

MINUTES OF THE HOUSE COMMITTEE ON COMMERCIAL & FINANCIAL INSTITUTIONS

The meeting was called to order by REPRESENTATIVE HAROLD P. DYCK at
Chairperson

3:30 ^{XX} a.m./p.m. on Thursday, February 9, 1984 in room 527-S of the Capitol.

All members were present except: Representative Kenneth King, excused

Committee staff present: Bill Wolff, Research Department
Myrta Anderson, Research Department
Bruce Kinzie, REvisor of Statutes Office
Mitchell Lousch, Intern
Virginia Conard, Committee Secretary

Conferees appearing before the committee: Proponents:
Opponents:
Gordon Hahn, The Associated Landlords of Kansas
Marvin Umholtz, Kansas Credit Union League
Mitch Lousch, Legislative Intern from KU
Jeffrey Southard, Assistant Attorney General
Paul Johnson, a private citizen
Paul Rasor, Law Professor from Washburn University
Sylvia Hougland, Secretary of the Department of Aging

Chairman Harold Dyck called the meeting to order. He introduced his legislative intern Mitch Lousch to speak for him in the introduction and support of HB2777. See Attachment I

Jeffrey Southard was the second conferee, testifying in favor of the bill. He pointed out that while this bill could be an important first step, he did make two suggestions which the committee might wish to consider. See Attachment II

Third conferee Paul Johnson stated that he was appearing as a private citizen and was in favor of the bill. He suggested two amendments he wished the committee would consider. See Attachment III

Professor Paul Rasor spoke in favor of the bill. He suggested that the committee might want to follow suit of other states by removing the phrase "nontechnical language" from the bill. He stated that he would encourage the committee to put some sanctions in the bill. He pointed out that the states which have sanctions have not had any problems because of them. Prof. Rasor said that the idea is to make the sanctions just enough that people will want to follow the laws.

Ms. Sylvia Houghland was the fifth conferee to testify in favor of the bill. See Attachment IV

Gordon Hahn was the first of two conferees to testify against the bill. See Attachment V
He was followed by Marvin Umholtz who also testified against HB2777. See Attachment VI

The testimonies were followed by questions from committee members to the different speakers.

Regarding SB471 which had been heard Tuesday of this week, Rep. Bob Ott moved that it be passed out of committee favorably. Rep. Homer Jarchow seconded the motion. Motion passed.

Rep. David Louis moved that the minutes of the previous meeting be approved. Rep. Dorothy Nichols seconded the motion. Motion carried.

The meeting adjourned at 4:30.

The next meeting will be Tuesday, February 14, 1984.

DATE February 9, 1989

GUEST REGISTER

HOUSE

COMMERCIAL & FINANCIAL INSTITUTIONS

NAME	ORGANIZATION	ADDRESS
<i>Mildred</i>	AIA	Topeka
Marvin Umholtz	KCUL	Topeka
Steve Wilbert	Close-up Kansas	Wichita
JANET STUBBS	HBAK	TOPEKA
Phil Anderson	BUDGET DW	—
Becky Rohling	KANU	Lawrence
Paul Johnson	PACK	Topeka
Paul Rasot	Washburn Law School	"
<i>Richard Newland</i>	KDOA	"
<i>Jim McBride</i>	United Way of Topeka	"
Joel Wright	KCUL	"
<i>Robert M. Baker</i>	TALK	Topeka
DON FIELDS	CONSUMER CR. Comm.	"
<i>Jeff Sorkin</i>	Atty Gen.	"
Tom PALACE	KLSP	"
<i>Jim Helt</i>	KCUL	Valley Center, KS
<i>Jim Sawyer</i>	Leg. Intern	Topeka

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE--

I feel that there is a genuine need for HB2777. In my research for the report that you have before you, I talked with many people, both professional and nonprofessional, who indicated that they would like to be able to understand contracts that they enter into without needing the help of an attorney.

HB2777 would require residential leases, insurance contracts, and loan agreements to be "written in non-technical manner using words with common and everyday meaning. This bill will pertain only to contracts in which consumers are involved where the amount of the agreement is not more than \$50,000. It does not affect agreements between corporations and businesses. We don't ~~we~~ want to put their staff attorneys out of jobs!

