor and debtor and such written credit agreement may not be contradicted by evidence of any prior oral credit agreement or of a contemporaneous oral credit agreement between the creditor and debtor. A written credit agreement shall contain a sufficient space for the placement of nonstandard terms, including the reduction to writing of a previous oral credit agreement and an affirmation, signed or initialed by the debtor and the creditor, that no unwritten oral credit agreement between the parties exists.

New Sec. 3. This act is a declaration of the meaning of chapter 55, laws of 1988, as originally adopted.

Sec. 4. K.S.A. 1988 Supp. 16-117 and 16-118 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the Kansas register.

Sen. F. J. + J.  
Attachment 1  
11/17/89

**KLSI** Kansas  
League of  
Savings  
Institutions

JAMES R. TURNER, President • Suite 512 • 700 Kansas Ave. • Topeka, KS 66603 • 913/232-8215

January 17, 1989

TO: SENATE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS  
FROM: JIM TURNER, KANSAS LEAGUE OF SAVINGS INSTITUTIONS  
RE: REQUEST FOR BILL INTRODUCTION

The Kansas League of Savings Institutions appreciates the opportunity to appear before the Senate Committee on Commercial and Financial Institutions to request the committee's introduction of the attached bill.

The proposed bill addresses those sections of Kansas statutes relating to duties of officers and directors of state-chartered savings and loan associations. The measure would create equity in the responsibilities of directors of state-chartered institutions with those of federally chartered institutions as well as business corporations.

James R. Turner  
President

JRT:bw

Encl.

SFI+I  
attachment 2  
11/17/89

AN ACT regarding liability of officers and directors of savings and loan associations; amending K.S.A. 17-5412 and repealing the existing sections, and repealing K.S.A. 17-5812.

Be It Enacted By the Legislature of the State of Kansas:

Section 1. K.S.A. 17-5412 is hereby amended to read as follows: K.S.A. 17-5412. (a) The board of directors of any association formed under the provisions of this or any previous act may from time to time declare dividends from the earnings of the association to be paid or credited in such manner as may be provided in the bylaws, but no dividends shall be declared except from the earnings and undivided profits of the association: Provided, however, That if the board of directors shall willfully declare, credit or pay any dividend when there is an impairment of capital they shall be jointly and severally liable to the extent of the dividend so declared, credited or paid for all the debts of the association then existing or that shall be thereafter contracted while they shall respectively continue in office. ~~Provided, That any of the board of directors who shall object to the declaring of such dividend or the payment or crediting of the same and who shall at the time of declaration of the dividend procure his objections to be noted in the book of minutes of the association and shall file a certificate of his objections in writing with the secretary of the association and with the commissioner shall be exempted from such liability. and any director of such association who consents to the payment of any dividend when the capital is impaired shall be deemed guilty of a felony and upon conviction thereof shall be imprisoned in the penitentiary for not less than one (1) nor more than five (5) years.~~

(b) Any officer or director against whom a claim is successfully asserted under this section shall be entitled to contribution from the other officers or directors who voted for or concurred in the unlawful dividend.

(c) Any officer or director against whom a claim is successfully asserted under this section shall be entitled, to the extent of the amount paid by him as a result of such claim, to be subrogated to the rights of the savings and loan association against shareholders who received the dividend on, or assets for the sale or redemption of, their shares with knowledge of facts indicating that such dividend was unlawful under this act, in proportion to the amounts received by such shareholders respectively.

New Section 2. A member of the board of directors or governing body of any association, or a member of any committee designated by the board of directors or governing body of any association,

shall be fully protected in the performance of such member's duties in relying in good faith upon the books of account or reports made to the association by any of its directors, officers, or by an independent certified public accountant, or by an appraiser selected with reasonable care by the board of directors or by any such committee, or in relying in good faith upon other records of the association.

New Section 3. An officer or director shall be fully protected in relying in good faith upon the books of account or other records of the association or statements prepared by any of its officers or directors or by independent public accountants or by an appraiser selected with reasonable care by the board of directors as to the value and amount of the assets, liabilities or net profits of the association, or any other facts pertinent to the existence and amount of surplus or other funds from which dividends might properly be declared and paid, or with which the association's stock might properly be purchased or redeemed.

New Section 4. Except as provided in K.S.A. 17-5412, as amended, the provisions of K.S.A. 60-258(a), as amended, shall apply to all actions against directors and officers of any association to recover damages for personal injury, property damage or economic loss.

Section 5. K.S.A. 17-5412 and K.S.A. 17-5812 are hereby repealed.

Section 6. This act shall be in force and effect after its publication in the statute book.

SENATE BILL NO. \_\_\_\_\_

By Committee on Financial Institutions and Insurance

AN ACT repealing K.S.A. 16a-6-302 and 16a-6-303; concerning the council of advisors on consumer credit.

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

Section 1. K.S.A. 16a-6-302 and 16a-6-303 are hereby repealed.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

Sen. 71 + 4  
attachment 3  
1/17/89