

MINUTES OF THE SENATE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS

The meeting was called to order by Sen. Neil H. Arasmith at  
Chairperson

9:00 a.m./p.m. on February 24, 1983 in room 529-S of the Capitol.

All members were present except:

Senator Hess - Excused

Committee staff present:

Bill Wolff, Legislative Research  
Bruce Kinzie, Revisor's Office

Conferees appearing before the committee:

Senator Jack Steineger  
Mildred Schroeder, Kansas Deptment of Aging  
Dr. Richard Morse, Kansas State University  
Marvin Umholtz, Kansas Credit Union League  
Rosemary Dunwiddie, The Associated Landlords of Kansas, Inc.  
Jim Turner, Kansas Savings and Loan League  
Tim Underwood, Kansas Association of Realtors  
L. M. Cornish, Kansas Insurance Industry

The minutes of February 23 were approved.

The hearing began on SB 206 with Sen. Steineger, one of the authors, giving his testimony in support of the bill dealing with plain language leases. (See Attachment I).

Mildred Schroeder, Kansas Department of Aging, gave her testimony in support of SB 206. She said that many people have a limited ability to understand contracts. She said that contracts are not always in the same form and are difficult to understand because they can be interpreted differently. She added that many of the people that she deals with do not understand contracts. She said that it is even hard for herself as an attorney to understand the contracts and to help the older people she deals with to understand them.

Dr. Richard Morse, Kansas State University, began his testimony in support of SB 206. (See Attachment II). He also referred to testimony given by Stan Lind in the House last year on this same subject. He said that he believes that Mr. Lind's estimate of six million dollars to convert to plain language was "rubbish". He explained to the committee that the computation used to arrive at this figure was wrong.

Marvin Umholtz, Kansas Credit Union League, gave his testimony in opposition to SB 206. (See Attachment III). Sen. Feleciano agreed with Mr. Umholtz that more lead time is needed for companies to prepare the necessary forms but asked Mr. Umholtz why he objects to the use of simple language in contracts. Mr. Umholtz said that he has no objection to the simple language, but he opposes making the use of it mandatory by law. He said that he is not sure that things can be made uncomplicated by passing laws. He added that the simpler language contracts are just as long and frightening to the consumer as those in present use.

Rosemary Dunwiddie, The Associated Landlords of Kansas, gave her testimony in opposition to SB 206. She said she opposes the bill because it does not clearly define what constitutes nontechnical language. She said even simple words could have different interpretations. The landlords would have difficulty in determining what wording could be used. She said the people enforcing the provisions of the Residential Landlord-Tenant Act (RLTA) do understand the words now and would have to be retrained as to the plain language words. She added that the RLTA is sufficient and clear now and that the necessary infusion of some of the technical language from it into contracts would defeat the purpose of SB 206. She said the tenant has the responsibility to ask the meaning when signing a contract or to get legal counsel. She feels that SB 206 singles out landlords and penalizes them because these are the only contracts required to be in simple language.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS,

room 529-S, Statehouse, at 9:00 a.m. ~~pm~~ on February 24, 1983.

Jim Turner, Kansas Savings and Loan League, appeared in opposition to SB 206. He stated that he feels that it would be beneficial to have simpler language and agreed with Dr. Morse that the cost involved would not be unreasonable. He said that the one objection that he has to the bill is on lines 47-49. He feels that it should be inserted in the bill that all state agencies and instrumentalities of the state are responsible as well as the private sector. He added that line 39 concerning class action against a lender needs to be clarified. He concluded by saying that he could never support the bill until governmental agencies are included in the requirement for the use of plain language.

Tim Underwood, Kansas Association of Realtors, gave testimony in opposition to SB 206. He said that he opposes the bill in its present form because it does not define what nontechnical language is, and it would encourage law suits. Sen. McCray explained to Mr. Underwood that the bill is trying to get around having to use an attorney for so many things and would allow the private individual to understand without the expense of an attorney's service. Mr. Underwood replied that even with the use of plain language, there would still be questions and concerns which the individual would need to have answered by an attorney.

L. M. Cornish, Kansas Insurance Industry, gave his testimony in opposition to SB 206. He said that the insurance companies have made an attempt to put policies in easy to read language. He said that he is not sure if insurance companies fall into the category of creditor or seller or lessor and that he would like to expressly remove insurance companies from the bill. He would accomplish this on line 47 by adding "no insurance contracts subject to the supervision of the Kansas Insurance Department".

The hearing on SB 206 was concluded.

The chairman announced that the hearing on SB 157 which was continued from a previous meeting will be heard at the next meeting to be held on February 25.

The meeting was adjourned.

