

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. ~~pm~~ on March 16, 1983 in room 529-S of the Capitol.

All members were present except:

Senators Hess, Feleciano, and Gordon - Excused

Committee staff present:

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

Conferees appearing before the committee:

Jim Maag, Kansas Bankers Association
Dick Brock, Insurance Department
Larry Magill, Independent Insurance Agents of Kansas

The minutes of March 15 were approved.

The hearing began on HB 2072, dealing with credit cardholder liability, with the testimony of Jim Maag, Kansas Bankers Association, in support of it. (See Attachment I.) After a few questions and discussion by the committee, the hearing on HB 2072 was concluded.

The hearing began on HB 2117 with the testimony of Dick Brock, Insurance Department, in support of it. Mr. Brock said that he is speaking for the Committee on Surety Bonds and Insurance. He said that this bill was requested by the Kansas Association of School Boards because school boards have encountered the problem involved more than anyone else as it is not unusual for an insurance agent to be on a school board. He said that the conflict of interest statutes provide adequate safeguards to the public and that the repealing of the two criminal statutes included in HB 2117 would do no harm. Committee discussion and questions followed. Sen. Pomeroy explained that if these two statutes are repealed as requested in the bill, there would still be a criminal penalty under the conflict of interest statutes.

Larry Magill, Independent Insurance Agents of Kansas, appeared in support of HB 2117. He added that his association was not aware that these two statutes were on the books until last summer when the Association of School Boards took action to get the bill introduced.

Sen. Pomeroy made a motion to report HB 2117 favorably. Sen. Reilly seconded the motion. The motion carried.

Sen. Reilly made a motion to report HB 2072 favorably. Sen. Werts seconded the motion. The motion carried.

The next meeting will be held on March 17.

The meeting was adjourned.

SENATE COMMITTEE

ON

COMMERCIAL AND FINANCIAL INSTITUTIONS

OBSERVERS
(Please print)

| DATE | NAME | ADDRESS | REPRESENTING |
|---------|----------------|----------|-----------------|
| 3-16-83 | Marvin Umholtz | Topex | KUML |
| " " " | Jim May | " | KBA |
| | Jon Wilton | " | KSL |
| 3-16-83 | Dick Block | " | Insurance Dept. |
| 3-16-83 | Bruce Scherwin | Lawrence | A |
| | LARRY MERRILL | TOPERA | I.I.A.K. |

March 16, 1983

TO: Senate Committee on Commercial and Financial Institutions

RE: HB 2072

Mr. Chairman and members of the Committee:

We appreciate the opportunity to appear before the Committee in support of HB 2072 which would amend K.S.A. 16-842 to conform with existing federal law and regulation. Since this Kansas statute was passed in 1972 setting forth the liability of a credit cardholder for any unauthorized use of a credit card, the federal government has altered the provisions requiring the credit card issuer to provide a card recipient a self-addressed, prestamped envelope to send back to the card issuer in case of loss or theft of the card by the cardholder. HB 2072 would simply strike the language in K.S.A. 16-842 requiring that such a self-addressed, prestamped envelope be provided in the initial notification to the cardholder.

The federal Truth-In-Lending Act in 15 USC 1643(a) says the credit card issuer must provide the cardholder with a description of notifying of the loss or theft, and Regulation Z (which amplifies Truth-In-Lending) says in Section 226.12(b) that the creditor must tell the cardholder his notification may be either oral or written. In other words, a telephone call to the credit card issuer will suffice and currently statistics of card issuers in the state of Kansas indicate that over 97% of the notifications to the card issuer of lost or stolen cards are received by telephone.

Card issuing banks in Kansas have long had a policy of accepting telephone notice for lost or stolen credit cards. Such contact is more convenient and more likely to minimize the consumer's liability for unauthorized use.

The description of the means of notification is a condition that must precede imposing the \$50 liability on the consumer that is allowed by both state and federal law. Kansas banks give the consumer such a description in the initial agreement and in every statement going to the customer. We strongly believe that this amendment to K.S.A. 16-842 will not only bring conformity between state-chartered and federally-chartered institutions, but it will also simplify the procedure for issuing credit cards and result in lower service costs for the issuing banks.

Thank you very much for the opportunity to appear and we respectfully request that the Committee recommend HB 2072 favorably for passage.

