

Approved 2/6/89 Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

The meeting was called to order by Senator Richard L. Bond at
Chairperson

9:13 a.m. ~~pm~~ on TUESDAY, JANUARY 31, 1989 in room 529 S of the Capitol.

~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
~~All members were present except:~~
Members present were Senators Bond, Anderson, Karr, Kerr, Moran, Parrish, Reilly, Salisbury, Strick and Yost.

Committee staff present:
Bill Wolff, Research Department
Bill Edds, Revisors Office
Louise Bobo, Committee Secretary

Conferees appearing before the committee:

Charles Henson, Kansas Bankers Association
Jim Turner, League of Savings Institutions

Chairman Bond called the meeting to order at 9:11 a.m.

SB 46 - The Chairman stated to the committee that SB 46 relates to questions raised by the passage of SB 535 passed last year by the Kansas Legislature. The bill is supported by the Kansas Bankers Association, the Savings and Loan Leagues, and the Credit Union organizations. Proponents state that there are no substantive changes in the law but SB 46 clarifies and defines more clearly the meaning of "credit agreement". Discussion followed. A committee member asked if a line of credit constituted a "credit agreement". Chairman Bond recognized Charles Henson, Kansas Bankers Association, and asked him to explain to the committee examples of a credit agreement. Mr. Henson stated that a credit agreement would be a loan agreement or an agreement to establish a line of credit. It could also be in the form of a one time loan agreement. Mr. Henson said that a promissory note was not considered a credit agreement. It is not a promise by the financial institution but is a promise by the debtor to repay a loan. Following further discussion, Senator Kerr made the motion that SB 46 be passed. Senator Salisbury seconded the motion and the motion carried.

SB 47 - Charles Henson, Kansas Bankers Association, appeared in support of amendments to SB 47 and explained that the thrust of the amendments to savings and loan groups is to conform their law to that of existing financial corporations. (attachment 1)

Senator Salisbury made the motion to accept the amendments with Senator Yost seconding the motion. The motion carried.

The amendment would write into the state banking code the same as that in the savings and loan. A committee member inquired if an officer or a board of director would be liable if their financial institution paid an erroneous dividend. Jim Turner, Kansas League of Savings Institutions, responded that if the institution falls below certain capitalization it cannot pay dividends and this bill would protect officers and directors who unknowingly pay dividends when the capitalization is below the required amount. Another committee member asked the advantage of the comparative negligence clause. Mr. Turner said that would allow the courts to determine on a participatory level how the damage should be applied.

Senator Salisbury made the motion to accept the amendments to SB 47 and Senator Yost seconded. The motion carried.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,
room 529 S, Statehouse, at 9:11 a.m./^{XX}p.m. on TUESDAY, JANUARY 31, 1989.

Senator Yost then made a motion to place in the bill where "association" appears the words "savings and loan." Senator Karr seconded the motion. the motion carried.

Senator Parrish made the motion to change "willfully" in line 28 of SB 47 to read "willfully or negligently". Senator Karr seconded the motion and the motion carried.

The motion was made by Senator Salisbury to pass out of committee SB 47 as amended. Senator Yost seconded the motion. The motion carried.

The minutes of January 25 and January 26, 1989, were approved as written on the motion of Senator Yost with Senator Reilly seconding the motion. The motion carried.

The meeting adjourned at 10:02 a.m.

SENATE COMMITTEE

ON

FINANCIAL INSTITUTIONS AND INSURANCE

Yes Jan. 31, 1971

OBSERVERS
(Please print)

DATE	NAME	ADDRESS	REPRESENTING
1-31	Chuck Stones	Topeka	KS Bankers Assn
	Kathy Taylor	"	"
	JEFFREY SONWICH	TOPEKA	KS LEAGUE OF SAV. INST.
	R G Frey	"	Mr. Lualaba Assn
	Charles Henson	"	KS Bankers Assn
	John Peterson	"	Fourth Federal City
	Alan Steppat	"	Pete McGill & Associates
	Jared Wright	Topeka	KS Credit Union League
	Jimi Johnson	Topeka	KLSI
	TOVE COOPER	"	KCC

BILL AMENDMENT

Amend S.B. 47 following line 79 by inserting the following:

New Sec. 5. Except as provided in K.S.A. 9-1915 and 9-1916, and amendments thereto, the provisions of K.S.A. 1988 Supp. 60-258a, and amendments thereto, shall apply to actions against directors and officers of any bank to recover damages for death, personal injury, property damage or economic loss.

Amend S.B. 47 in the title by striking the words "savings and loan associations" and inserting in lieu thereof the words "certain financial institutions".

Amend S.B. 47 by renumbering sections 5 and 6 as 6 and 7.