SENATE COMMITTEE

ON

COMMERCIAL AND FINANCIAL INSTITUTIONS

OBSERVERS  
(Please print)

DATE	NAME	ADDRESS	REPRESENTING
2/24	Tim Underwood	Topeka	KAR
2/24	Jim Turner	Topeka	KSL
2/24	Jesse Jones	Topeka	Am Investors Life
"	Ron Todd	"	Ins Dept
"	MARK HEITZ	"	SBL
"	STEVE LOBELL	"	American Home Life
"	Vicki E. Meinhardt	Alma	KIN
"	JAMES C. Ketcherside	Winpherson, KS	FARMERS Alliance Mutual Ins Co.
"	L.M. CORNISH	Topeka	KS Insurance Industry
	Mildred Schroeder	Topeka	KDOA
	Morvin Umholtz	Topeka	KMML
	Martyn O'bell Umholtz	Lawrence	—
	Gordon M. Abaku	Topeka	TALK
	ROSEMERI DUNWIDDIE	OVERLAND PARK	TALK
	Homer Cowan	FT Scott	The Western Ins Co's
	LARRY SMITH	FT SCOTT KS	THE WESTERN INS CO

STATE OF KANSAS



TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS

WAYS AND MEANS  
JUDICIARY  
LEGISLATIVE AND CONGRESSIONAL  
APPORTIONMENT  
COORDINATING COUNCIL  
INTERSTATE COOPERATION  
LEGISLATIVE BUDGET  
POST AUDIT

JACK STEINEGER  
MINORITY LEADER  
SENATOR, SIXTH DISTRICT  
STATE CAPITOL BLDG.  
TOPEKA, KANSAS 66612  
(913) 296-3245

REMARKS BY SENATE MINORITY LEADER JACK STEINEGER  
SENATE BILL 206  
FEBRUARY 24, 1983

JUST AS AMERICAN SOCIETY HAS BECOME MORE COMPLICATED AND COMPLEX IN MODERN TIMES, SO HAVE THE COUNTLESS FORMS AND CONTRACTS USED IN EVERYDAY LIFE TO GOVERN CONSUMER TRANSACTIONS. THE DAYS WHEN PERSONAL BUSINESS IN AMERICA WAS DONE BY HANDSHAKE AND GENTLEMEN'S AGREEMENTS ARE LONG PAST.

ALMOST ALL PERSONAL TRANSACTIONS, WHETHER IT'S BUYING A HOME, OR A REFRIGERATOR, OR AN AUTOMOBILE, OR USING A CREDIT CARD, ARE GOVERNED BY OFTEN LONG AND ALWAYS COMPLICATED, TECHNICAL FORMS AND CONTRACTS.

I THINK IT'S A FAIR STATEMENT TO SAY THAT A MAJORITY OF THE CONTRACTS SIGNED BY THE AVERAGE PERSON ARE NOT UNDERSTANDABLE--- AND USUALLY NOT FULLY UNDERSTOOD.

THIS ISN'T JUST A KANSAS PROBLEM. CONSUMERS ACROSS THE NATION HAVE TRADITIONALLY FACED THE SAME KIND OF INCOMPREHENSIBLE CONTRACTS USED IN KANSAS. OTHER STATE LEGISLATURES, HOWEVER,

*Attachment I*

STEINEGER/PLAIN LANGUAGE/2

HAVE TAKEN THE LEAD IN ATTEMPTING TO DE-COMPLICATE AND SIMPLIFY CONTRACTS USED TO GOVERN CONSUMER TRANSACTIONS. THE STATE OF NEW YORK, FOR EXAMPLE, PUT A "PLAIN ENGLISH" LAW INTO EFFECT MORE THAN FOUR YEARS AGO, AND IT'S MY UNDERSTANDING THAT THE LAW HAS MADE A FAVORABLE IMPACT ON NEW YORK CONSUMER CONTRACTS.

THE SAME KIND OF LEGISLATION IS NOW PENDING IN A NUMBER OF OTHER STATES, INCLUDING KANSAS. AND AT LEAST 20 MORE HAVE ENACTED LAWS TO BRING "PLAIN LANGUAGE" TO INSURANCE CONTRACTS.

IN KANSAS---SO FAR AS INSURANCE CONTRACTS ARE CONCERNED--- THE COMMISSIONER OF INSURANCE HAS MADE GREAT PROGRESS IN THE PAST SEVEN YEARS TO BRING "SIMPLIFIED LANGUAGE" TO CONSUMER INSURANCE POLICIES. THE COMMISSIONER'S EFFORTS HAVE BEEN MARKED BY OUTSTANDING PROGRESS IN THE PAST FOUR YEARS.

