

1988

# Grant Thornton and Co. v. Brighton Bank : Brief of Appellant

Utah Court of Appeals

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Priority No. 14(b)

FILED

GRANT THORNTON & CO., as  
Liquidator/Receiver of  
COPPER STATE THRIFT & LOAN  
COMPANY,

V.

Respondent.

Priority No. 14(b)

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# HOUSE OF REPRESENTATIVES

## STATE OF UTAH

318 STATE CAPITOL • SALT LAKE CITY 84114



June 14, 1988

### CERTIFICATION

This is to certify that the attached transcript, with corrections noted, is a verbatim and accurate reflection of the House debate regarding S.B. No. 238, FINANCIAL INSTITUTIONS ACT AMENDMENTS, which occurred in the House Chamber on March 7, 1983, as recorded on Disk No. 6 and 7.

A handwritten signature in cursive script, reading "Hollace L. Parker".

Hollace L. Parker  
Administrative Assistant  
House of Representatives

ACTION ON FLOOR OF HOUSE FOR SENATE BILL 238

March 7, 1983

Afternoon Session

Speaker == We will now move to the time certain, which is Senate Bill 238. Turn to the reading clerk.

Clerk == Senate Bill No. 238 Financial Institutions Act Amendment<sup>Karl N.</sup> by Senator ~~Collins~~<sup>be it</sup> Snow enacted by the Legislature of the State of Utah.

Speaker == <sup>Rep. H</sup> Senator Gillyard.

<sup>Rep. H</sup> S. Gillyard == Thank you Mr. Speaker. I move that we resolve ourselves in a committee of the whole for ten minutes for the purpose of hearing from Elaine Weiss, the Commissioner of Financial Institutions, to explain and answer any questions regarding this bill. We have handed out material for you over the weekend to read it and hopefully understand the very complicated bill, but very vital in the area of financial institutions.

Speaker == Representative, is that a fiscal note bill?

Hillyard=Yes, it is, it does have a fiscal note of revenue in the state. <sup>Speaker=</sup> All those in favor of the motion that has been moved and seconded that we resolve ourselves into a committee of the whole for ten minutes to hear from the Director of Financial Institutions. All in favor say aye.

Aye.

Speaker == Opposed. (No reply). The motion carries.  
Would you come forward Mrs. Weiss?

Weiss == Mr. Speaker, distinguished representatives, we are grateful for this opportunity to talk about Senate Bill 238. I am sure that <sup>for</sup> ~~to~~ many of you it comes as a shock to see something that is 179 pages long after Senate Bill 134 was passed two years ago, but during the last two years the Department of Financial Institutions has found that there were many changes in Senate Bill 134 which were necessitated either by events that occurred in the very first thrift case or by the passage of federal legislation which raised a question of the conflict between our state statute and the federal law.

Most of the bill deals with technical amendments that clean up language and eliminate conflicts. We also thought it necessary to amend the bill to eliminate sections which had questionable constitutionality, particularly those that had automatic tie-ins with federal law, but I feel that the meat of the bill and the central issue of the bill in terms of the public purpose are those sections which amend the supervisory procedures. In 134 the Commissioner was given broad powers to supervise a broad range of financial institutions, but the powers were so broad that they were in essence undefined. The amendments that we have introduced in 238 define this power statutorily and set forth specific procedures and a sequence of increasingly severe supervisory action. Under the current statute, the only recourse that the commissioner has <sup>is</sup> ~~it~~ possession, and it is too severe a penalty, it is too serious an action. 238 creates a series of steps so that possession is the last resort. When all else fails, the commissioner may take possession of a company. When we take possession it's a legal proceeding and involves a great deal of expense, a great deal of time. The introduction of supervisory mergers and acquisitions is comparable to that the federal authorities have and it permits the commissioner to negotiate a reorganization in a non-judicial proceeding, <sup>but</sup> while still preserving the right of judicial review for the company which is the subject of the supervisory action. I

think another needed change was to give depositors priority. We found out in the <sup>Murray First Thrift</sup> ~~very first~~ thrift case that depositors were treated as unsecured creditors. I don't feel this is sound public policy and after discussing with a number of the legislators, it was my opinion that it was not the legislative intent. What we have done is to give depositors priority so even in a possession case depositors can have access to at least part of <sup>their</sup> his funds. The hardship that was worked on the public, the depositors of the <sup>Murray First Thrift</sup> ~~very first~~ thrift case, was very great and should there be another situation where the state is forced to take possession, we do not think that the depositors should be the victims, that the depositors should pay the price, and they paid the price in Murray. Luckily, we were able to resolve that satisfactorily, but the next case may next end so felicitously. I will be glad to answer any questions.

Speaker == Are there questions? Representative Karras?

R. Karras == Thank you Mr. Speaker. Am I correct that in this bill there are some reciprocity provisions for banks savings and loans, that affect them? And is it true that they affect them differently, that in one case one allows reciprocity, and I don't remember which is which, and one



does not? And if that is the case, can you tell me how it is in the public interest to have a different treatment for the savings and loans and the banks in the same bill?

