

SESSION OF 2014

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2514

As Recommended by House Committee on
Insurance

Brief*

HB 2514 would amend the Insurers Supervision, Rehabilitation and Liquidation Act to clarify the priority rights of Federal Home Loan (FHL) Banks as secured creditors in insurance company insolvency proceedings. Specifically, the bill would:

- Prohibit an FHL Bank from being stayed, enjoined, or prohibited from exercising or enforcing any right or cause of action regarding collateral pledged under any FHL Bank security agreement or any pledge, security, collateral, or guarantee agreement, or other similar arrangement or credit enhancement relating to such security agreement;
- Prohibit a liquidator from disavowing, rejecting, or repudiating any FHL Bank security agreement;
- Clarify a receiver cannot avoid any transfer arising under or in connection with any FHL Bank security agreement, unless the transfer was made with the intent to hinder, delay, or defraud existing or future creditors; and
- Prohibit a liquidator or receiver from avoiding any preference arising under or in connection with any FHL Bank security agreement.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Background

The bill was introduced by the House Committee on Insurance. A representative of the FHL Bank of Topeka testified before the House Committee on Insurance at a January 27, 2014, informational hearing on the bill. The representative testified that the priority granted to an FHL Bank under federal law to enforce its rights to collateral as a secured creditor might not apply in insurance company insolvency proceedings due to uncertainties created under Kansas law. The representative noted if the sale of collateral in an insurance company insolvency proceeding was necessary, the uncertainties in the law could result in extensive delays in the sale, in the possible loss of some collateral, and in insurance company members being treated less favorably than bank or credit union members. According to the representative, the bill would clarify that the ability of an FHL Bank to enforce its rights to its collateral as a secured creditor could not be delayed or hindered and ensure the position of an FHL Bank with regard to collateral pledged by an insurance company would be parallel to its position with regard to collateral pledged by a bank or credit union.

A formal hearing on the bill subsequently was held before the House Committee on Insurance, and neutral written testimony was provided by representatives of the Heartland Community Bankers Association, the Community Bankers Association of Kansas, and the Kansas Bankers Association. There was no opponent testimony.

The fiscal note prepared by the Division of the Budget on the bill states that, according to the Kansas Insurance Department, enactment would not have a fiscal effect for the agency or any other state agency. The Kansas Insurance Department noted the bill could affect the FHL Bank and competing creditors in the case of an insurance company liquidation.