Attachment 1
4/31/89
Sen. Jim Gustafson

of court as provided hereinafter, or the records of a receiver of such bank are impounded or stored on or in the property of any county, either in the office of the clerk of the district court or elsewhere, the board of county commissioners of such county or the clerk of the district court may petition the district court having jurisdiction in such county, and such court shall have authority, in its discretion, to order the destruction of all or any part of such records. The order of such court shall be directed to the board of county commissioners of such county and any officer in whose care or possession such records are located or entrusted, and shall contain any special instructions which the court deems proper for the performance of such order.

30. **History:** L. 1961, ch. 65, § 1; L. 1980, ch. 50, § 1; July 1.

Research and Practice Aids:

Banks and Banking 63.
C.J.S. Banks and Banking §§ 418 et seq.

9-1915. Deposits or debts while insolvent; liability. It shall be unlawful for the president, director, managing officer, cashier or any other officer of any bank or trust company to assent to the reception of deposits or the creation of any debt by any bank or trust company after he or she shall have had knowledge of the fact that such bank or trust company is insolvent; and it hereby is made the duty of every such officer or managing officer to examine into the affairs of every such bank or trust company and know its condition if possible; and upon failure to discharge such duty he or she shall be held to have had knowledge of the insolvency of such bank or trust company or that it was in failing circumstances, for the purposes of this act. Every person who shall violate the provisions of this section shall be responsible individually for such deposits so received and all debts so contracted: *Provided*, Any director or officer who may have paid more than his or her share of the liabilities mentioned in this section shall have the proper remedy at law against such other persons as shall not have paid their full share of such liabilities.

History: L. 1947, ch. 102, § 123; June 30.

Source or prior law: 9-119.

Revisor's Note:

Similar provisions and penalty, see 9-2010.

Research and Practice Aids:

Banks and Banking 74.
Hatcher's Digest, Banks § 76.
C.J.S. Banks and Banking § 489.

9-1916. Same; action to enforce liability; evidence. In all actions brought for the recovery of any deposits received or debt created while any bank or trust company was insolvent or in failing circumstances all officers, agents, and directors of such bank or trust company may be joined as defendants or proceeded against severally. The fact that any bank or trust company was insolvent or in failing circumstances at the time of the reception of the deposit charged to have been so received, or the creation of the debt charged to have been so created, shall be prima facie evidence of such knowledge and assent to such deposit or creation of such debt on the part of such officer, agent, or director so charged therewith. This liability may be enforced by and against executors and administrators of any deceased officer, director or agent.

History: L. 1947, ch. 102, § 124; June 30.

9-1917. Undelivered funds due creditors, depositors and shareholders of defunct bank or trust company; duties of commissioner and state treasurer; undistributed assets of defunct institutions fund. On and after July 1, 1972, and in every case occurring heretofore and hereafter, in which funds due to creditors, depositors and shareholders on liquidation of institutions under the jurisdiction of the state bank commissioner under K.S.A. 9-1901 *et seq.* are undelivered, they shall, together with accrued interest, if any, be paid to the state bank commissioner, who shall deposit such payments with the state treasurer and credit such individual creditors, depositors or shareholders account in the undistributed assets of defunct institution fund ledger. The state treasurer shall credit all such deposits to the undistributed assets of defunct institutions fund which is hereby created. Said fund shall be used only for refunds and payments of amounts due creditors, depositors and shareholders on claims filed with and approved by the state bank commissioner. Any balance remaining in said fund from any single defunct institution five (5) years, during which time no person entitled thereto shall have appeared to claim such funds, shall be transferred by the state bank

commissioner to the appropriate entries of creditors, depositors showing the date funds and shall be transferred by reason of such institution.

History: L. 1972, ch. 102, § 125.

9-1918. Escheat of certain property of defunct bank or trust company; escheat. Whenever a bank or trust company shall be insolvent or in failing circumstances at the time of the reception of the deposit charged to have been so received, or the creation of the debt charged to have been so created, shall be prima facie evidence of such knowledge and assent to such deposit or creation of such debt on the part of such officer, agent, or director so charged therewith. This liability may be enforced by and against executors and administrators of any deceased officer, director or agent.

History: L. 1947, ch. 102, § 124; June 30.

9-2001. Failing institution. Every banker, agent or officer of any bank or trust company who shall fail to comply with the requirement made by this act shall be deemed guilty of a crime and upon conviction shall be imprisoned in the state penitentiary for a term not to exceed one year, or fined not more than \$1000.

Article 20.—BANKING AND PUNISHMENTS

9-2001. Failing institution. Every banker, agent or officer of any bank or trust company who shall fail to comply with the requirement made by this act shall be deemed guilty of a crime and upon conviction shall be imprisoned in the state penitentiary for a term not to exceed one year, or fined not more than \$1000.

History: L. 1947, ch. 102, § 124; June 30.

Source or prior law: 9-137.

failure to serve the parties with a copy thereof. Daniels v. Chaffee, 5 K.A.2d 552, 557, 620 P.2d 1177.

32. Time for postjudgment remedies runs from date parties are notified of judgment. Daniels v. Chaffee, 50 K. 32, 36, 37, 38, 45, 46, 48, 630 P.2d 1090 (1981).