James S. Maag
Director of Research

Attachment I

226.12 (b) *Liability of cardholder for unauthorized use.* (1) *Limitation on amount.* The liability of a cardholder for unauthorized use²² of a credit card shall not exceed the lesser of \$50 or the amount of money, property, labor, or services obtained by the unauthorized use before notification to the card issuer under paragraph (b)(3) of this section.

(2) *Conditions of liability.* A cardholder shall be liable for unauthorized use of a credit card only if—

(i) The credit card is an accepted credit card;

(ii) The card issuer has provided adequate notice²³ of the cardholder's maximum potential liability and of means by which the card issuer may be notified of loss or theft of the card. The notice shall state that the cardholder's liability shall not exceed \$50 (or any lesser amount) and that the cardholder may give oral or written notification, and shall describe a means of notification (for example, a telephone number, an address, or both); and

(iii) The card issuer has provided a means to identify the cardholder on the account or the authorized user of the card.

6-749

(3) *Notification to card issuer.* Notification to a card issuer is given when steps have been taken as may be reasonably required in the ordinary course of business to provide the card issuer with the pertinent information about the loss, theft, or possible unauthorized use of a credit card, regardless of whether any particular officer, em-

²² "Unauthorized use" means the use of a credit card by a person, other than the cardholder, who does not have actual, implied, or apparent authority for such use, and from which the cardholder receives no benefit.

²³ "Adequate notice" means a printed notice to a cardholder that sets forth clearly the pertinent facts so that the cardholder may reasonably be expected to have noticed it and understood its meaning. The notice may be given by any means reasonably assuring receipt by the cardholder.

ployee, or agent of the card issuer does, in fact, receive the information. Notification may be given, at the option of the person giving it, in person, by telephone, or in writing. Notification in writing is considered given at the time of receipt or, whether or not received, at the expiration of the time ordinarily required for transmission, whichever is earlier.

(4) *Effect of other applicable law or agreement.* If state law or an agreement between a cardholder and the card issuer imposes lesser liability than that provided in this paragraph, the lesser liability shall govern.

(5) *Business use of credit cards.* If 10 or more credit cards are issued by one card issuer for use by the employees of an organization, this section does not prohibit the card issuer and the organization from agreeing to liability for unauthorized use without regard to this section. However, liability for unauthorized use may be imposed on an employee of the organization, by either the card issuer or the organization, only in accordance with this section.

6-750

(c) *Right of cardholder to assert claims or defenses against card issuer.*²⁴ (1) *General rule.* When a person who honors a credit card fails to resolve satisfactorily a dispute as to property or services purchased with the credit card in a consumer credit transaction, the cardholder may assert against the card issuer all claims (other than tort claims) and defenses arising out of the transaction and relating to the failure to resolve the dispute. The cardholder may withhold payment up to the amount of credit outstanding for the property or services that gave rise to the dispute and any finance or other charges imposed on that amount.²⁵

²⁴ This paragraph does not apply to the use of a check guarantee card or a debit card in connection with an overdraft credit plan, or to a check guarantee card used in connection with cash advance checks.

²⁵ The amount of the claim or defense that the cardholder may assert shall not exceed the amount of credit outstanding for the disputed transaction at the time the cardholder first notifies the card issuer or the person honoring

§ 1642. Issuance of credit cards

No credit card shall be issued except in response to a request or application therefor. This prohibition does not apply to the issuance of a credit card in renewal of, or in substitution for, an accepted credit card.

(Pub.L. 90-321, Title I, § 132, as added Pub.L. 91-508, Title V, § 502(a), Oct. 26, 1970, 84 Stat. 1126.)

Historical Note

Effective Date. Section 503(1) of Pub.L. 91-508 provided that: "Section 132 of such Act [this section] takes effect upon the date of enactment of this title [Oct. 26, 1970]."

Legislative History. For legislative history and purpose of Pub.L. 91-508, see 1970 U.S. Code Cong. and Adm. News, p. 4394.

Truth In Lending Regulations

Issuance, conditions, see § 226.12(a), set out following section 1700 of this title.

Library References

Consumer Credit ☞8.

C.J.S. Interest and Usury; Consumer Credit § 348.