FOR EXAMPLE, THREE YEARS AGO, APPROXIMATELY 35 PER CENT OF THE HOMEOWNERS POLICIES IN KANSAS WERE WRITTEN IN THE "SIMPLIFIED" LANGUAGE. TODAY, THIS FIGURE IS NEAR 100 PER CENT. MUCH THE SAME IS TRUE FOR PERSONAL AUTOMOBILE INSURANCE. THREE YEARS AGO 73 PER CENT OF THE POLICIES WERE "SIMPLIFIED." TODAY THE NUMBER ALSO IS NEAR 100 PER CENT.

AS FOR THE BILL ITSELF, YOU SHOULD NOTE THAT IT APPLIES TO RESIDENTIAL RENTALS AND TRANSACTIONS WHICH ARE ENTERED INTO BY CONSUMERS FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES. THIS IS THE STANDARD DEFINITION FOR CONSUMER CONTRACTS.

THE BILL REQUIRES NON-TECHNICAL LANGUAGE WRITTEN IN A CLEAR AND COHERENT MANNER USING WORDS WITH COMMON AND EVERY DAY MEANINGS.

THE BILL ALSO REQUIRES THAT THE CONTRACT BE APPROPRIATELY DIVIDED AND CAPTIONED TO AID THE CONSUMER'S ABILITY TO UNDERSTAND THE CONTRACT AS A WHOLE.

THERE IS A \$50 PENALTY FOR NONCOMPLIANCE AND A LIMIT OF \$10,000 IN ANY CLASS ACTION. YOU ALSO SHOULD NOTE THAT ANY CREDITOR, SELLER OR LESSOR WHO ATTEMPTS IN GOOD FAITH TO COMPLY WITH THE LAW IS NOT LIABLE FOR ANY PENALTIES.

THE BILL ALSO LIMITS THE AGREEMENTS COVERED TO THOSE OF LESS THAN \$50,000.

I BELIEVE THIS PROPOSAL IS LONG OVERDUE IN KANSAS. OF OUR TWO MILLION 355 THOUSAND CITIZENS, ONLY ABOUT FIVE THOUSAND ARE FORMALLY TRAINED IN THE LAW---IN OTHER WORDS, LAWYERS. I THINK IT'S TIME THAT THE KANSAS LEGISLATURE DO SOMETHING ABOUT COMPLICATED CONTRACTS FOR THE TWO MILLION PLUS KANSANS WHO AREN'T LAWYERS.

RICHARD L. D. MORSE

BEFORE

SENATE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS

I appreciate the opportunity to give a consumer's perspective on Senate Bill No. 206 the "PLAIN LANGUAGE" bill.

This bill is not only in the consumers' interest, but in the interest of businesses. The bill follows logically from a basic principle of contract law -- mutuality of assent. Mutuality is essentially absent in those contracts which cannot be understood by one of the contracting parties.

The cost to Kansas businesses should be minimal. Most of the creative work has already been done by counterparts in New York, Connecticut, New Jersey and other states that have enacted such legislation. The American Management Association and other trade groups have published aids and glossaries of plain English terms. So, the law need not present a major problem for even small businesses; larger firms will simply begin using in Kansas the forms already printed up.

It is difficult to measure what "peace of mind" and freedom from anguish plain language can give consumers. But understandable contracts establish greater confidence on the part of consumers both in their ability to know what they have signed and respect for the institution that seems to care enough to make its contracts understandable.

This bill would stimulate and hasten the adoption of such desirable practices by setting the standard that contracts be "written in a clear and coherent manner" using words with common and everyday meanings", and that they be divided and captioned by various sections. These standards may seem too imprecise, but they (1) are not impossible to meet; (2) encourage voluntary compliance; and (3) allow a reviewing court to take a common sense approach to cases brought before it. These are not my speculations, but the considered judgment of a Montgomery Ward executive after "living" under the New York law.

The other aspects of the bill which I like are:

1. The \$50,000 cap, which effectively limits coverage to consumer transactions.
2. The "good faith" provision, which provides protection from harassment.
3. The imprecise language, which allows latitude for common sense.

The major flaw in the bill is its exemption of contracts written by governmental entities. This could be addressed by a supplementary directive to all bodies with jurisdiction over commercial activities and governmental contracts with consumers. It would review contracts for compliance with the plain language standards, and provide for a positive educational program to address the deficiencies.

I offer for your consideration that the bill might be amended so as to enable businesses to protect themselves from accidentally breaking the law by submitting their form contracts to the attorney general's office, that the contracts comply with the law. New Jersey law makes such a provision. for certification

The sponsors are to be commended for writing this bill in plain language! I urge the committee to recommend its passage in this plain language form, and to resist any temptation to complicate it with further amendments and exempt special groups. What may appear to be excessive coverage is also good insurance for the public.