Weiss == Yes, the reciprocity in the current statute actually delegates the authority of another state legislature to determine if Utah will be open to that state. For credit unions and savings and loans, they are already interstate. We have four state-chartered savings and loans that operate in other states, some of which went in under our existing reciprocity statute. For banks, there is no interstate either branching or acquisition, so the federal law is very different for banks than it is for savings and loan or credit unions. Credit unions can freely cross state lines. We had reservations about creating a situation where there might be retribution taken, for example, <sup>by</sup> ~~for~~ the state of Oregon against our two Utah institutions which went into Oregon under the reciprocity statute, and that's why we have eliminated reciprocity for commercial banks, but preserved it for the credit unions and savings and loans, because it is a different situation.

R. <sup>K</sup>arras == I'm not sure I agree with you, but I can see why you did it. *Thank you*

Redd  
Speaker == Representative Graham.

Redd  
R. Graham == Thank you. Who prepared this legislation? Who .. was it a group or a committee, or was it somebody hired? Who in effect wrote these changes?

Weiss == This was a cooperative effort by representatives of all the industries, plus the people in the department.

Redd  
R. Graham == In other words, the bankers and those other financial institutions were involved in it?

Weiss == Yes sir.

Redd  
R. Graham == Were stockbrokers, etc.?

Weiss == This was sent to the firms representing brokerage houses, and they reviewed it, and actually the revisions on 71104 were the contribution of the brokerage houses.

Redd  
R. Graham == O.k., thank you.

Rep. Redd  
Speaker == Who was the lead attorney on this?

Weiss == There really wasn't a lead attorney. It was truly a cooperative effort and there was not a single attorney that handled all this. We coordinated it through the department offices.

Rep Reed = Thank you

Speaker == ~~Thank you.~~ Representative Garth. <sup>Garff</sup>  
Representative ~~Garth~~ <sup>Garff</sup>, do you have a question? Representative Skousen?

R. Skousen == In the few minutes that have elapsed since we talked out there, have you had a chance to resolve that question relative to the other fees and the semi-annual versus annual?

Weiss == After reviewing it I agree with you.

R. Skousen == I beg your pardon.

Weiss == I agree with you that it is confusing.

R. Skousen == Very fine, then with no objection . . I mean you would not object to my making amendment in that respect.

Weiss == No sir.

Speaker == Representative Hillyard, do you have further questions?

R. Hillyard == I have no further questions, I trust that she has answered the questions with your reading and I thank Commissioner Weiss and move that we <sup>dissolve</sup> ~~resolve~~ ourselves <sup>of the</sup> ~~as a~~ committee of the whole.

Speaker == Then moved <sup>and seconded</sup> ~~the segment~~ that we dissolve the committee of the whole and thank the commissioner. All in favor say "aye".

Aye.

Speaker == Opposed. (No reply). The motion carries. Now representatives, this is not a fiscal <sup>bill</sup> year in the sense that it costs money and our rule~~s~~ is that the only bills that we do not have a limit on are those that add to an appropriation. We will rule that this is not a fiscal bill in that sense and will impose the ten minute limit and we will count the committee <sup>of the</sup> ~~as a~~ whole as an additional time. We will now go to the ten minutes and we'll turn to Representative Hillyard to introduce the bill further.

R. Hillyard == I first should make an amendment on page 22, line 21, after the word "exceeding", remove the brackets from around 10 percentage points to reinstate the original language and delete 10 percent. Do you have a pink sheet that was just handed out that should cover that and if I have a second I'll speak to that amendment.

Speaker == It has been moved and seconded that we amend the bill on page 22, line 21. <sup>To</sup> that motion?

R. Hillyard == It clears up the language. Ten percentage points is different than ten percent. There was an error made in the preparation and so this restores the language as it should be.

Speaker == Representative <sup>Rees</sup> Reese to the motion, to the motion to amend, Representative Red, anyone to the motion to amend? All those in favor of the motion to amend say "aye".

Aye.

Speaker == Opposed? (No reply). The motion carries, you may proceed.

R. Hillyard == Those of you who were here two years ago when we did Senate Bill 134 know that I was in opposition of Senate Bill 134 and worked against that and voted against it until the final amendments were made deleting the money market funds. The money market fund people are satisfied and in fact have written a provision in this amendment. The technical amendments <sup>that</sup> apply to them. I would just indicate to you that this bill I have been involved in it in the aspect that seeing that different entities were represented in coming up with a consensus bill. It has been through the senate committee and it passed the senate and we tried to get a hearing in the house, but the business and labor committee was filled up that particular day and we were not able to get a hearing, so we apologize for not having the second hearing in the house, but I would submit to you that the papers we have given to you <sup>should</sup> ~~would~~ explain the need for this bill. It passed, I recall, unanimously in the Senate. We feel like this has some good technical amendments and it also brings some good changes in Utah law, giving the commissioner the power that she really needs under the act to implement the intent of Senate Bill 134 and I think it will make <sup>our</sup> ~~out~~ financial institutions and regulations there a better enterprise.