New York passed the first plain language law in 1978. Since that time, 27 states have passed laws that require plain language in insurance policies. Seven states have laws that require plain language in consumer contracts.

Many lawyers are concerned that the law is too vague. But Kent Brown, legislative assistant to the New York Bar Association, states that he has not heard of one lawsuit connected to the law since its introduction. It decreases the consumer's abilities to defend breach of contract by claiming unconscionability and unfair surprise.

Information on HB2777--page two

The bill apparently has merit with consumers as well. In 1979, the Attorney General's office here in Topeka distributed information packets concerning plain language laws. The purpose was to obtain public comment on the plain language theory. Over 90% of the responses received support plain language ideas.

Lastly, I would urge you to look through the report before you. In that way I can be sure of your suport of HB2777.

HB 2777 was introduced because of complaints from consumers who indicated that they are unable to understand some of the contracts that they are expected to sign.

Communication is a very important part of our American way of life. Historically, Americans make verbal agreements and then put it in writing. It is illogical to put these agreements in a form that is not understandable by the people who are a part of the contract.

New York passed the first plain language law which took effect on June 1, 1978 ("Sullivan Act"). Since then, 27 states have passed laws that require plain language in insurance policies. Seven states have laws that require plain language in consumer contracts.

At present, there is a strong level of interest in the basic concept which underlies plain-language legislation; that citizens should be able to read and understand the contracts that commit them to action.

Some people are concerned that the laws are too vague. Kent H. Brown, a legislative counsel to the New York Bar Association said that, "I've never heard of one single, solitary lawsuit" resulting from changes in contractual language under the law. Peter Zimmerman, director of governmental affairs for the New York Council of Retail Merchants, said he knew of no litigation. "We've had no serious problems with it," Zimmerman said. "We're living with it."

Many of the nation's large banks have changed their legal forms and put them into plain language. (Citibank, Crocker National

Bank, and Continental Bank of Illinois to name a few.) These banks use the simplified form as a marketing tool in their promotion.

Ron Todd, Assistant Insurance Commissioner for Kansas, sent an example of an auto insurance contract that has been rewritten into plain language form. The old, technically written policy had 10,852 words as compared to the plain language version of 6,511 words.

Besides making contracts easier to read and understand, plain language legislation will remove the emotional defense of, "I shouldn't have to do this, I could never have understood what I was getting into." Plain language contracts should also decrease the consumers' abilities to defend breach of contract by claiming unconscionability and unfair surprise.

By all indications, the "plain language" bill has support in Kansas. On December 20, 1979, the Attorney General's office distributed information packets concerning plain language laws. The purpose being to obtain public comment concerning the plain language theory. Over 90% of the responses received supported the plain language idea.

Further testimony to the bill's merit is evidenced by these states, (excluding New York):

Connecticut passed a plain language law (with guidelines) that pertains to any contract entered into after June 30, 1980.

Maine's law, which is modelled on New York's Sullivan Act, took effect in September of 1979.

Hawaii's version of New York's Sullivan Act ^{took} ~~to~~ effect when it was signed in April, 1980.

A law in Minnesota, which also provides review and enforce-

ment procedures, went into effect in April, 1982.

West Virginia passed a law in April, 1982, that covers consumer contracts.

The consumer contract law in New Jersey, which offered some additional language guidelines, took effect in April 1982.

In California, SB 2051 became law on January 1, 1983. It requires state agencies to write documents in "plain, straightforward Language".



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

January 16, 1984

MAIN PHONE (913) 296-2215
CONSUMER PROTECTION 296-3751

Honorable Harold P. Dyck
State Representative, 99th District
State Capitol
Topeka, Kansas 66612

Re: Plain Language Law

Dear Representative Dyck:

Attorney General Stephan has asked me to convey to you his position on the proposed legislation concerning a plain language law for Kansas. As in the past, the Attorney General is strongly supportive of language which would help to make consumer contracts such as residential leases and insurance policies more readable to the average consumer. Although the full impact of such a measure can only be apparent after the contracts which result can be examined, the Attorney General supports the concept which is embodied in your proposed act. In addition, as legal counsel to a number of state agencies which are listed in the latter part of the measure, this office will of course assist in the drafting of any model contracts or forms for use by creditors and institutions.

