

Approved: March 27, 2007

Date

MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

The meeting was called to order by Chairman Ruth Teichman at 9:30 A.M. on March 20, 2007 in Room 234-N of the Capitol.

All members were present except:

Chris Steineger- excused

James Barnett- excused

Committee staff present:

Melissa Calderwood, Kansas Legislative Research Department

Ken Wilke, Office of Revisor of Statutes

Bev Beam, Committee Secretary

Conferees appearing before the committee:

John Smith, Administrator, Kansas Dept. Of Credit Unions; Senator Marci Francisco

Others attending:

See attached list.

The Chair called the meeting to order.

Action on:

John Smith offered written testimony stating that HB 2113 would amend K.S.A. 17-2242(b) which currently states that a credit union may appeal an order of the administrator pursuant to K.S.A. 17-2241. Mr. Smith said that at a hearing before the Senate Financial Institutions and Insurance Committee on March 14, 2007, concern was expressed that parties who are subjected to administrative action are not able to request a hearing. Mr. Smith said according to testimony and discussion, substitution of the existing language on page 2, lines 6 through 9 would read, "The credit union board of directors or individuals named in the administrative action shall be given a hearing or an opportunity for a hearing in accordance with the provisions of the Kansas Administrative Procedures Act." (Attachment 1)

Senator Francisco addressed the group stating that the language agreed upon as presented by John Smith was the definition of credit unions. She said the two things she was trying to accomplish was to change the definition of credit union and the other was to add the Kansas Administrative Procedures Act to come into effect in 2007, which was the second part of the balloon. Senator Francisco said if it is left in SB 351, that will come into effect in 2009. If it is left with the language in this bill, it would happen in 2007.

Following questions by Senator Vicki Schmidt, Ken Wilke again clarified the balloon language to HB 2113. Mr. Wilke stated that on page 2, line 6, it would read, "The credit union board of directors or individuals of any administrative action shall be given a hearing or an opportunity for a hearing in accordance with the provisions of the Kansas Administrative Procedures Act." Further, in Sec. 2 (h), it states, The following state agencies, boards and commissions shall utilize the office of administrative hearings for conducting adjudicative hearings under the Kansas administrative procedures act in which the presiding officer is not the agency head or one or more members of the agency head: (1) "On and after July 1, 2005 (2) "On and after July 1, 2006 . . . and (3) "On and after July 1, 2007: Kansas lottery, Kansas racing and gaming commission, the state department of credit unions, state treasurer, pooled money investment board, Kansas department of wildlife and parks and state board of tax appeals. (Attachment 2)

Senator Brownlee moved to adopt the amendments to HB 2113. Senator Schmidt seconded. Motion carried.

Senator Barone moved to move the bill out favorably as amended. Senator Brownlee seconded. Motion carried.

The Chair reminded the committee members that minutes would be e-mailed to them for approval. If they don't notify her office with changes by March 28, 2007, they will be considered approved.

The meeting adjourned at 9:50 a.m.

FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE GUEST LIST

DATE: 3-20-07

| NAME | REPRESENTING |
|----------------|-------------------------------|
| John P. Smith | Kansas Dept. of credit unions |
| Doug Wareham | Kansas Bankers Association |
| Bill Sneed | State Farm |
| Terrel Wright | Ks Credit Union Assn |
| Camille Nohs | Athy Bank |
| Kemi Ann Lower | KATAP |
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**Written testimony for the
Senate Financial Institutions and Insurance
Committee**

HB 2113

March 20, 2007

**John P. Smith
Administrator
Kansas Department of Credit Unions**

*FI & I
3-20-07
Attachment 1*

HB 2113 would amend K.S.A. 17-2242(b) which currently states that a credit union may appeal an order of the administrator pursuant to K.S.A. 17-2241. That statute provides for an appeal of administrative action to district court. However, what is missing is a hearing or an opportunity for a hearing at the administrative level prior to any appeal to district court.

At a hearing before the Senate Financial Institutions and Insurance Committee on March 14, 2007, concern was expressed regarding the ability of affected parties to administrative action being able to request a hearing. According to the testimony and discussion, substitution of the existing language on page 2, lines 6 - 9 to read "The credit union board of directors or individuals named in the administrative action shall be given a hearing or an opportunity for a hearing in accordance with the provisions of the Kansas Administrative procedures act" would address these concerns.

The proposed amendment to K.S.A. 17-2242(b) would remedy this situation by granting a hearing or an opportunity for a hearing to board of directors or any named individuals in accordance with the provisions of the Kansas administrative procedures act. Appeals from the hearing process would continue to be governed by the Kansas act for judicial review (K.S.A. 77-601 et seq.) according to K.S.A. 17-2241.

The original amendment was requested by my counsel at the Attorney General's Office in order to assure that actions authorized under this statute would be taken in accordance with the Kansas administrative procedures act as are all other actions authorized under other statutes. The substitute language has been reviewed by my counsel.