Speaker == The bill, Representative <sup>Garff</sup> ~~Garth~~.

Garff

R. Garth == Thank you, Mr. Speaker. There are several overriding reasons why I believe it is imperative for this bill to pass. Number one, Senate Bill 238 defines and clarifies the response of only the commissioner in dealing with troubled financial institutions. Two, supervised acquisition of troubled institutions if necessary, can be handled in a more efficient and beneficial manner for the general public. Three, the confidence of Utah citizens relative to the safety and soundness of the efficiently managed institutions will not be unfairly eroded because of adversity such as was experienced in a recent take-over. Four, these are unsettled times and the commissioner needs this latitude now. It can't wait for another session and five, all actions of the commissioner are subject to due process and judicial review for the benefit and the protection of the savers and borrowers of all financial institutions. You should know that the senate passed this bill 27 to 0. Let's all get on and vote favorably for this bill.

Redd

Speaker == Representative Red.

Redd

R. Red == Thank you Mr. Speaker. Many of you who are here remember Senate Bill 134 and the fight that was on it. The reason that I objected to it was mainly because it hadn't

gone through an <sup>interim</sup> ~~in-term~~ committee, hadn't been studied by the legislature, it was a bill written by the bankers for the bankers, and it was written to force the money market funds of the stockbrokers, to eliminate that competition. My plea at that time was that this thing should be put in an <sup>interim</sup> ~~in-term~~ study committee and studied by members of the legislature. It always makes me nervous when a bunch of people that are in institutions get together and say "Let's write our own law for ourselves" and this is a consensus piece of legislation. It always worries me if the consumer has been represented at all in it. All I'd do on this bill is ask that the same thing be done that should have been done on Senate Bill 134, or an <sup>interim</sup> ~~in-term~~ study. I wonder, fellow representatives, if this massive piece of legislation would be back to us in two years if it had been studied by the legislature in the first place. We passed, two years ago, a massive revision of the financial institutions act that was supposed to solve all these problems, and here they come back in two years with another massive revision, none of which the legislature has really reviewed. There's been no <sup>interim</sup> ~~in-term~~ studies on it. They say it's a consensus bill. I'd like to ask you folks here, how many by raise of hands have read this bill, of the legislators, have read this bill completely? That's beautiful. That's more than read Senate Bill 134. How many who have not read it really understand what you are doing? I



have no quarrel with the substance of the bill. My quarrel is with the way these things are handled. Here's a massive recodification. Every other recodification goes through an <sup>interim</sup> ~~in-term~~ study committee, where legislators have a chance to look it over. Somehow, the bankers are exempt from that. For that reason I suggest that instead of voting for this, that we vote to put these changes that are so necessary into an <sup>interim</sup> ~~in-term~~ study committee so that the legislature can study them and so that we won't have to two years from now have another bill just like this of important changes that need to be made on an emergency basis. I think the best argument that maybe our system is working fairly well is that fact that the Murray First Thrift has been taken over and no depositor lost any money in that, so I would suggest that you vote against this bill on the basis of procedure if not on the basis of substance.

Speaker == Representative Moody.

R. Moody == I stand . . . rise in support of this bill. I want you to know Representative Red<sup>1</sup> having read through the bill I will not confess that I understand it, but what I do understand I like. I think, first off, you don't wait until you have a severe problem to change the law. You look in advance and realize there are problems out there and

you've seen what has happened in the past and realized things must change before there's a crucial problem. It's kind of like the story of the farmer letting the horses out and the cows out and then when he sees them all out in the field says "you know I should have mended that fence last week when I saw there was a problem". Well this is the same thing we're looking at here. We saw it with Murray First Thrift and fortunately we had a happy situation. It is nice to know that that was resolved without tremendous lawsuits and things that could have come out of that . . . to wait until the problems are here to take a stand. So I ask for your support.

Speaker == Representative Skousen.

R. Skousen == Thank you Mr. Speaker. As one of those who has read this bill in entirety, I have an amendment to make which you heard the commissioner approve of inasmuch as I discussed this with her just a little while ago. It indicates one of those areas in which ....., I'll make the amendment first. It's on page 30, lines 27 and 28. The amendment is to restore the original language and delete the new language on lines 28, 29, 30, and 31.

Speaker == You've heard the motion, is there a second?

== Second.

Speaker == You may proceed.

R. Skousen == Thank you, actually, this last sentence was put in by mistake. <sup>The Commissioner indicated</sup> ~~It was stated~~ that they really wanted these people to submit all other fees semi-annually, but somehow or another they got mixed up and they crossed out the semi-annual and they said they would <sup>report</sup> record annually, and then they turned right around and said that these main organizations would report semi-annually, so it was contradictory, it got in there somehow, and they would like to have that deleted. That is the original language on 27 and 28, put back in and the new language in the <sup>remainder of</sup> ~~remaining~~ of the paragraph deleted.

