

Approved: February 23, 1993  
Date

## MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson William Bryant at 3:30 p.m. on February 22, 1993 in Room 527-S of the Capitol.

All members were present except: Representative Standifer, Excused  
Representative Cox, Excused

Committee staff present: William Wolff, Legislative Research Department  
Bruce Kinzie, Revisor of Statutes  
Nikki Feuerborn, Committee Secretary

Conferees appearing before the committee:

Bill Caton, Consumer Credit Commissioner  
Frank, Dennick, State Banking Commissioner  
Jim Maag, Kansas Bankers Association

Others attending: See attached list

### **Hearing on HB 2465: UCCC, computation of finance charges**

Bill Caton, Consumer Credit Commissioner, explained that this pro-consumer bill would require all consumer loans and consumer credit sales to have finance charges figured on an actuarial basis method rather than a pre-computed method (Attachment 1). The pre-computed method does not give equitable treatment in the event of a substantial prepayment. Presently if the loan is paid off early, the refund is figured on the amount of time remaining on the loan and not on the unpaid balance. This happens oftentimes in vehicle loans especially those carried by Ford and GMC. The majority of creditors have already discontinued the pre-computed contract which was quite popular prior to the availability of inexpensive calculators. Delaying the effective date of this change until January 1, 1994, allows all creditors now using pre-computed contracts sufficient time to convert their systems and forms to the actuarial method. Most states adopted the actuarial basis method some time ago.

### **Hearing on SB 31: Critically undercapitalized banks**

Frank Dennick, State Banking Commissioner, stated that the FDIC Improvement Act of 1991 mandated certain procedures federal regulators must follow in dealing with banks whose capital position has declined to a level of 2 percent or less of the bank's assets (Attachment 2). These regulations went into effect in December of 1992. The new law forced the FDIC to take control and close those institutions which fall under the category of critically undercapitalized. The power to close a bank has only been vested with the bank's chartering authority in the past. This bill would grant the same authority in this area to the banking department. The exception would be that instead of being required to seize and close such a bank, this amendment makes that action simply one option available. This bill is needed for the following reasons:

1. State laws, regulations and policies governing banks are heavily interrelated with those at the federal level.
2. The Bank Commissioner should be allowed to grant an emergency charter to a successor bank if the closing may result in inconvenience or loss to depositors.
3. Ensure that the state maintains an active role in the oversight of bank closings whether as a result of insolvency or critical undercapitalization. Without the amendment, the decision could rest solely with the federal authorities.

Jim Maag of the Kansas Bankers Association voiced endorsement of the bill.

Representative Helgerson moved that the balloon amendments as presented be approved. Representative Crabb seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,  
Room 527-S Statehouse, at 3:30 p.m. on February 22, 1993.

Representative Helgerson moved that the bill be passed favorably as amended. The motion was seconded by Representative Weiland. Motion carried.

Representative Cornfield moved that the minutes of February 15, 17, and 18 be accepted. Representative Gilbert seconded the motion. The motion carried.

The Chair adjourned the meeting at 4:05 p.m. The next meeting is scheduled for February 23, 1993.

## GUEST LIST

COMMITTEE:

III

DATE:

Feb-22

[illegible]



# KANSAS

Office of CONSUMER CREDIT COMMISSIONER

Joan Finney  
Governor

Wm. F. Caton  
Commissioner

**TESTIMONY FOR HOUSE BILL 2465**  
**BY: BILL CATON, COMMISSIONER**  
**CONSUMER CREDIT**

Effective January 1, 1994, House Bill 2465 will require all consumer loans and consumer credit sales to have finance charges figured on an actuarial method rather than a pre-computed method. These amendments to the Kansas Consumer Credit Code will have a positive effect on consumers as the pre-computed method of calculating finance charge does not give equitable treatment in the event of a substantial prepayment.

Pre-computed interest calculation assumes that all payments will be made on the due date and the interest is calculated at the beginning of the loan and added to the principal amount. When payments are made, they are inclusive of principal and interest. If the loan is paid off early, the refund is figured on the amount of time remaining on the loan and NOT on the unpaid balance. This method would be accurate if EVERY payment is made for the exact amount on the exact due date.