§ 1643. Liability of holder of credit card

Limits on liability

(a)(1) A cardholder shall be liable for the unauthorized use of a credit card only if—

- (A) the card is an accepted credit card;
- (B) the liability is not in excess of \$50;
- (C) the card issuer gives adequate notice to the cardholder of the potential liability;
- (D) the card issuer has provided the cardholder with a description of a means by which the card issuer may be notified of loss or theft of the card, which description may be provided on the face or reverse side of the statement required by section 1637(b) of this title or on a separate notice accompanying such statement;
- (E) the unauthorized use occurs before the card issuer has been notified that an unauthorized use of the credit card has occurred or may occur as the result of loss, theft, or otherwise; and
- (F) the card issuer has provided a method whereby the user of such card can be identified as the person authorized to use it.

(2) For purposes of this section, a card issuer has been notified when such steps as may be reasonably required in the ordinary course of business to provide the card issuer with the pertinent information have been taken, whether or not any particular officer, employee, or agent of the card issuer does in fact receive such information.

Burden of proof

(b) In any action by a card issuer to enforce liability for the use of a credit card, the burden of proof is upon the card issuer to show that the use was authorized or, if the use was unauthorized, then the burden of proof is upon the card issuer to show that the conditions of liability for the unauthorized use of a credit card, as set forth in subsection (a) of this section, have been met.

Liability imposed by other laws or by agreement with issuer

(c) Nothing in this section imposes liability upon a cardholder for the unauthorized use of a credit card in excess of his liability for such use under other applicable law or under any agreement with the card issuer.

Exclusiveness of liability

(d) Except as provided in this section, a cardholder incurs no liability from the unauthorized use of a credit card.

(Pub.L. 90-321, Title I, § 133, as added Pub.L. 91-508, Title V, § 502(a), Oct. 26, 1970, 84 Stat. 1126, and amended Pub.L. 96-221, Title VI, § 617, Mar. 31, 1980, 94 Stat. 182.)

Text of Subsection (a) Effective Until October 1, 1982

Prior to its amendment by Pub.L. 96-221, effective upon the expiration of two years and six months after March 31, 1980, subsec. (a) of this section read as follows:

(a) A cardholder shall be liable for the unauthorized use of a credit card only if the card is an accepted credit card, the liability is not in excess of \$50, the card issuer gives adequate notice to the cardholder of the potential liability, the card issuer has provided the cardholder with a self-addressed, prestamped notification to be mailed by the cardholder in the event of the loss or theft of the credit card, and the unauthorized use occurs before the cardholder has notified the card issuer that an unauthorized use of the credit card has occurred or may occur as the result of loss, theft, or otherwise. Notwithstanding the foregoing, no cardholder shall be liable for the unauthorized use of any credit card which was issued on or after the effective date of this section, and, after the expiration of twelve months following such effective date, no cardholder shall be liable for the unauthorized use of any credit card regardless of the date of its issuance, unless (1) the conditions of liability specified in the preceding sentence are met, and (2) the card issuer has provided a method whereby the user of such card can be identified as the person authorized to use it. For the purposes of this section, a cardholder notifies a card issuer by taking such steps as may be reasonably required in the ordinary course of business to provide the card issuer with the pertinent information whether or not any particular officer, employee, or agent of the card issuer does in fact receive such information.

Historical Note

1980 Amendment. Subsec. (a). Pub.L. 96-221 revised existing provisions into pars. (1) and (2) and, as so revised, in par. (1) made changes in structure and phraseology and revised means of notice and verification, and in par. (2) made changes in phraseology.

Effective Date of 1980 Amendment. Amendment by Pub.L. 96-221 effective upon the expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses pre-

scribed by the Board prior to such effective date, see section 625 of Pub.L. 96-221, set out as an Effective Date of 1980 Amendment note under section 1602 of this title.

Effective Date. Section 503(2) of Pub.L. 91-508 provided that: "Section 133 of such Act [this section] takes effect upon the expiration of 90 days after such date of enactment [Oct. 26, 1970]."

Legislative History. For legislative history and purpose of Pub.L. 91-508, see 1970 U.S. Code Cong. and Adm. News, p. 4394. See, also, Pub.L. 96-221, 1980 U.S. Code Cong. and Adm. News, p. 236.

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