Enactment of the amendment will have no fiscal impact on the Kansas Department of Credit Unions

I stand for questions from members of the Senate committee.

HOUSE BILL No. 2113

By Committee on Insurance and Financial Institutions

1-18

z2113c1

FI? I
3-20-07
Attachment 2

9 AN ACT concerning credit unions; pertaining to administrative hearings;
10 amending K.S.A. 17-2242 and repealing the existing section.

and K.S.A. 2006 Supp. 75-37,121

11 sections

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

13 Section 1. K.S.A. 17-2242 is hereby amended to read as follows: 17-
14 2242. (a) If it appears to the administrator that the board of directors,
15 supervisory or credit committees, of any credit union has been dishonest,
16 reckless or incompetent in the performance of their duties, the admin-
17 istrator: (1) May recommend the removal of such persons; and (2) may
18 submit any such findings, reports or recommendations to any regularly
19 or specially called meeting of the board of directors, credit and supervi-
20 sory committees or, if the administrator has done this, after due notice
21 given at least 10 days in advance, may submit the administrator's findings
22 and recommendations and reports to a general meeting of the sharehold-
23 ers. Due notice shall be construed as being such notice as is provided in
24 the bylaws of the credit union for calling such meetings. The administra-
25 tor may give such additional notice to the members as the administrator
26 deems advisable. The administrator and employees shall not be personally
27 liable for such reports, recommendations and findings made in good faith.
28 At any such meeting of the shareholders it shall be in order to call for a
29 vote to remove such officers, board members, committee members, or
30 employees. Such action by the shareholders to remove or not remove
31 such persons from their positions shall be absolute and need not be based
32 on any finding, concurrence or nonagreement with the administrator that
33 such persons are or have been dishonest, reckless or incompetent in the
34 performance of their duties. At any such meeting of the shareholders the
35 board of directors, supervisory or credit committees may concur or not
36 concur with a recommendation of removal whether or not they agree
37 with the findings of the administrator.

38 (b) As an alternative to and notwithstanding subsection (a), the ad-
39 ministrator may suspend from office and prohibit from further partici-
40 pation in any manner in the conduct of the affairs of a credit union any
41 director, officer, committee member or employee who has committed
42 any violation of a law, rules and regulations or of a cease and desist order
43 or who has engaged or participated in any unsafe or unsound practice in

1 connection with the credit union or who has committed or engaged in
2 any act, omission or practice which constitutes a breach of that person's
3 fiduciary duty as such director, officer, committee member or employee,
4 when the administrator has determined that such action or actions have
5 resulted or will result in substantial financial loss or other damage that
6 seriously prejudices the interests of the members. The credit union may
7 ~~appeal the order pursuant to K.S.A. 17-2241, and amendments thereto~~
8 *shall be given a hearing or an opportunity for a hearing in accordance*
9 *with the provisions of the Kansas administrative procedures act.*

10 Sec. 2. K.S.A. 17-2242 is hereby repealed.

11 Sec. 3. This act shall take effect and be in force from and after its
12 publication in the statute book.

or named in

receivership

2-2

or any affected member

See attached

And renumber remaining sections accordingly

and K.S.A. 2006 Supp. 75-37,121 are

Sec. 2. K.S.A. 2006 Supp. 75-37,121 is hereby amended to read as follows: 75-37,121.

(a) There is created the office of administrative hearings within the department of administration, to be headed by a director appointed by the secretary of administration. The director shall be in the unclassified service under the Kansas civil service act.

(b) The office may employ or contract with presiding officers, court reporters and other support personnel as necessary to conduct proceedings required by the Kansas administrative procedure act for adjudicative proceedings of the state agencies, boards and commissions specified in subsection (h). The office shall conduct adjudicative proceedings of any state agency which is specified in subsection (h) when requested by such agency. Only a person admitted to practice law in this state or a person directly supervised by a person admitted to practice law in this state may be employed as a presiding officer. The office may employ regular part-time personnel. Persons employed by the office shall be under the classified civil service.

(c) If the office cannot furnish one of its presiding officers in response to a requesting agency's request, the director shall designate in writing a full-time employee of an agency other than the requesting agency to serve as presiding officer for the proceeding, but only with the consent of the employing agency. The designee must possess the same qualifications required of presiding officers employed by the office.

(d) The director may furnish presiding officers on a contract basis to any governmental entity to conduct any proceeding other than a proceeding as provided in subsection (h).

(e) The secretary of administration may opt rules and regulations:

(1) To establish procedures for agencies to request and for the director to assign presiding officers. An agency may neither select nor reject any individual presiding officer for any proceeding except in accordance with the Kansas administrative procedure act;

(2) to establish procedures and adopt forms, consistent with the Kansas administrative procedure act, the model rules of procedure, and other provisions of law, to govern presiding officers; and

(3) to facilitate the performance of the responsibilities conferred upon the office by the Kansas administrative procedure act.