Speaker == To the motion to amend, Representative Hillyard, quickly.

R. Hillyard == We have no objection to that.

Speaker == Others to the motion to amend. All in favor of the motion say "aye".

Aye.

Speaker == Motion carries. Representative Lewis.

R. Lewis == Thank you Mr. Speaker. I rise in support of this bill and would like to just make two or three brief comments on a couple of points. In our appropriation subcommittee, we had to appropriate a supplemental appropriation, a sizable amount to ~~recover~~ legal and accounting fees that were involved in the ~~very first~~ <sup>Murray First Thrift</sup> thrift problem. We had to take a long hard look at that and we determined that it was very much in the benefit ~~to~~ <sup>to</sup> the state if in this bill there was some position that could be taken by the commissioner other than a complete take-over or a complete acquisition by an interested party. One of the main purposes of this bill will be to give the commissioner some grounds to have some action to take some steps to do something about a problem short of taking it over. That's a mighty serious step to take and if you have to wait until things get so bad that you have to take the thing over, sometimes there will be irreparable harm. In this particular ~~essence~~ <sup>instance</sup>, there was a party ready and willing to acquire the Murray First Thrift and it ended up that we were able to see a good resolution because there was a buyer. There will not always be someone who is willing to acquire a big problem like this and I would urge very much that we support this bill.

Speaker == Representative <sup>Jeppson</sup> Jepson.

<sup>Jeppson</sup>  
R. Jepson == Thank you Mr. Speaker. I find this legislation is necessary because of the change in the federal laws. Senator Garn proposed federal regulations which affected the financial world. Many of us respond and call this the banking bill. This is not true. It is now a financial institution bill and it covers banks, savings and loans, finance companies, credit unions, investment firms, all types of lending, and it gives them some power and authority to supervise the supervised lenders. Since the <sup>e</sup>proceeding legislation has passed it has been necessary to make some changes. As I have noted these changes they seem to be of benefit and support and <sup>strengthen</sup> ~~benefit~~ existing supervision by the federal commissioner, <sup>or the</sup> financial institution commissioner. I would surely support this bill. It will protect the consumer in their banking deposits also relating to checking accounts, putting them in line of assets, distribution of assets and they would be a preference depositor.

Speaker == You may sum up representative.

R. Hillyard == Thank you. Let me just make three quick points to you. Number one, an argumentative point has

been made about this being a consensus bill and therefore the consumer has been forgotten. Let me tell you one of the reasons I was opposed to Senate Bill 134 was because I really felt in my negotiations <sup>in</sup> and talking that it had been drawn by the bankers without the commissioner having much say or input in what the bankers allowed and was against the money market fund. Let me tell you, I think now in this negotiation as I've watched it, that the commissioner's office has really made some steps forward, has some strength, has some power, and is doing things in a way that is beneficial to the consumer. For example, this bill would give the depositor the first lien on those assets. Now is not the case. And you know, the state of Utah is one of the principal depositors in our local institutions. If <sup>one of those</sup> ~~our doors~~ were to go bankrupt ~~or~~ into receivership without <sup>this</sup> ~~some~~ change in the law, we would be an unsecured creditor for whatever may be left of the assets of the state of Utah. So I don't think there's any question but what we're now dealing with a strengthened commissioner's office who really now has the power to negotiate with the banks, with the savings and loan associations and with all these various entities to come up with a consensus bill that isn't favoring one specific entity but in effect protecting the state of Utah. Secondly, we heard an argument that we will be back again, and I submit that we probably will be. You know, laws change, the federal

law changed, we learned best by experience, and we can study this all we want, for two years, four years, or ten years, but not until you actually have the experience do you know the strengths and weaknesses of the theory you are trying to apply, so I think it's a compliment to the commissioner to be back again. As experience has shown weaknesses in our current law that need to be updated and strengthened to give her the power to protect the consumers of the state of Utah. And the final point I would like to make is that we need this law <sup>now.</sup> ~~not~~. You will note that one of the amendments in the Senate is it takes effect now. For this bill to be effective we've got to have fifty votes in this body today so it can take effect <sup>now.</sup> ~~not~~. I urge your support for this Senate Bill. I realize it's a complicated piece of legislation and it has to be in an area that is very complicated for many people to understand, but it is one that has been put together by consensus, it is one that is designed to give the commissioner greater power to implement the authority and intent of Senate Bill 134, and it is one that is the best for the interest of the state of Utah for all the people who have deposits in our financial institutions to give them the protection they really need and I'd appreciate your affirmative vote. Thank you.

