

Approved: February 11, 1997
Date

MINUTES OF THE Senate Committee on Financial Institutions and Insurance.

The meeting was called to order by Chairperson Don Steffes at 9:00 a.m. on February 6, 1997 in Room 529-S of the Capitol.

All members were present except:

Committee staff present: Dr. William Wolff, Legislative Research Department
Fred Carman, Revisor of Statutes
Nikki Feuerborn, Committee Secretary

Conferees appearing before the committee: Newton Male, State Banking Commissioner
Bill Sneed, AmVestors
Chuck Stones, Kansas Bankers Association
Roger Viola, Security Benefit Group

Others attending: See attached list

HEARING ON SB 132 -- Limitation on loans by banks

Newton Male, State Banking Commissioner, presented testimony regarding the legal lending limit law (Attachment 1). A bank is allowed to lend to one borrower up to 25% of the bank's capital with special regulations regarding partnerships and corporations. The proposed amendment would allow only the limited partner's debt in a partnership to be considered in determining the amount of personal debt when figuring the 25% limit. They are requesting to change the word "interest" to "liability."

The hearing was closed.

Senator Corbin moved to pass the bill out favorably. The motion was seconded by Senator Becker. Motion carried.

CONTINUED HEARING ON SB 86 -- Public funds depositories

Senator Steffes reported on the Subcommittee meeting in which Chuck Henson, legal counsel for the Kansas Bankers Association, had provided amendments which would allow public funds to be placed in any bank in Kansas. Kansas Bankers Association is not in favor of these amendments so there would still be a problem with the depositing and handling of funds of the State Treasurer's office. Suggestions for amendments have included allowing any state bank, savings and loans, and savings banks to be a depository of public funds as long as they are a lending agency.

The Subcommittee will continue to meet and the hearing was continued.

CONTINUED HEARING ON SB 31 -- Exemption of interests in contracts of annuity

Bill Sneed, AmVestors, appeared again as a proponent of the bill which would treat annuities the same as life insurance (exemptions) in bankruptcy cases. Mr. Sneed presented a balloon which would require the purchase of an annuity at least two years prior to the filing of bankruptcy (Attachment 2).

Chuck Stones, Kansas Bankers Association, spoke in opposition to the bill as he viewed it as another method for persons to avoid creditors in a bankruptcy and salvage unlimited funds through annuities (Attachment 3). It is more difficult to build cash value in a life insurance policy because of underwriting standards and limitations on amounts set by TEFRA and DEFRA. There are no such underwriting standards for annuity contracts. He urged the setting of a dollar limitation on exemption of annuities.

Senator Steffes left the meeting at 9:30 a.m. and Vice-Chair Praeger chaired the meeting during his ten minute absence.

CONTINUATION SHEET

MINUTES OF THE Senate Committee on Financial Institutions & Insurance, Room 529-S Statehouse, on February 6, 1997.

During Committee discussion, it was mentioned that life insurance can still shield large single dollar payments, however, insurance agents ask many questions when such things occur. There are no caps on homes in bankruptcy proceedings but there are on values of automobiles which can be retained. Pensions are exempt from such proceedings and if a rolled-over pension was placed in an annuity, it would receive the same protection as a life insurance policy if it happened two years prior to the bankruptcy declaration. Caps on annuities would only protect large banks.

The hearing was closed.

Senator Biggs moved that the proposed amendments regarding the two year limit be approved. The motion was seconded by Senator Praeger. Motion carried.

Senator Praeger moved that the bill be passed out favorably as amended. Motion was seconded by Senator Biggs. Motion carried.

HEARING CONTINUED ON SB 93 -- Conversion of mutual insurer to stock insurer

Roger Viola, Security Benefit Group, reminded the Committee of the recent legislation by Senator Jim Leach in Washington which would allow any mutual insurance company domiciled in a state in which does not allow demutualization, to move to any of the ten states which do allow demutualization. Paperwork might remain in Kansas but the staff and main company would be in another state. Delaware has become the "corporate capital of the world" due to their very friendly corporation and banking laws. (Attachment 4)

Committee members were very concerned regarding the notification process. Even though policy holders would be notified of the proposed change in "regular language" and that a possible change in value could occur, how many would really read and understand what was going to happen. Specified proxies for voting on conversion could be required for such drastic changes in company structure rather than signing a general proxy upon joining the company and becoming a voting member. The Insurance Commissioner would have a great deal of oversight and authority in such transactions as all plans would have to pass his/her judgment. Committee members all agreed the current Insurance Commissioner is very consumer oriented and an advocate for the public but would it be in the best public interest to put such authority which could impact every mutual company in Kansas under the auspices of the Department. Discussion included concerns that the company should set aside assets to pay for values, surrender claims, and death rights of non-voting membership. The Committee was reminded that demutualization could not occur without having a public hearing after the Insurance Commissioner had reviewed every detail of the plan and signed off on it.