This concludes my remarks.

Testimony of the  
KANSAS CREDIT UNION LEAGUE

on SB 206  
NONTECHNICAL LANGUAGE CONTRACTS AND FORMS

Presented to the  
SENATE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS

February 24, 1983

by

Marvin C. Umholtz  
Governmental Affairs Director

Attachment III



Mr. Chairman, Members of the Committee:

I am Marvin Umholtz, Governmental Affairs Director for the Kansas Credit Union League (KCUL). Our association represents over 90% of the credit unions in Kansas, both state and federally chartered. Credit unions are member-owned cooperative financial institutions.

I appreciate the opportunity to appear before this Committee to express our concerns on SB 206. Credit unions have historically provided counseling to their members to assist them in understanding the many documents involved in the provision of financial services. However, our association cannot support the passage of SB 206.

During KCUL's 1981 Governmental Forum, held in the fall of that year, the following position statement was adopted:

Credit unions favor the use of understandable language in consumer contracts, but oppose laws requiring non-technical language contracts and forms.

This position clearly supports a voluntary approach to plain language contracts and forms. Existing "written agreements" used by credit unions in Kansas were designed with both the members' and the credit unions' interests in mind. This is clearly to the benefit of both -- the members have a better understanding of their obligations to the credit union.

Kansas citizens are currently protected from unconscionable acts of businesses, including those impacted by this bill. The Kansas Consumer Protection Act (K.S.A. 50-627(b)(1)) lists among its protections from unconscionable acts the "...inability of a consumer to understand the language of an agreement..."

This provision protects the individual from the acts of the small percentage of persons who are clearly out to take advantage of them with "unreadable" written agreements.

Consumers of financial services are further protected by Truth-in-Lending REG Z and the other "alphabet" laws and regulations.

Our position in support of a voluntary approach to plain language contracts and forms is predicated on the concept that the "good faith" majority should not be subject to new legal liabilities and the vaguaries of legal interpretation simply to get at a minority. This holds especially true when a law currently exists which seeks to control and penalize the unconscionable minority. Even if a credit union was in good faith compliance with SB 206, it would still be subject to lawsuit and have to defend itself.

If SB 206 becomes Kansas law, I would like to assure this Committee that our association will do everything that it can to assist credit unions in Kansas to comply with the provisions of this act. With this in mind, I would like to offer the following comments on SB 206.

Our first concern surrounds the concept of "nontechnical language," found on line 0029 of the bill. It is our opinion that certain "technical language" is unavoidable when either adequately describing the collateral for a loan or when disclosing contract provisions. A loan contract could conceivably contain terms such as: down payment; finance charge; annual percentage rate; security interest; repossession; or similar terms. Even though these terms are unavoidable and generally explained in an understandable manner, they could be construed as "technical."

It is my understanding that shortly after New York passed its law (1977 N.Y.L., ch. 747), that the New York Legislature amended the law to delete the "nontechnical language" restriction.

SUGGESTED AMENDMENT:

On line 0029, strike: "nontechnical language and in"

Our second concern addresses the bill's designation of agreements "in excess of \$50,000" as the upper ceiling of the bill's applicability. The Kansas Uniform Consumer Credit Code (UCCC) establishes \$25,000 as its upper limit when it defines "consumer loan." This is also true for "consumer credit sales" and "consumer lease" as defined in the UCCC. The \$50,000 amount on line 0047 of the bill would be inconsistent with current Kansas Law.

SUGGESTED AMENDMENT:

On line 0047, strike: "\$50,000" and insert "\$25,000".

A third concern is the fact that "every written agreement" appears to include new applications for loans, notes, security agreements, extension agreements, quarterly statements, line of credit agreements, etc. This broad language might also include membership applications, share certificates, and other savings instruments in all their diversity. This adds up to the potential for a significant amount of forms revision, and the accompanying costs.

SUGGESTED (CONCEPTUAL) AMENDMENT:

- ° further define "consumer transaction" (which written agreements?)
- ° further define the category of people who must comply with the bill's provisions. (financial institutions, retailers, landlords, MMMF's etc?)

And finally, the effective date of this act needs to be changed to allow more lead time prior to its application in the event that it becomes law. The review of existing forms and/or the development of new forms cannot be easily achieved by July 1, 1983.

SUGGESTED AMENDMENT:

On line 0024, following "Section 1" add: On and after July 1, 1984, ; also strike "Every" and insert "every".

Closing on a philosophical note, I would like to raise the question as to whether the problem addressed by this bill should be dealt with by passing a law or by voluntary action by those involved in consumer transactions. The private initiative is already on the move, let's let it work.

Thank you Mr. Chairman, for the opportunity to appear before the Committee on SB 206.