If we can be of any further assistance in this matter, please do not hesitate to let us know.

Very truly yours,

OFFICE OF THE ATTORNEY GENERAL
ROBERT T. STEPHAN

A handwritten signature in cursive script, reading "Jeffrey S. Southard".

Jeffrey S. Southard
Assistant Attorney General
Consumer Protection and
Antitrust Division

JSS/fm



STATE OF KANSAS

KANSAS INSURANCE DEPARTMENT

420 S.W. 9th

Topeka 66612 913-296-3071

1-800-432-2484

FLETCHER BELL
Commissioner

January 16, 1984

Honorable Harold Dyck
House of Representatives
State House, Room 112-S
Topeka, Kansas 66612

Re: Plain Language Insurance Policies

Dear Representative Dyck:

This letter is in response to a request from your office concerning this Department's experience with "plain language" insurance policies.

Commissioner Bell has long been one of the foremost advocates for the use of insurance contracts that were easier to read and engaged in many efforts to encourage insurance companies to so revise their contracts. We feel we have been highly successful in this endeavor. Although exact figures are impossible to obtain without a complete search of voluminous files, we estimate that some form of "readable" insurance contracts have now been approved, and are in use in Kansas, for insurance companies representing 1. over 95% of the private passenger auto insurance business; 2. over 96% of the dwelling fire and home-owners insurance business; 3. over 75% of the accident and health business excluding medicare supplement policies and 4. over 95% of the medicare supplement policies (issued to insureds over age 65). Although similar estimates are impossible to obtain, a significant number of insurance companies have filed similar "readable" forms for commercial property and liability contracts and for life insurance contracts.

As you know, the principal emphasis on "plain language" or "readable" contracts has been directed to those contracts involving individual consumers as opposed to contracts issued to businesses. Using such criteria, we can accurately state that practically all "personal lines" insurance contracts in Kansas are now being issued in the more "readable" form. The more "readable" forms can be generally summarized as being shorter in total words (some as much as 40% shorter) and using words that are more easily understood.

If you have any further questions concerning this Department's activity relative to this matter, we will be happy to respond.

Very truly yours,

Fletcher Bell
Commissioner of Insurance

Ron Todd
Assistant Commissioner

RT:sc

Attachment II



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

February 9, 1984

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

The Honorable Harold Dyck
Chairman, House Committee on Commercial
and Financial Institutions
State Capitol, 527-S
Topeka, Kansas 66612

Re: 1984 House Bill No. 2777 (Plain Language Bill)

Dear Representative Dyck:

I appreciate the opportunity to appear before the committee today to say a few words about House Bill No. 2777. This measure would enact into Kansas law what is popularly known as the plain language concept, and represents what could be an important step in the area of consumer protection and consumer awareness. I say "could be" because of the nature of the bill -- it is open-ended, and does not itself provide that any certain format will be used. Rather, it directs certain state agencies to develop model forms which can be relied upon by private industry as guides.

The measure before the committee today is an important step in the right direction, for consumer transactions in today's world are becoming increasingly more complex. Nor is the answer detailed government regulation, as the case of Truth-in-Lending demonstrates. From a basic, readable set of laws, Truth-in-Lending developed during the 1970's into a massive set of regulations, interpretative letters and informal comments that no one, let alone the average consumer, could be expected to be familiar with. It took a major overhaul of the entire concept in recent years to get the program back on track and providing readable, concise disclosures to people entering into credit transactions.

This bill, rather than proscribing any set formula, merely establishes as the policy of this state that consumer transactions and leases should be expressed in non-technical language and set out in a readable fashion. While some companies, as in the insurance area, have adopted such a policy on their own, to my knowledge there exists no overall state statute which makes this type of reform available in all areas. Further, in that other states have

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Harold Dyck
Page 2

already adopted plain language laws, companies and state agencies may look to their experience in implementing this statute.