Speaker == Voting is open. \_\_\_\_\_ <sup>It appears to the Cl</sup>  
<sup>that</sup> All  
present have voted. Voting is closed on Senate Bill 238 as  
<sup>amended,</sup>  
~~matter to~~ having received sixty affirmative, three negative  
votes, pass<sup>ed</sup> this house and be referred to <sup>the</sup> Senate for their  
consideration of house amendments. Representative Hansen?

R. Hansen == Mr. Speaker I have to announce a conflict  
of interest on this bill.

Speaker == Noted. Representative Lewis?

R. Lewis == Mr. Speaker, point of personal privilege?

Speaker == Granted.

R. Lewis == When I arose a while ago and mentioned an  
attorney and accountants fee relative to the Murray First  
Thrift I was mistaken, that was the Grove Finance. The point  
is still the same, we need the bill, but I was mistaken and I  
didn't want that to go uncorrected. Thank you.



# UTAH STATE SENATE

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June 14, 1988

## CERTIFICATION

### S.B. No. 238, FINANCIAL INSTITUTIONS ACT AMENDMENTS

Sponsors: Senator Karl N. Snow, et al

I hereby certify that the attached transcript, with corrections noted, is a verbatim and accurate reflection of the discussion regarding S.B. No. 238, FINANCIAL INSTITUTIONS ACT AMENDMENTS, which occurred in the Senate Chamber on February 28, 1983, and is recorded on Disk No. 220.

A handwritten signature in cursive script that reads "Joan B. Thomas".

Joan B. Thomas  
Administrative Assistant &  
Minute Clerk

SENATE FLOOR DEBATE  
ON SENATE BILL 238 OF 1983  
THE FINANCIAL INSTITUTIONS ACT AMENDMENTS

February 28, 1983

Recorded on Disk No. 220

Afternoon Session beginning Minute 6

Senate Bill 238 Financial Institutions Act Amendments by Senator Snow and others. The report, Mr. President, Business Labor and Economic Development to which referred Senate Bill 238, Financial Institutions Act by Senator Snow have carefully considered the bills<sup>and</sup> reports <sup>it out of</sup> on ~~other~~ committee with a favorable recommendation respectfully<sup>Lowell</sup> Laura S. Petersen, Committee Chairman

Mr. President, I read the adoption<sup>of the</sup> committee report. The Motion is to adopt the committee report, discussion. All in favor of that motion say "aye".

"Aye"


--Opposed "no".

(No reply)

--Motion carried. Senator Snow.

S. Snow == This is a small, simple little bill. Mr. President and members of the body will recall that two years ago we were in extended and sometimes heated debate over Senate Bill 134, which was finally passed by the 43rd legislature. This was an attempt to bring about a recodification of the statutes dealing with our financial institutions, and while this particular piece of legislation as was sponsored by Senator Cornaby at our last general session, has indeed moved us forward, we have during the past sixteen months experienced several ~~of our own~~ problems in the application of our current statutes and in our efforts to deal with a number of crisis situations in our savings and loan industries in the state. One particular incident has brought to the forefront and emphasized that we do not have in the hands of <sup>the</sup> a Commissioner of Financial Institutions the adequate tools to deal with the problems that are confronting us from day to day. It is particularly important, in my view, that the department and the commissioner particularly be empowered to take supervisory action to protect depositors and other creditors of troubled financial institutions. Now, if I could emphasize and point out to the

members of the body that under current statutes depositors are treated as unsecured creditors entitled to absolutely no preferences or priority over any other creditor. Now I think all of you would agree with me that this is not sound public policy to allow depositors to assume a risk that they are not equipped to assess independently. If the public is to have confidence in the soundness and safety of Utah's financial institutions, depositors must, in my view, be given priority over other creditors. The current law provides that the only remedy available to the commissioner is a take-over of problem institutions, and again I emphasize that depositors have no priority of position. The supervisory powers or responsibilities of the commissioner must be expanded and of course that's the intent of this <sup>piece of</sup> legislation, to prevent losses to the public in any takeover. Possession, I suggest to you, is a drastic action. This is the taking of, on the part of the public, <sup>private</sup> ~~prior~~ investments, involving substantial time and oftentimes extended legal expenses, all to the detriment of depositors. This bill seeks first and foremost to protect depositors. The bill before you, Senate Bill 238, is an agreed bill, that is to say that all members of the financial community have been working diligently for the past several months in an effort to arrive at <sup>some</sup> ~~full~~ consensus with respect to a recodification and to the granting of the Commissioner of Financial Institutions additional powers to



supervise financial institutions in the state of Utah. This bill, if adopted, will do the following: And rather than you read the bill I would hope that you would just take note of these, <sup>five or six items that I am going to mention here</sup> because the bill is lengthy, if you are going to try to read it. <sup>and you are going to have difficulty</sup>