(f) The director may implement the provisions of this section and rules and regulations adopted under its authority.

(g) The secretary of administration may adopt rules and regulations to establish fees to charge a state agency for the cost of using a presiding officer.

(h) The following state agencies, boards and commissions shall utilize the office of administrative hearings for conducting adjudicative hearings under the Kansas administrative procedures act in which the presiding officer is not the agency head or one or more members of the agency head:

(1) On and after July 1, 2005:
Department of social and rehabilitation services, juvenile justice authority, department on aging, department of health and environment, Kansas public employees retirement system, Kansas water office, Kansas animal health department and Kansas insurance department.

(2) On and after July 1, 2006: Emergency medical services board, emergency medical services council, Kansas health policy authority and Kansas human rights commission.

(3) On and after July 1, 2007: Kansas lottery, Kansas racing and gaming commission,

state department of credit unions, state treasurer, pooled money investment board, Kansas department of wildlife and parks and state board of tax appeals.

(4) On and after July 1, 2008:

Department of human resources, state corporation commission, state conservation commission, agricultural labor relations board, department of administration, department of revenue, board of adult care home administrators, Kansas state grain inspection department, board of accountancy and Kansas wheat commission.

(5) On and after July 1, 2009: Except for administrative hearings conducted by the state board of pharmacy, Kansas dental board, state board of veterinary examiners, behavioral sciences regulatory board, state board of cosmetology, Kansas real estate commission, real estate appraisal board, state board of mortuary arts, Kansas board of barbering, board of nursing, Kansas board of examiners in fitting and dispensing of hearing aids, board of examiners in optometry, state board of healing arts, Kansas state banking board, ~~state-department of-credit-unions~~, office of the securities commissioner of Kansas and state board of technical professions, all other Kansas administrative procedure act hearings not mentioned in subsections (1), (2), (3) and (4).

(i) With respect to hearings before the secretary of agriculture in accordance with the Kansas administrative procedures act, the secretary of agriculture or a hearing officer from the office of administrative hearings shall be the presiding officer unless the party requests that the matter, for which a hearing has been scheduled or for which a right to a hearing exists, be heard by a hearing officer appointed by the secretary.

(j) (1) Effective July 1, 2005, any presiding officer in agencies specified in subsection (h)(1) which conduct hearings

pursuant to the Kansas administrative procedure act, except those exempted pursuant to K.S.A. 77-551 and amendments thereto, and support personnel for such presiding officers, shall be transferred to and shall become employees of the office of administrative hearings. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state which had accrued to or vested in such personnel prior to the effective date of this section. Such person's services shall be deemed to have been continuous. All transfers of personnel positions in the classified service under the Kansas civil service act shall be in accordance with civil service laws and any rules and regulations adopted thereunder. This section shall not affect any matter pending before an administrative hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment had occurred.

(2) Effective July 1, 2006, any presiding officer in agencies specified in subsection (h)(2) which conduct hearings pursuant to the Kansas administrative procedure act, except those exempted pursuant to K.S.A. 77-551 and amendments thereto, and support personnel for such presiding officers, shall be transferred to and shall become employees of the office of administrative hearings. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state which had accrued to or vested in such personnel prior to the effective date of this section. Such person's services shall be deemed to have been continuous. All transfers of personnel positions in the classified service under the Kansas civil service act shall be in accordance with civil service laws and any rules and regulations adopted thereunder. This section shall not affect any matter pending before an

Administrative hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment had occurred.

(3) Effective July 1, 2007, any presiding officer in agencies specified in subsection (h)(3) which conduct hearings pursuant to the Kansas administrative procedure act, except those exempted pursuant to K.S.A. 77-551 and amendments thereto, and support personnel for such presiding officers, shall be transferred to and shall become employees of the office of administrative hearings. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state which had accrued to or vested in such personnel prior to the effective date of this section. Such person's services shall be deemed to have been continuous. All transfers of personnel positions in the classified service under the Kansas civil service act shall be in accordance with civil service laws and any rules and regulations adopted thereunder. This section shall not affect any matter pending before an administrative hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment had occurred.

(4) Effective July 1, 2008, any full-time presiding officer in agencies specified in subsection (h)(4) which conduct hearings pursuant to the Kansas administrative procedure act, except those exempted pursuant to K.S.A. 77-551 and amendments thereto, and support personnel for such presiding officers, shall be transferred to and shall become employees of the office of administrative hearings. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state which had accrued to or vested in such personnel prior to the effective date of this section. Such

person's services shall be deemed to have
been continuous. All transfers of personnel
positions in the classified service under the
Kansas civil service act shall be in
accordance with civil service laws and any
rules and regulations adopted thereunder.
This section shall not affect any matter
pending before an administrative hearing
officer at the time of the effective date of
the transfer, and such matter shall proceed
as though no transfer of employment had
occurred.