If a consumer prepays a substantial amount towards the balance, a pre-computed contract does not give the consumer full advantage of the prepayment. An example of this situation occurs frequently on vehicle loans that have insurance physical damage payments applied to the loan versus making repairs to the vehicle. Many times hail damage is not repaired and insurance payments are applied to loans. Also, many prudent consumers prepay loan payments if money is available. One situation came to our attention this fall when a Wichita consumer prepaid \$5,000 on a \$10,000 vehicle loan in the 3rd month of the contract due to hail damage on the vehicle. This consumer continued to make the normal scheduled payments for several more months and paid the loan off in full. The pre-computed calculation of interest on this loan was over \$1,100 more than the actuarial method.

The majority of creditors have already discontinued the pre-computed contracts. Those creditors that still use the pre-computed method cannot give a good economic reason for the continued use of these contracts. Prior to the availability of calculators that have financial function abilities, pre-computed contracts were prevalent. Today, there are inexpensive calculators available to all businesses that are capable of computing principal and interest for contracts.

Delaying the effective date of this change until January 1, 1994 allows all creditors now using pre-computed contracts sufficient time to convert their systems and forms to the actuarial method. Please consider adopting this change as it provides progressive and needed reforms in interest calculation methods.

*House File 2*  
*Attachment 1*  
*2-22-93*

STATE OF KANSAS

Frank D. Dunnick  
Bank Commissioner

Judi M. Stork  
Deputy Commissioner



OFFICE OF

**BANKING DEPARTMENT**  
TOPEKA

Kevin C. Glendening  
Assistant Deputy Commissioner

Ruth E. Glover  
Administrative Officer

**TESTIMONY BEFORE**

**THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE**

February 22, 1993

Mr. Chairman and members of the committee, attached to your handout is the text of our testimony provided to the Senate committee on **SENATE BILL 31**. We requested Chairman Bryant move up your committee's hearing on this bill in light of recent developments which directly affect a Kansas state bank. I'll address some of the specifics of that case in a moment, but first I would like to briefly describe the purpose of Senate Bill 31.

The FDIC Improvement Act of 1991 mandated certain procedures federal regulators must follow in dealing with banks whose capital position has declined to a level of 2 percent or less of the bank's assets. These procedures for so called "critically undercapitalized" banks became effective approximately two months ago in December 1992. With some exceptions, this new federal law requires the FDIC to take control of and close those institutions which fall under the category of critically undercapitalized. Historically, the power to close a bank has only been vested with the bank's chartering authority.

*House FDIC*  
*Attachment 2*

*2-22-93*

Senate Bill 31 would grant the same authority in this area to the banking department, as that presently held by the FDIC. One important exception, however, is that rather than being required to seize and close a critically undercapitalized bank, this amendment makes that action simply one option available to the banking department.

In essence, the importance and need for this amendment can be summarized in three general categories:

First, state laws, regulations, and policies governing banks are heavily interrelated with those at the federal level. In order to successfully carry out our joint supervision responsibilities, particularly in the area of problem bank supervision, we must coordinate our activities and utilize the same general guidelines. This amendment would facilitate that process by matching up the guidelines used by each of our respective agencies.

Second, in the event of a bank closing as a result of critical undercapitalization, provisions within this bill would also facilitate the Bank Commissioner's ability to grant an emergency charter to a successor bank if it appears the closing may result in serious inconvenience or losses to depositors or public interest in the community.

Third, as I stated earlier, the responsibility to close a bank has historically been given solely to the chartering authority. Undoubtedly, that decision was based on the appropriate belief that the state, through its own regulatory process, should have primary control over banks operating within its borders. This amendment would ensure that the state maintains an active role in the oversight of bank closings whether as a result of insolvency or critical undercapitalization. Without this amendment, that decision could rest solely with the federal authorities in Washington.

Mr. Chairman and members of the committee, as I stated at the beginning of my testimony, since our original presentation of this bill in the Senate, continuing developments involving a Kansas state bank have created a sense of additional urgency and in our opinion warrant expedited treatment of this bill. While confidentiality requirements and our desire to limit public alarm and the possibility of a run on deposits, prevents me from disclosing the name or location of the specific institution, there is at present a bank in our state which falls within the critically undercapitalized guidelines. Preliminary activity is underway by the FDIC which may give Kansas the unfortunate distinction of having the first bank in the nation seized and closed under the new federal regulation.

It is our hope and belief that, the adoption of this bill and resulting parity in procedural matters between our agency and the FDIC, will facilitate the possibility of locating a buyer for this and other institutions which may be in a similar situation in the future. At the very least, this bill will certainly permit our agency to function within more uniform guidelines in working with the federal regulators to ensure any disruption to the public is minimized in the event the institution is closed.