If adopted, this bill will allow the commissioner to issue cease and desist orders when officers and directors of an institution are acting improperly. It will allow the commissioner to remove officers and directors when they persist in any impropriety which has been identified by the commissioner. It will allow the commissioner and ~~and they will allow~~ the state-authorized guarantee fund to provide assistance in merger or acquisition of troubled institutions. Fourthly, it will grant authority to the Utah Industrial Loan Guarantee Corporation to withdraw its guarantee from a problem institution and to make special assessment of its members to replenish the funds. Fifth, it will strengthen the statutory restriction to prevent excessive abuses. Sixth, it will grant to the Department of Financial Institutions power over parent and affiliates of certain classes of state-supervised institutions to prevent the raiding of depositors funds, and last, it will grant to the commissioner authority to effect a merger or acquisition before, and I emphasize before, the state takes possession of

an institution rather than after, thereby avoiding all of the negative public impact and the cost of such proceedings. In short, the passage of this proposed piece of legislation will ensure that possession and liquidation will be the last resort rather than the only solution available to the commissioner for dealing with problem institutions.

Now there is one other major change that is presented in itself. You will recall that recent legislation passed by Congress, the Garn-St. Germaine Act, which we <sup>have</sup> ~~did~~ discussed here when Senator Garn did appear before us, along with other changes that have been made in the rules and regulations by the depository institution, have necessitated certain changes be made by state law. In <sup>SB</sup> ~~EC~~ 134 that we passed here two years ago, an attempt was made to solve this continuing change or the problem that results from continuing change in federal law and federal rules and regs. And what we did there was simply tied state law to any future change that might be made in federal law or federal rules and regulations. Unfortunately, the constitutionality of state statutes which adopt future changes in federal law and regulation are subject to serious question in the courts. More specifically I cite a case handed down by Judge David Winder of the District Court for Utah in the case of Utah Insured Savings Association and others v. The State of Utah, in which Judge

Winder said that the Utah State Legislature can adopt existing laws, but it cannot constitutionally abdicate its authority by ~~professedly~~<sup>perspectively</sup> adopting federal statutes and/or regulations. In short, what he's saying is that we are free to adopt whatever statutes and rules and regulation we want to that are enforced at a federal level, but we cannot perspectively do that and say be<sup>y</sup> statute that all changes in the future <sup>of</sup> on federal law and rules and regulations of the depository institutions of the federal government will be adopted automatically by the State of Utah. In the light of this decision and problem that we face, there are several other amendments that are offered in this bill that will revise the language of the Utah Code to avoid future constitutional conflict with this decision of Judge Winder. Mr. President, and members of the senate, in summary I would suggest to you that this piece of legislation which comes to us with the approval of the banking commissioner of the state of Utah and has been thoroughly reviewed by all members of the industry associated and regulated by the commissioner, seeks to, of course, strengthen the hand of the commissioner, it strengthens the statutory procedure for dealing with problem institutions and attempts to prevent, if I may, another Murray <sup>First</sup> Thrift case that we recently experienced. It eliminates constitutionally defective sections of the present code and insures competitive equality between state chartered

and federally chartered institutions. It also revises vague and conflicting language to reduce the regulatory burden on Utah's financial institutions and, in my opinion, will prevent and avoid further costly litigation. I would, of course, urge the support of my colleagues in the adoption of this recodification of our banking statutes. Now, Mr. President, I have on legal size paper distributed a brief summary of section by section of all of the changes that have been made in this proposed piece of legislation. Hopefully this will make some good bedtime reading. I think all of us recognize that we are in large measure moving on the recommendation<sup>s</sup> of the commissioner as she has experienced numerous problems during <sup>the</sup> her last sixteen months that we are moving to correct certain constitutional challenges that might come because of a recent district court ruling and that we recognize that if indeed we are to have confidence in Utah's financial institutions, we must give to the department and to the commissioner the necessary powers to supervise troubled institutions before a take-over actually takes place, and lastly that we have an obligation to the citizens of this state who are depositors of these institutions to ensure that take-over is not the only remedy available to them when there is trouble that emerges within a financial institution. Now there are several proposed amendments that I am going to propose, Mr. President, if I could have -- I



heard Senator Bangerter say "I hope so" and I thought he was talking to me --. I might indicate that we do have representatives of the savings and loan, the credit union, of the banks as well as the banking commissioner here <sup>if it becomes</sup> ~~should~~ ~~it~~ ~~become~~ necessary to obtain any technical clarification.

I am going to only in a very general way explain the amendments. Most of them are technical. The first part deals with the effective date. Others are made in an attempt to clarify sections in one chapter with sections in another chapter. There are on page 2 amendments that come that would preserve the reciprocity that has currently established for our savings and loan institutions and in any event all of these have been agreed to by the savings and loan, by the credit union, and by the banking commissioner. Now I am not going to further explain these in detail unless someone has need for further clarification and would move, Mr. President, the <sup>adoption of the</sup> amendments carried on pages 1, 2 and 3 <sup>of</sup> ~~on~~ <sup>buff</sup> ~~the bottom of the~~ paper that has just been handed to each member.

esidewT Ferry) --Senator Snow, I notice that the last one is an emergency clause. I assume you have that there because you need it, you need 20 votes in order to make it effective.

