

SESSION OF 2014

SUPPLEMENTAL NOTE ON SENATE BILL NO. 299

As Amended by Senate Committee on Financial
Institutions and Insurance

Brief*

SB 299 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 at the request of the FHL Bank of Topeka whose representative testified at the Senate Committee hearing that, because of uncertainties in Kansas law, the FHL Bank must presume that an insurance company receiver could ask a court to order a stay, which would prohibit the bank from selling its collateral for an unknown, indefinite period. The representative indicates clarifications to the Kansas Insurers Supervision, Rehabilitation and Liquidation Act would ensure the FHL Bank's position with regard to collateral pledged by an insurance company is parallel to the position it has regarding collateral pledged by a bank or credit union. A representative of the American Council of Life Insurers appeared in support of the bill at the hearing. The Heartland Community Bankers Association submitted written testimony in support of the bill. Neutral written testimony was provided by representatives of the Community Bankers Association of Kansas and the Kansas Bankers Association. There was no opponent testimony.

The Senate Committee on Financial Institutions and Insurance amendments are technical in nature.

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