We ask for your favorable consideration of this bill and that, in view of the recent developments I have just relayed to you, we request the effective date of this bill be changed to be upon publication in the Kansas Register.

**TESTIMONY BEFORE**  
**THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE**

Thursday, January 28, 1993

**SENATE BILL 31**, amends K.S.A. 9-1801, 9-1903, 9-1904, 9-1905, 9-1906, and 9-1907. Currently, Article 19 defines when a bank is insolvent and mandates certain actions which the commissioner must undertake. They require the commissioner to take control of an insolvent institution and, if such cannot resume business, he must appoint a receiver.

Under the new Federal Deposit Insurance Corporation Improvement Act (FDICIA), the Federal Deposit Insurance Corporation (FDIC) now has the power and is mandated to take control of an institution, and to close such institution within 270 days, if the bank is considered to be critically undercapitalized. A bank is critically undercapitalized when its Capital Stock, Surplus, Undivided Profits, Contingencies or Capital Reserves, Non Cumulative Perpetual Preferred Stock, less disallowed intangibles and any known loss plus outstanding cumulative perpetual preferred stock to total assets is equal to or less than two percent. This law went into effect as of December 19, 1992 and was referred to by many as the "December Surprise." In reality it turned out to be the "December Fizzle." Only 26 banks in the United States, with \$7 billion dollars in assets, fall under the category of critically undercapitalized. In Kansas, we have no state chartered banks with capital of less than two percent. This change in the law gives the FDIC the new power to take control of banks and to close those institutions. FDIC has never had such authority before; only the chartering authority could close an institution.



The amendments we are asking the legislature to approve would give the banking department parity with the new power the FDIC has received. It would broaden the power of the Commissioner to take control and close a bank, previously allowed only at insolvency, to do such action when a bank is critically undercapitalized. We feel that it is important that the issue of whether a Kansas state chartered bank remain open or be closed rest with the state chartering authority versus the Board of Governors of the FDIC in Washington, D.C. By amending our statutes to mirror the threshold for taking control of a bank to that of the FDIC, we will accomplish this goal. While amending our statute does not limit the power of the FDIC to take charge of, or close, a critically undercapitalized bank, it gives the Bank Commissioner equal authority.

Additionally, K.S.A. 9-1801 is being amended to allow the Commissioner to grant an emergency charter to applicants wishing to acquire a bank or trust company that was closed as a result of being critically undercapitalized. The statute currently only allows this upon dissolution or insolvency.

The department has met with Fred Carmen of the Revisor's Office and a balloon amendment is attached. Technical changes in the language have been made.

We would ask for favorable consideration of this bill.

5072

## SENATE BILL No. 31

By Committee on Financial Institutions and Insurance

1-15

and trust companies

receiver for financial institutions

AN ACT concerning banks; critically undercapitalized; amending  
K.S.A. 9-1801, 9-1903, 9-1904, 9-1905, 9-1906 and 9-1907 and  
repealing the existing sections.

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

~~New Section 1. A bank or trust company shall be deemed to be  
critically undercapitalized when the ratio of its Tier-I capital plus  
the amount of outstanding cumulative perpetual preferred stock (in-  
cluding related surplus) to total assets is equal to or less than 2.0  
percent. Any bank deemed to be insolvent pursuant to K.S.A. 9-  
1902 and amendments thereto shall be deemed critically  
undercapitalized.~~

Sec. 2. K.S.A. 9-1801 is hereby amended to read as follows: 9-  
1801. (a) No bank or trust company hereafter shall be organized or  
incorporated under the laws of this state, nor shall any such insti-  
tution transact either a banking business or a trust company business  
in this state, until the application for its incorporation and application  
for authority to do business has been submitted to and approved by  
the board. The board shall approve or disapprove the organization  
and establishment of any such institution in the city or town in  
which the same is sought to be located. The form for making any  
such application shall be prescribed by the board and any application  
made to the board shall contain such information as it shall require.  
The board shall not approve any such application until it first in-  
vestigates and examines such application and the applicants.