(S. Snow) == Yes, Mr. President, it is <sup>our hope</sup> possible of course that we could obtain a two-thirds vote in support of this measure which has, in my opinion, been studied thoroughly. I might add that our own legal counsel and research office has spent days if not weeks with the technical changes that need to be made here are the ones that we had hoped to make two years ago, but could not for a variety of reasons. Our commissioner has indicated that there is some urgency. That she would like at the earliest possible date to have this power of supervisory action, and I would like to oblige and hope that the senate would oblige with a two-thirds vote. I appreciate your calling to our attention the effective provision.

us. Jerry) --Senator Snow has moved the three pages of amendments to Senate Bill 238. Questions on the amendments?

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*Question has been called for.*  
--~~President Caldwell~~. All in favor of the amendment say "aye".

"Aye"

--Opposed "no".

(No reply).

--Motion carries. Senator Overson.

S. Overson == I have also an amendment I would like to make at this time and it has been passed out to you. It is just a very brief amendment that will be added on page 131, line 21. It is just a clarification that this particular act and also action that was taken on the original bill does not delete the provisions of the due-on sale legislation that took effect in the spring of 1981.

--Senator Overson moves <sup>2</sup>that amendments on the single buff sheets you have in your hand? Are there questions <sup>on the amendments?</sup>  
*Senator Snow.*

S. <sup>Snow</sup>~~Overson~~ == I would indicate that it is <sup>not the</sup> ~~the~~ <sup>of</sup> intended the bill in any way to interfere with the due-on sale enactments passed by the last session of the legislature, but for clarification purposes we have concurred with the <sup>15</sup> amendment and would support it.

*S. Overson*  
? == In conjunction with this amendment I would like to move that we enter in as testimony for this amendment that testimony written and given to Joanne Thomas from David R. Olsen, counsel for the Utah Association of Realtors.

(Pres. Terry) I'll place the amendment.

All in favor of amendments by Senator Overson say  
"aye".

"Aye"

--Opposed "no".

(No reply)

--Motion carries. Now, we have the bill before us.  
Senator Swan.

S. Swan == Senator Snow, you have mentioned something  
about the change in the industrial loan warranty corporation  
isn't it?

S. Snow == Yes.

S. Swan == And this group does give some guarantee to  
depositors and the thrift institutions. Would you run that  
over again? What was actually the change there? Is there  
any lack or removal <sup>f</sup> of responsibility? <sup>of</sup> Is that fund covering  
as much as possible the loss to depositors?

S. Snow == O.k., let me reiterate the two points there. This measure would allow the state-authorized guaranteed fund to provide assistance in merger or acquisition of troubled institutions and it would give authority to the Utah Industrial Loan Guarantee Corporation to withdraw its guarantee from any problem institution, and lastly to make special assessments to its members to replenish the fund, if needed.

S. Swan == Well, my question is at what point is that withdrawal . . when does that take place? After the banking commissioner has indicated that there is any kind of trouble in the institution, or . . I don't understand the time sequence there as to when that guarantee is withdrawn.

S. Snow == I think what we are looking at is we are <sup>giving</sup> ~~getting~~ the commissioner that flexibility and latitude to make that decision. The commissioner simply points out to me that presently now that they do not have that authority. I don't know whether that sufficiently answers your question. If you need to have further information as to how that industrial loan guarantee fund actually works, we could go into committee ~~to~~ of the whole for that purpose.

S. Swan == My whole concern is that many people have their money in these particular thrift institutions and they have the feeling that there is some guarantee there. They know it is not the Federal Deposit Insurance Corporation, but they feel that there is some guarantee there, and it sounds like maybe even with the first indication of mismanagement within that banking . . within that institution . . that that fund would no longer be available for depositors. That's what I'm concerned about.

S. Snow == I think, Senator Swan, you need to understand that under present law they don't have that guarantee and there is nothing to protect the depositor.

S. Swan == Well I thought . .

S. Snow == *until such time as there is a take-over.*  
What we're talking about is moving to take action under a supervisory position in which then the guarantee . . the Utah industrial loan guarantee corporation could provide some assistance without having an actual take-over. It is only when you have a take-over that you have any move to protect the depositor. What we are trying to do is to protect the depositor before there is a take-over.

S. Swan == But the protection to the depositor after the take-over is not affected in any way then. In fact, you are saying that . .

S. Snow == No, it's strengthened by this measure, rather than weakened.

S. Bunnell == Well, I think that we need to pursue that a little bit further, and it worries me what Senator Swan was just saying. At what point in time . . are you listening?

S. Snow == Yes.

S. Bunnell == At what point in time in can the industrial loan corporation withdraw its support? It seems to me if you come up with a certain day, we can't make that retroactive. They've advertised that they are supported by this corporation.