The hearing was continued.

The meeting adjourned at 10:03 a.m. The next meeting is scheduled for February 10, 1997.

SENATE FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE GUEST LIST

DATE: 2/6/97

NAME	REPRESENTING
Trish Copeland	} Security Benefit Group, Inc.
Brenda Kramer	
Tad Kramer	
Roger Viola	
Jim Maag	KBA
Chuck Stokes	KBA
Bill Sneed	Amvestors
Stacy Moorhead	Heartland Health, Inc.
W. J. Lenz	Pooled Money Investment Board
Matt Gaddard	HCBA
Wesley Johnson	State Farm
Susan Baker	Hein + Weir
Roger Fournier	BK IU
Glyde Gruber	Governors Office
W. Newton Male	OFFICE OF STATE BANK. COMM
Sonya Allen	"
Tom Wilder	Kansas Insurance Dept
Bill Mitchell	Alliance
David Hanson	Ks Insur Assocs

SENATE FINANCIAL INSTITUTIONS & INSURANCE
COMMITTEE GUEST LIST

DATE: _____

NAME	REPRESENTING
Aue Achmeyer	KCUA
Chris Keeshan	KTLA
Kimberly Nelson	Bank 11
Roger Vio	SIBG
Drod Smart	BTV
Callie Hill Denton	K. Peterson's Assoc.

STATE OF KANSAS
BILL GRAVES
GOVERNOR



W. Newton Male
Bank Commissioner

Judi M. Stork
Deputy Commissioner

Kevin C. Glendening
Assistant Deputy Commissioner

William D. Grant, Jr.
General Counsel

Ruth E. Glover
Administrative Officer

OFFICE OF THE
STATE BANK COMMISSIONER

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

FEBRUARY 6, 1997

Mr. Chairman and Members of the Committee:

I am Newton Male, Bank Commissioner and I am here today to testify in support of Senate Bill 132. This bill amends K.S.A. 9-1104, commonly referred to as the legal lending limit law.

This statute limits the amount of money a bank can lend to one borrower to 25% of the bank's capital. Under this law there are also special rules which deal with loans to partnerships and corporations. Our amendment affects this portion of the law. The basic rule is if you are a limited partner in a partnership, only that portion of the partnership debt **for which you are liable**, will be added to your personal debt for determining whether the bank is in compliance with the 25% limit.

An example may help. Bank KS has a 25% lending limit of \$500,000. Joe Borrower has personal debt with the bank of \$200,000 to buy a home. He is also a limited partner in a partnership which borrows \$1,000,000 from the bank. Joe has a 50% interest ownership in the partnership. Under the partnership agreement Joe's **liability** is limited to only 10%. So, even though Joe has a 50% ownership interest, Joe would be liable for only \$100,000 or 10% of the partnership debt. To then determine whether the bank is complying with K.S.A. 9-1104 you would add his \$200,000 personal debt to his \$100,000 partnership debt, for a total of \$300,000. The bank is in compliance as they are under the 25% limit of \$500,000.

Page 4, line 35 of the bill shows the one word amendment we are making. When our department revamped this section during the last legislative session we said the partner's **interest** in the partnership is what would be added in for the purpose of determining his total personal liability. In fact what we meant to say, and have been applying as law during the last year, is the partner's **liability** under the partnership will be added in for the purpose of determining personal liability.

I would be happy to answer any questions.

Senate FDSJ
Attachment 1
2/6/97

SENATE BILL No. 31

By Committee on Financial Institutions and Insurance

1-15

9 AN ACT concerning exemption of interest in contracts of annuity; amend-
10 ing K.S.A. 40-414 and repealing the existing section.

11

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

13 Section 1. K.S.A. 40-414 is hereby amended to read as follows: 40-
14 414. (a) If a life insurance company or fraternal benefit society issues any
15 policy of insurance, *including a contract of annuity*, or beneficiary certif-
16 icates upon the life of an individual and payable at the death of the in-
17 sured, or in any given number of years, to any person or persons having
18 an insurable interest in the life of the insured, the policy and its reserves,
19 or their present value, shall inure to the sole and separate use and benefit
20 of the beneficiaries named in the policy and shall be free from:

21 (1) The claims of the insured or the insured's creditors and repre-
22 sentatives;

23 (2) the claims of any policyholder or the policyholder's creditors and
24 representatives, subject to the provisions of subsection (b);

25 (3) all taxes, subject to the provisions of subsection (d); and

26 (4) the claims and judgments of the creditors and representatives of
27 any person named as beneficiary in the policy of insurance.