(b) ~~If upon the dissolution or insolvency critical undercapital-~~  
~~ization, as defined in section 1,~~ of any bank, trust company, national  
bank association, savings and loan association, savings bank or credit  
union, it is the opinion of the commissioner that by reason of the  
loss of services in the community, an emergency exists which may  
result in serious inconvenience or losses to the depositors or the  
public interest in the community, the commissioner may accept and  
approve an application for incorporation and application for authority  
to do business from applicants for the organization and establishment  
of a successor bank or trust company, subject to confirmation and  
subsequent approval by the board. Upon approval of an application

New Section 1. A bank or trust company is  
critically undercapitalized when the ratio of its  
capital to total assets is equal to or less than 2.0%.  
For the purposes of this section, capital shall be the  
sum total of the institution's common stock, surplus,  
undivided profits, capital reserves, noncumulative  
perpetual preferred stock and outstanding cumulative  
perpetual preferred stock (including related surplus).

, insolvency or appointment of a receiver

1 for the organization and establishment of any such successor bank  
2 or trust company, the commissioner shall no later than the next  
3 regular meeting of the board submit such application to the board  
4 for its confirmation and approval.

5 Sec. 3. K.S.A. 9-1903 is hereby amended to read as follows: 9-  
6 1903. If it shall appear upon the examination of any bank or trust  
7 company or from any report made to the commissioner that any  
8 bank or trust company is ~~insolvent~~, then it shall be the duty of  
9 the ~~commissioner~~ *forthwith to critically undercapitalized*, the com-  
10 ~~missioner~~ may take charge of such bank or trust company and all of  
11 its property and assets. *If from such examination or reports it shall*  
12 *appear any bank or trust company is insolvent the commissioner*  
13 *shall take charge of such bank or trust company and all of its*  
14 *property and assets.* In so doing the commissioner may appoint a  
15 special deputy commissioner to take charge temporarily of the affairs  
16 of such ~~insolvent~~ *critically undercapitalized* bank or trust company  
17 until a receiver is appointed. Such deputy shall qualify, give bond  
18 and receive compensation ~~the same as the regular examiner/de-~~  
19 *termined by the commissioner*, but such compensation shall be paid  
20 by the ~~insolvent~~ *critically undercapitalized* bank or trust company  
21 or in case of the appointment of a receiver allowed by the court as  
22 costs in the case. *Provided, That in no case shall any bank or*  
23 *trust company continue in charge of a special deputy for a*  
24 *longer period than six months. After appointment, the special*  
25 *deputy shall continue to serve under the direction of the commis-*  
26 *sioner for such period of time as deemed reasonable/by the com-*  
27 *missioner before returning charge of the bank or trust company back*  
28 *to the board of directors of the institution or appointing a receiver.*  
29 *In no case shall any bank or trust company continue in the charge*  
30 *of a special deputy for a period exceeding nine months.*

insolvent or

as

insolvent or

and necessary

31 Sec. 4. K.S.A. 9-1904 is hereby amended to read as follows: 9-  
32 1904. The stockholders of any ~~insolvent~~ bank or trust company and  
33 its depositors and creditors may formulate a plan for the reorgani-  
34 zation of such bank or trust company while the same is in charge  
35 of the commissioner or a special deputy commissioner or a receiver,  
36 at any time before a dividend has been paid. The depositors and  
37 creditors of such ~~insolvent~~ bank or trust company may formulate a  
38 plan for the reorganization thereof, and if such plan is subscribed  
39 to in writing by creditors and depositors having not less than eighty  
40 percent 80% in amount of the known claims against said such bank  
41 or trust company, and such plan shall be approved by the board,  
42 and a copy thereof filed with the commissioner, the same shall be  
43 held to be legal, valid and binding upon all depositors and creditors

insolvent or critically undercapitalized

insolvent or critically undercapitalized

8/26

1 of such insolvent bank or trust company to the same extent and  
2 with the same effect as if all of the depositors and creditors had  
3 joined in the execution thereof.

insolvent or critically undercapitalized

4 As used in this section "depositors" and "creditors" shall mean  
5 and include the pooled money investment board acting for and on  
6 behalf of the state of Kansas and the governing body of any county,  
7 township, city, drainage district, school district, sewer district or  
8 other governmental subdivision and as such they are hereby au-  
9 thorized to join in the execution of any plan for the reorganization  
10 of any insolvent bank with the same legal effect and validity as any  
11 individual depositor or creditor.