33. In action by discharged teacher appeal was timely and trial court erred in dismissing because of plaintiff's failure to exhaust administrative remedies. Scott v. U.S.D. No. 377, 7 K.A.2d 82, 84, 85, 638 P.2d 941 (1982).

34. Cited; garnishee may stay garnishment by posting supersedeas bond equal to its liability costs and interest. Cansler v. Harrington, 231 K. 66, 73, 643 P.2d 110 (1982).

35. Judgment effective when judgment entered; notice of appeal not timely filed. Smith v. Smith, 8 K.A.2d 252, 655 P.2d 469 (1983).

60-258a. Contributory negligence as bar to recovery in civil actions abolished, when; award of damages based on comparative negligence; imputation of negligence, when; special verdicts and findings; joinder of parties; proportioned liability. (a) The contributory negligence of any party in a civil action shall not bar such party or said party's legal representative from recovering damages for negligence resulting in death, personal injury or property damage, if such party's negligence was less than the causal negligence of the party or parties against whom claim for recovery is made, but the award of damages to any party in such action shall be diminished in proportion to the amount of negligence attributed to such party. If any such party is claiming damages for a decedent's wrongful death, the negligence of the decedent, if any, shall be imputed to such party.

(b) Where the comparative negligence of the parties in any such action is an issue, the jury shall return special verdicts, or in the absence of a jury, the court shall make special findings, determining the percentage of negligence attributable to each of the parties, and determining the total amount of damages sustained by each of the claimants, and the entry of judgment shall be returned by the jury.

(c) On motion of any party against whom a claim is asserted for negligence resulting in death, personal injury or property damage, any other person whose causal negligence is claimed to have contributed to such death, personal injury or property damage shall be joined as an additional party to the action.

(d) Where the comparative negligence of the parties in any action is an issue and

recovery is allowed against more than one party, each such party shall be liable for that portion of the total dollar amount awarded as damages to any claimant in the proportion that the amount of his or her causal negligence bears to the amount of the causal negligence attributed to all parties against whom such recovery is allowed.

(e) The provisions of this section shall be applicable to actions pursuant to this chapter and to actions commenced pursuant to the code of civil procedure for limited actions.

History: L. 1974, ch. 239, § 1; L. 1976, ch. 251, § 4; Jan. 10, 1977.

Law Review and Bar Journal References:

Discussed in detail in "Comparative Negligence in Kansas—Legal Issues and Probable Answers," Victor E. Schwartz, 13 W.L.J. 397 (1974).

"The New Kansas Comparative Negligence Act," Henry Woods, 14 W.L.J. 1 et seq. (1975).

Comment concerning comparative negligence, 23 K.L.R. 113, 119 (1974).

Discussed in detail in "Comparative Negligence—Kansas," William A. Kelly, 43 J.B.A.K. 151 (1974).

Subsections (b) and (d); "Comparative Negligence Update—A Discussion of Selected Issues," Donald W. Vasos, 44 J.B.A.K. 13 (1975).

"Comparative Negligence—A Look at the New Kansas Statute," James F. Davis, 23 K.L.R. 113 (1974).

The legal effect of jury answers to special verdict questions under Kansas comparative negligence law, David E. Pierce, 16 W.L.J. 114, 115, 116, 117, 118, 119, 125, 131, 132, 133 (1976).

Survey of tort liability, Patty Griffin and Harold J. Pickler, 15 W.L.J. 397, 398 (1976).

"The Kansas Comparative Negligence Statute: Informing the Jury of the Legal Effect of Its Answers to Special Verdict Questions," Joel Goldman, 45 J.B.A.K. 91, 93, 96, 99 (1976).

Comparative negligence and damage apportionment, 16 W.L.J. 672, 673, 674, 676, 677, 678, 679, 682 (1977).

Strict liability in tort as adopted in Kansas, 25 K.L.R. 462, 463 (1977).

"Employer Liability to Third Parties Under the Workmen's Compensation and Comparative Negligence Statutes," Ruth C. Nelson, 26 K.L.R. 485, 489, 490 (1978).

Discussion of 40-3113a in "No Fault—The Insurer's Reimbursement Rights Under the New Statute," William R. Sampson, 46 J.B.A.K. 211, 212, 216, 217 (1977).

Extensively discussed in "Torts: Damage Apportionment Under the Kansas Comparative Negligence Statute—the Unjoined Tortfeasor," Philip R. Carson, 17 W.L.J. 698 (1978).

Discussed extensively in comment, "Brown and Miles: At Last, An End to Ambiguity in the Kansas Law of Comparative Negligence," Hal D. Meltzer, 27 K.L.R. 111 (1978).

Survey of recent U.S. District Court decisions, John A. Price, 47 J.B.A.K. 287, 295 (1978).

"Survey of Kansas Law: Civil Procedure," Jerry G. Elliott, 27 K.L.R. 185 (1979).

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