S. Snow == The bill provides that they would continue for two years after withdrawal.

S. Bunnell == Oh, o.k., that sounds fair.

S. Snow == I think that should be sufficient.

(Pres. Harry)

--Are there any questions? Senator Williams?

S. Williams == Senator Snow, as you well know, two years ago we passed this very comprehensive in-depth law in regards to the financial institutions. I felt at that time it was quite comprehensive and in fact gave the commissioner sufficient authority to deal with the exact issues that you are talking about. Could you relate, sir, what kind of provisions or activities that specifically you are referring to in regards to page 23 in the powers we are giving the commissioner? In particular, the safeguards of the institution when, as I read this language, perhaps on hearsay, some information may come in which might prompt the commissioner to put in a cease and desist order.

S. Snow == Will you give me specific reference to . .

S. Williams == Well, I'm looking at all the new language on page 23. And its speaking quite blanketly about engaging in or perhaps will engage in . . that kind of language. What kind of safeguards do the institutions have on their behalf?



S. Snow == What kind of guarantees and safeguards to the institutions have that the commissioner isn't going to move upon them?

S. Williams == Yes. We're suggesting that on the basis of even hearsay, if we read the language in very broad terms, that the information can come into the office suggesting that someone may be entering into an unsafe and unsound practice and what . . . isn't that quite a broad authority <sup>we are</sup> given the commissioner?  
ing

S. Snow == Senator Williams, it may appear to be a rather broad authority. I think we need to recognize that what we do here by way of statute is to give to the commissioner these tools to move when at his, or in this case her <sup>discretion,</sup> conditions warrant. It's true that there is considerable latitude placed in the hands of the commissioner, but I think at the same time we need to recognize that any offended institution or entity could resist that if there was indeed any suggestion that she was moving arbitrarily or capriciously and that in every instance the institution is protected by the requirement and notice of due process.

S. Williams == It would seem, sir, that the burden of proof is on the institution rather than on the commissioner, and that is the point I was trying to . .

S. Snow == Well, I'm going to make a general assumption and say yes, that I think the burden of proof would then be upon the institution rather than the commissioner. Now, Senator Cornaby may want to add something to that.

S. Cornaby == Yes, I was going to mention <sup>I think S. Williams</sup> that the commissioner clearly may not act without justification and just cause and that the failsafe provision for this is noted on page 23 at lines 18 through 20, which is a notice and opportunity for hearing. So if, after full hearing, those facts as alleged are not substantiated, then any basis for action is obviated. I think that would take care of it.

(S. Williams) Thank you.  
--Call for <sup>the</sup> questions <sup>Mr. President</sup> in ~~this~~ . .

(Pres. Terry) --Question <sup>has been called for on</sup> ~~call~~ for Senate Bill 238, second <sup>reading</sup> ~~reading~~ calendar. Question is shall the bill be read <sup>for the third time</sup> ~~role~~ <sup>note</sup> ~~call~~ ~~note~~.

Asay:

Bangerter: Aye

Barlow: Aye  
Barton: Aye  
Black: Aye  
Bullen: Aye  
Bunnell: Aye  
Carling:  
Christensen: Aye  
Cornaby: Aye  
Finlanson:  
Flann<sup>mm</sup>: Aye  
Matheson: Aye  
McAllister: Aye  
McMullin:  
Munies<sup>oney</sup>: Aye  
Overson: Aye  
Jerry<sup>Cary</sup> Petersen: Aye  
Lowell Petersen: Aye  
Pugh:  
Rogers:  
Sandberg: Aye  
Snow: Aye  
Sowers<sup>ards</sup>:  
Stratford: Aye  
Thron<sup>Swan</sup>mm: Aye  
Wayman<sup>e</sup>: Aye

Williams: Aye

Pugh                      Coenaby  
Key votes aye, Corey votes aye, Asay votes aye, Rogers  
votes aye. President Ferry?

--Aye.

Senate Bill 238 on the second reading calendar shows  
twenty-six ayes, no nays, and three being absent. Received  
the constitution majority. bill passes. placed at the bottom of  
Senator Snow? third reading  
calendar.

S. Snow == Mr. President, the railroad <sup>was moving</sup> even too fast  
for me and <sup>Dwight</sup> ~~as part of~~ <sup>started</sup> the roll call before we could  
get our other motion in, which was to, under suspension of  
the rules, move that we considered <sup>the bill</sup> having been read for the  
second and third time, <sup>and up</sup> not for final passage. Having voted  
on it now on the second reading calendar, I move under  
suspension of the rules that we cast the same vote for the  
bill on the third reading.

(Pres. Ferry) --Motion by Senator Snow <sup>that</sup> under suspension rules, senate  
bill 238 <sup>be</sup> ~~the~~ <sup>ed</sup> passed on the third reading calendar on the same  
vote we just passed on so that we can speed it up so that <sup>it</sup> we  
can go to the house. Discussion on that motion.