insolvent or critically undercapitalized  
or trust company

12 Sec. 5. K.S.A. 9-1905 is hereby amended to read as follows: 9-  
13 1905. When the commissioner shall take charge of any bank or trust  
14 company he or she pursuant to article 19 of chapter 9 of the Kansas  
15 Statutes Annotated and amendments thereto, the commissioner shall  
16 ascertain its actual condition as soon as possible by making a thorough  
17 investigation into its affairs and condition, and if the commissioner  
18 shall be satisfied that such bank or trust company cannot sufficiently  
19 recapitalize, resume business or liquidate its indebtedness to the  
20 satisfaction of its depositors and creditors, then the commissioner  
21 forthwith shall appoint a receiver therefor and require the receiver  
22 to give such bond as the commissioner deems proper. The com-  
23 missioner also shall fix reasonable compensation for the receiver but  
24 the same shall be subject to the approval of the district court of the  
25 county wherein such bank or trust company is located upon the  
26 application of any party in interest.

insolvent or critically undercapitalized

27 Any receiver shall be a resident of the state of Kansas and shall  
28 have had at least five years credit experience. ~~Provided, That~~ Upon  
29 written application made within ~~thirty~~ 30 days after the finding of  
30 insolvency the commissioner shall appoint as receiver any person  
31 whom the holders of more than ~~sixty percent~~ 60% in amount of  
32 the claims against such bank or trust company shall agree upon in  
33 writing; and. The creditors so agreeing may also agree upon the  
34 compensation and charges to be paid such receiver. Each receiver  
35 so appointed shall make a complete report to the commissioner  
36 covering the receiver's acts and proceedings as such. The commis-  
37 sioner may remove for cause any receiver and appoint the receiver's  
38 successor.

39 Sec. 6. K.S.A. 9-1906 is hereby amended to read as follows: 9-  
40 1906. (a) The A receiver appointed pursuant to K.S.A. 9-1905 and  
41 amendments thereto, under the direction of the commissioner, shall  
42 take charge of any insolvent bank or trust company and all of its  
43 assets and property, and liquidate the affairs and business thereof

insolvent or critically undercapitalized

1 for the benefit of its depositors, creditors and stockholders. The  
2 receiver may sell or compound all bad and doubtful debts and sell  
3 all the property of the bank or trust company upon such terms as  
4 the district court of the county where the bank or trust company is  
5 located shall approve. The receiver shall pay over all moneys received  
6 to the creditors and depositors of such bank or trust company as  
7 ordered by the commissioner.

8 (b) In distributing assets of an insolvent ~~the~~ bank or trust com-  
9 pany in payment of its liabilities, the order of payment, in the event  
10 its assets are insufficient to pay in full all of its liabilities, shall be  
11 by category as follows:

12 (1) The costs and expenses of the receivership and real and per-  
13 sonal property taxes assessed against the bank pursuant to applicable  
14 law;

15 (2) claims which are secured or given priority by applicable law;

16 (3) claims of unsecured depositors;

17 (4) all other claims exclusive of claims on capital notes and  
18 debentures;

19 (5) claims on capital notes and debentures.

20 Should the assets be insufficient for the payment in full of all  
21 claims within a category, such claims shall be paid in the order  
22 provided by other applicable law or, in the absence of such applicable  
23 law, pro rata.

24 Sec. 7. K.S.A. 9-1907 is hereby amended to read as follows: 9-  
25 1907. The federal deposit insurance corporation or its successor,  
26 hereby is authorized and empowered to be and act without bond as  
27 receiver or liquidator of any insolvent bank, the deposits in which  
28 are to any extent insured by such corporation, and which bank shall  
29 have been closed. In the event of any such closing of any bank the  
30 commissioner may tender to the insurance corporation the appoint-  
31 ment as receiver or liquidator of such bank, and if the insurance  
32 corporation accepts the appointment then such insurance corporation  
33 shall have and possess all the powers and privileges and shall assume  
34 all the duties and requirements provided by the laws of this state  
35 with respect to a state receiver or liquidator, respectively, of a bank,  
36 its depositors and other creditors, and shall be subject to the juris-  
37 diction of the district courts and supreme court of Kansas.

38 Sec. 8. K.S.A. 9-1801, 9-1903, 9-1904, 9-1905, 9-1906 and 9-  
39 1907 are hereby repealed.

40 Sec. 9. This act shall take effect and be in force from and after  
41 its publication in the statute book.

insolvent or critically undercapitalized

insolvent or critically undercapitalized

2/26