

Approved 1/31/89  
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

The meeting was called to order by SENATOR RICHARD L. BOND at  
Chairperson

9:10 a.m./~~p.m.~~ on Thursday, January 26, 1989 in room 529S of the Capitol.

All members were present ~~except~~

Committee staff present:

Bill Edds, Revisors Office  
Bill Wolff, Legislative Research  
Myrta Anderson, Legislative Research  
Louise Bobo, Committee Secretary

Conferees appearing before the committee:

Jim Maag, Kansas Bankers Association  
Charles Henson, Attorney, Kansas Bankers Association  
Jim Turner, Kansas League of Savings Institutions  
Jerel Wright, Kansas Credit Union League & Affiliates

The meeting was called to order at 9:10 a.m. by Chairman Bond.

Five legislative proposals developed by the Department of Insurance were presented to the committee for introduction. Following a brief period of discussion, Senator Strick moved that the committee introduce these bills. Senator Yost seconded the motion. The motion carried. (attachment 1)

SB 46 - Chairman Bond recognized Jim Maag, Kansas Bankers Association, who stated that amendments to SB 535, passed during the 1988 legislative session, were necessary because of the increasing number of lawsuits based on oral agreements. The main purpose of SB 46 would be to further define the term "credit agreement." Mr. Maag then deferred to Charles Henson, counsellor for the Kansas Bankers Association. Mr. Henson told the committee that, since SB 535 passed the Legislature last year, at least two other states had adopted legislation comparable to SB 535 making it essential that an agreement be in writing to be enforced. SB 46 provides that the debtor or creditor cannot maintain action on a credit agreement unless two conditions are present, (1) it must be in writing and (2) it must be signed by both parties. Exceptions to this would be student loans and lender credit card agreements as it is almost impossible to meet the requirements of credit agreements in these two types of transactions. SB 46 clarifies and makes clear that certain types of agreement are not "credit agreements". (attachment 2)

Discussion followed.

Jim Turner, Kansas League of Savings Institutions, testified briefly in support of SB 46.

Jerel Wright, Kansas Credit Union League and Affiliates, also informed the committee that his organization favored the passage of SB 46.

Following a brief discussion, the meeting was adjourned at 10:02 a.m.

SENATE COMMITTEE

ON

FINANCIAL INSTITUTIONS AND INSURANCE

OBSERVERS  
(Please print)

DATE	NAME	ADDRESS	REPRESENTING
1/26	Judy Bravence	Topeka	CCC
	JEFFREY SONNICH	"	KLSI
	Jacyn France	Topeka	KAR
	Joni Janner	Topeka	ILLBI
	Blanche Durson	Topeka	K.B.A.
	Jan Mee	"	"
	<del>Don</del>	Topeka	KS Ban Assoc
	Carol Wright	Topeka	K Credit Union League
	Dreg Winkler	Topeka	"
	John Peterson	Topeka	YHL Financial Corp
	Chuck Stones	"	Kansas Bankers Assn



# FLETCHER BELL

COMMISSIONER OF INSURANCE

January 24, 1989

The Honorable Richard Bond  
Chairman  
Senate Financial Institutions  
and Insurance Committee  
Capitol - Room 128-S  
Topeka, Kansas 66612

Dear Mr. Chairman:

Pursuant to our discussion last Monday, I am enclosing five legislative proposals developed by this office. As you will note, these are of varying impact but the following brief description of each is an attempt to identify the subject matters involved.

Legislative Proposal No. 3 -- This proposal parallels Senate Bill No. 548 enacted by the 1988 legislature and would provide the Commissioner of Insurance authority to impose an administrative penalty for any violation of Kansas insurance laws.

Legislative Proposal No. 5 is purely a housekeeping amendment to correct an erroneous reference to a statute that has been repealed.

Legislative Proposal No. 6 suggests the enactment of a statutory penalty provision that would discourage insurers from delaying payment of claims once the amount payable is determined.

Legislative Proposal No. 9 is intended to hasten the return of any monies paid as a deposit or otherwise in connection with an application for insurance if the insurer declines to write the insurance requested.

Legislative Proposal No. 10 would require all individual accident and sickness policies to include a provision permitting the insured to cancel the policy.

I would respectfully request and sincerely appreciate your committee's consideration and introduction of these proposals with the understanding that we will further explain and respond

*Sen. Fin. Inst. & Ins.  
1/26/89  
Attachment 1*

The Honorable Richard Bond  
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to questions about the proposals at such time as they are the subject of hearings.

Proposals No. 1, 2, 4, 7, 8 and 11 are being transmitted to the House Committee on Insurance with a similar request. However, we will be pleased to provide a copy of these proposals to any or all members of your committee upon request.

If you have any questions or if we can provide additional information, please do not hesitate to contact me.

Sincerely,



Fletcher Bell  
Commissioner of Insurance

FB:mmk

Enclosures

cc: Senator Alicia Salisbury



The KANSAS BANKERS ASSOCIATION  
A Full Service Banking Association

January 26, 1989

TO: Senate Committee on Financial Institutions and Insurance  
FROM: Jim Maag, Senior Vice President *Jim*  
RE: SB 46 - Credit Agreements of Financial Institutions

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to present testimony on SB 46. This bill was requested by the Kansas Bankers Association and amends SB 535 which was passed during the 1988 legislative session. The act became effective on January 1, 1989, and under its provisions a customer cannot sue the bank for failing to carry out an alleged promise unless that promise was specifically in writing and signed by both parties.

That act (which is now K.S.A. 16-117) was a major step forward in resolving lender liability problems for financial institutions in this state. It eliminates the problem of frivolous and unjustified counter claims being filed by debtors claiming that oral credit commitments existed beyond those stated in the written agreement. This had become a common practice for debtor attorneys in foreclosure and bankruptcy situations and it only delayed the legal process and created sizeable legal expenses. This had the bottom line effect of protecting the bad customer at the expense of the good customer since the bank's operating costs were ultimately increased no matter what the outcome of the lawsuit. Such lawsuits were also making it more difficult for banks, particularly in rural areas, to find people willing to serve as bank directors. The passage of SB 535 has attracted national attention and a number of states are now pursuing legislation based on this Kansas law.

The act does require that all "credit agreements" must contain a "clear, conspicuous and printed notice" stating that all of the terms of the agreement between the bank and the debtor are reflected in the written document. This has raised the question among bank legal counsels as to which documents used by the bank are considered "credit agreements" and which ones are not. While there is now a general understanding as to what is not a "credit agreement", it was the consensus of the various bank counsels that it would be best to clarify the definition of "credit agreement" in the act rather than waiting for the courts to make such a determination. The amendments in Section 1 of SB 46 are designed to accomplish that clarification.

New Section 3 has been added to emphasize that the clarifying admendment in Section 1 reflects the original legislative intent of the meaning of "credit agreement". We are also asking that the effective date of the act be from and after its publication in the State Register. Since the act is now in effect it is important that banks and S&Ls be assured as soon as possible which documents must be changed and which ones may be retained to comply with the provisions of the act.

We appreciate the committee's prompt attention to this important issue and we urge you to recommend SB 46 favorably.

*Rep. Fin. Inst. & Ins.*  
*1/26/89*  
*Attachment 2*