28 (b) The nonforfeiture value of a life insurance policy shall not be
29 exempt from:

[or annuity

30 (1) Claims of the creditors of a policyholder who files a bankruptcy
31 petition under 11 U.S.C. § 101 et seq. on or within one year after the
32 date the policy is issued; or

[life insurance

33 (2) the claim of any creditor of a policyholder if execution on judg-
34 ment for the claim is issued on or within one year after the date that the
35 policy is issued; or

[on or within two years after the date the annuity policy is issued; or

36 (c) Nothing in this section shall be construed as restricting the right
37 of the insured to change the beneficiary if the policy reserves that right
38 to the insured.

39 (d) Nothing in this section shall be construed as exempting from tax-
40 ation any real estate which may at any time be carried by any life insurance
41 company as a part of its legal reserve.

42 (e) The provisions of subsection (b) shall apply only to life insurance
43 policies purchased on or after July 1, 1988.

[or annuity

Senate F.O.'s
Attachment 2
2/6/97

1 (f) The provisions of subsection (b) shall not apply to that portion of
2 the nonforfeiture value of a life insurance policy, issued on or within one
3 year of the filing of a bankruptcy petition under 11 U.S.C. § 101 et seq.
4 or an execution on judgment for the claim of the creditor, which is derived
5 from the surrender of a life insurance policy issued more than one year
6 prior to such bankruptcy petition or such execution.
7 Sec. 2. K.S.A. 40-414 is hereby repealed.
8 Sec. 3. This act shall take effect and be in force from and after its
9 publication in the statute book.

(g) The provisions of subsection (b) shall not apply to that portion of the nonforfeiture value of an annuity policy, issued on or within two years of the filing of a bankruptcy petition under 11 U.S.C. § 101 et seq. or an execution on judgment for the claim of the creditor, which is derived from the surrender of an annuity policy issued more than two years prior to such bankruptcy petition or such execution.

2-2

Kansas Bankers Association

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2-6-97

To: Senate Financial Institutions and Insurance Committee
From: Chuck Stones, Director of Research

RE: addendum to testimony on SB 31

Mr Chairman and Members of the Committee,

In regards to this issue I have asked the following question to as many insurance people as I could: "Is there anything inherently different about an annuity contract that would make it easier to shelter money in bankruptcy?". This week, in conversation with the KBA's insurance consultant, Willis Corroon Corp. in Wichita, I was told that YES there is a difference.

It was explained to me that it is harder to build cash value in a life insurance policy because of underwriting standards and limitations on amounts set by TEFRA and DEFRA. There are no such underwriting standards for annuity contracts, they are very much like a CD. Anyone can place any amount of money in an annuity contract.

I would like to take you back to my original testimony and ask the appropriateness of placing an investment like instrument as an exempt item in bankruptcy, when current exemptions allow only for the basics rather than the ability large sums of money from secured creditors.

If the Committee is prone to adopt SB 31, we would urge a dollar limitation similar to automobiles.

*Senate JDD
Attachment 3
2/6/97*

BENEFITS OF MUTUAL HOLDING COMPANIES

- **Planning, growth and operation flexibility**
 - Permits acquisition of other insurers without merging operations
 - Permits acquisitions for stock, not just cash
 - Enhanced flexibility in developing affiliations and joint venture relationships with other mutuals, as well as stock insurers and other mutual holding companies
 - Broadens the field of candidates for mergers and other affiliations
 - Permits acquisitions structured as “sister” entities (not subject to statutory limits governing size of acquisition) rather than downstream entities
 - Permits corporate structure utilizing upstream holding company
 - May eliminate IRC section 809 tax on mutuals
 - Stock and options can be used to link management’s interests to performance
 - Permits participation in affiliation of banks and insurers; enables mutual insurer to remain competitive in the financial services industry

- **Permits alternative access to capital**
 - Other states have not accepted capital notes
 - Permits mutual to grow and remain well-capitalized by expanding into other areas of financial services industry, e.g., banks

Senate I.D.S.D.
Attachment 4
2/6/97

- Avoids the limitations of capital and surplus notes as only means to raise capital by creating ability to raise capital through non-insurance subsidiary
- Permits IPO (or private placement) that is not linked to demutualization -- better control of timing of capital-raising initiatives
- Equity financings can occur in managed stages
- **Less expensive alternative than complete demutualization/lower transaction costs**
 - No need to value each eligible policyholder's membership interest
 - Policyholders don't become shareholders of mutual holding company; cost of maintaining shareholder base not heightened by numerous holders of small amounts of shares
 - Prevents third party takeover because policyholders maintain majority interest
 - Viable alternative for mutuals that need capital but are too small for a full-scale demutualization with IPO
- **Preserves mutuality**
 - Maintain characteristics and culture of being mutual (mutual heritage)
 - Preserves alignment of consumer and ownership interests, i.e., avoids conflict between par policyholders and shareholders where no third party ownership is involved
- **Protects policyholder membership interest by establishing benchmarks for payment of consideration or by statutory demutualization provisions**
- **Availability and issuance of par business**
- **Levels the playing field between stock and mutual insurers**