

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 February 10, 2009, in Room 136-N of the Capitol.

All members were present.

Committee staff present:

Bruce Kinzie, Office of the Revisor of Statutes
Melissa Calderwood, Kansas Legislative Research Department
Terri Weber, Kansas Legislative Research Department
Beverly Beam, Committee Assistant

Conferees appearing before the committee:

Melissa Calderwood, Principal Analyst, Research Department
Tad Kramar, Vice President, Federal Home Loan Bank of Topeka (Attachment 1)
Natalie Haag, Security Benefit Group (Attachment 2)
Bill Sneed, American Investors Life (Attachment 3)
Matt Goddard, Heartland Community Bankers (Attachment 4)
Kathleen Olsen, Kansas Bankers Association (Attachment 5)
Haley DaVee, Kansas Credit Union Association (Attachment 6)
Cindy Hermes, Kansas Insurance Department
Casey Halsey, J. E. Dunn Construction Group, Inc. (Attachment 7)

Others attending:

See attached list.

The Chair called the meeting to order and welcomed everyone to the meeting.

Hearing on

SB 139 - Insurance, deposits and securities, Federal home loan bank

Melissa Calderwood, Principal Analyst, Research Department, gave an overview of the bill. Ms. Calderwood stated that this bill would include a Federal Home Loan Bank as defined as a financial institution in the insurance code. This would allow Federal Home Loan Banks to hold cash, securities, real estate deeds, mortgages and other assets with the Insurance Commissioner, she said. She added that all such deposits would be held in trust for use and benefit of such company and such company's policyholders and creditors. She said Federal Home Loan Banks would be required to meet all regulatory requirements. She said this bill would allow Federal Home Loan Banks to obtain a "nominee name" for an insurance company in which the company's securities may be registered or may arrange for securities to be held in a clearing corporation. She said the Kansas Insurance Department indicates the bill could be implemented within the agency's existing staff and resources.

Tad Kramar, Vice President and Assistant General Counsel of the Federal Home Loan Bank of Topeka testified in support of **SB 139**. Mr. Kramar said FHLBank Topeka is regulated by the Federal Housing Finance Agency in Washington, D.C. and has been providing custodial services for its member institutions for more than forty years. He said Finance Agency's Examination Manual states that the FHLBanks provide a secure and convenient method for clearing and safekeeping securities for the FHLBanks and their members. He said consequently, last year the National Association of Insurance Commissioners adopted amendments to expressly include the Federal Home Loan Banks as authorized custodians of insurance company assets under the NAIC Model Act on Custodial Agreements and Use of Clearing Corporations and the NAIC Model Regulation on Custodial Agreements and the Use of Clearing Corporations. He added that **SB 139** follows the NAIC amendments. K.S.A. 40-229a allows insurance company assets to be deposited with Kansas financial institutions acceptable to the Kansas Commissioner of Insurance. He said **SB 139** would amend it to include federal Home Loan Banks in the definition of "financial institution" and to modify the references to banking regulators and banking laws so that the Federal Home Loan Banks' regulator and the Federal Home Loan Bank Act would be included. (Attachment 1)

Natalie Haag, 2nd Vice President, Director of Government Affairs/Assistant General Counsel, Security Benefit Life Insurance Company, testified in support of **SB 139**. She stated **SB 139** amends the Kansas Insurance

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Code to clarify that the Federal Home Loan Bank is authorized to custody an insurance company's assets. She said currently, Kansas law allows state and federal banks to custody assets of an insurance company; however, none of the protections currently in place regarding custodial relationships or any of the regulatory authority the Kansas Insurance Department will have over them will be modified as a result of this statutory change. (Attachment 2)

William W. Sneed, Legislative Counsel, American Investors Life Insurance Company, testified in support of **SB 139**. He said this proposal would modify the Kansas Insurance Code to specifically allow the Federal Home Loan Bank to act as a custodian to an insurance company's assets. He noted that Kansas law currently allows state and federal banks to custody assets of an insurance company and **SB 139** does not alter the current framework of requirements governing custodial relationships. He said further that under this bill, the Kansas Insurance Department would continue to have regulatory authority over such custodial arrangements. (Attachment 3)

The Chair closed the hearing on **SB 139**.

Hearing on

SB 163 - Consumer protection, mortgage trigger lead

Melissa Calderwood gave an overview of the bill. Ms. Calderwood stated **SB 163** would amend the Consumer Protection Act to include the definitions of "lender" and "mortgage trigger lead." A "mortgage trigger lead" is defined as a consumer report obtained under the Federal Fair Credit Reporting Act where the issuance of the report is triggered by an inquiry made with a consumer reporting agency in response to an application for credit. In addition, **SB 163** would require that in written or oral solicitations for products or services based on mortgage trigger leads, the solicitation must clearly state that the solicitor is not affiliated with the lender or broker with which the consumer initially applied, and that the solicitation was based on personal information about the consumer that was purchased, directly or indirectly, from a consumer reporting agency without the knowledge of the lender or broker with which the consumer initially applied. She said failure to comply with this requirement would be considered a deceptive act or practice under the Kansas Consumer Protection Act.

Matthew Goddard, Heartland Community Bankers Association, testified in support of **SB 163**. Mr. Goddard states that **SB 163** requires greater disclosure to consumers by users of mortgage trigger leads. He said the bill does not prohibit anything, but rather attempts to ensure that consumers are educated about who is making an unsolicited offer of mortgage credit. He said a mortgage trigger lead is defined in **SB 163** as a credit report obtained under the prescreened offer of credit provisions of the federal Fair Credit Reporting Act where the issuance of the report is "triggered" by an inquiry in response to an application for credit. He noted that federal law preempts state law when it comes to a prescreened offer of credit and therefore, under the Fair Credit Reporting Act, individual states cannot prohibit the sale of mortgage trigger leads and **SB 163** does not.

(Attachment 4)

Kathleen Taylor Olsen, Kansas Bankers Association and Haley DaVee, Kansas Credit Union Association also provided written testimony in support of **SB 163**. (Attachments 5 and 6)

The chair closed the hearing on **SB 163**.

Action on

SB 49 - Insurance coverage, mental health, alcoholism drug abuse or other substance use disorder benefits.

Cindy Hermes, Kansas Insurance Department, asked that working this bill be postponed due to complications with the bill. She said the Department is not sure the bill was written appropriately.

The Chair said to make sure the bill complies with the federal government, she would hold the bill. She said

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the Committee would not be working **SB 49** at this time.

Action on

SB 126 - Controlled insurance program act

The Chair said because Casey S. Halsey, Executive Vice President and General Counsel for J.E. Dunn Construction Group, Inc., did not testify at the hearing on **SB 126**, she was going to allow him to testify before working the bill.

Mr. Halsey testified in opposition to **SB 126**. In summary, Mr. Halsey said that **SB 126** has many faults and defects. He said the proponents of this bill have highlighted the faults of a few bad programs to condemn an approach which has brought increased sophistication and enhanced benefits of insurance for many construction projects. He said he believes such legislation is not required. He said if it is the intention of the Committee and the Senate as a whole to move this legislation ahead, he would like the opportunity to propose an amendment to **SB 126**. *(Attachment 7)*

Senator Masterson moved to pass SB 126 out favorably. Senator Taddiken seconded. Motion passed.

The next meeting is scheduled for February 11, 2009.

The meeting was adjourned at 10:30 a.m.