I would make two suggestions which the committee may wish to consider in its deliberations. First, the complete lack of any enforcement provisions in the law has the effect of making compliance optional, since any agreement which does not comply is still fully enforceable. The committee may wish to consider this problem, and may look at the provisions contained in the federal Truth-In-Lending law concerning private enforcement. There, a citizen may recover his or her actual damages and a civil penalty of not less than \$100 nor more than \$1,000 if a violation is proven. 15 U.S.C.A. §1640.

Second, section 2 of the bill provides that state agencies shall "develop model forms of agreements" for illustration purposes. Mindful of the morass which Truth-In-Lending entered by trying to develop regulations to fit all possible situations, it may be better to adopt guidelines for the way agreements should be worded, instead of drafting specific model forms. This has been done in other states (Conneticut, for example), and allows the intent of the law (easily readable and understandable contracts and agreements) to be accomplished, without creating massive amounts of paperwork.

In conclusion, our office believes that this bill is an important one, for it expresses a goal which no one can argue with. While specific ways to implement this goal will of necessity have to be developed as situations arise, I hope this lack of specificity will not cause the committee to view the concept itself with suspicion. It has been done elsewhere, it can be done here.

Again, thank you for this opportunity to appear. If our office can be of any assistance to the committee, please feel free to let us know.

Very truly yours,

ROBERT T. STEPHAN
ATTORNEY GENERAL



Jeffrey S. Southard
Assistant Attorney General
Consumer Protection and
Anti-Trust Division

JSS:js

TESTIMONY

To: House Committee on Commercial and Financial Institutions
Subject: HB 2777
Date: February 9, 1984

My name is Paul Johnson and I am here as a private citizen in support of HB 2777. I am very appreciative that this committee has provided a proper forum for this issue. I've been interested in this concept for some time and would like to highlight two of many reasons why I support this bill.

1. There should be complete understanding between both parties as to their respective responsibilities when entering into a contractual agreement. The game rules should be thoroughly understood by all parties. When this happens, there is less room for problems later on and I believe a greater willingness to live up to the agreement.

Vague clauses, questionable financing provisions, and unintelligible refinancing gimmicks serve to undermine a basic respect for the integrity of contractual agreements. Our economic system depends on the individual's belief in basic fairness. This bill helps reinforce that right and reduces the hostility when unexpected demands are suddenly required.

2. This bill would work in conjunction with what is already in the Kansas Consumer Protection Act. K.S.A. 50-627(1).

That said supplier took advantage of the inability of the consumer reasonably to protect his or her interests because of his or her physical infirmity, ignorance, illiteracy, inability to understand the language of an agreement, or similar factor,

This bill would assist in producing contracts that are readable by the far majority of Kansas consumers, thus actually strengthening the readability clause.

There are two amendments I wish this committee would consider. First of all, there should be some minimal penalty for non compliance so that parties drafting such contracts will take this law a little more seriously. With state agencies taking the lead in producing said contracts, it should be little additional work to modify for a given consumer situation. Secondly, all state rules and regulations affecting consumers such as those of SRS, Health and Environment, Department of Administration bidding procedures, etc. should be subjected to plain language tests.

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As you can see on the attached sheet, Kansas would be the eighth state to adopt such a law. The confusion and potential avalanche of lawsuits has not materialized as predicted. This law is a good start in clarifying and simplifying contracts and regulations which we are all bound to.

TABLE 4 FEDERAL PLAIN ENGLISH LAWS

Effective Date	Name	Citation
7/1/69	Truth In Lending Act of 1968 (Regulation Z)	15 USC 1601-1666 12 CFR 226
4/26/71	Fair Credit Reporting Act of 1970	15 USC 1681
10/26/72	FTC Door To Door Sales Rule	16 CFR 429, 37 FR 22934
6/22/74	Real Estate Settlement Procedures Act of 1974	12 USC 2601-2617
1/1/75	Employment Retirement Income Security (Pension Reform) Act of 1974	29 USC 1001 et seq
7/4/75	Consumer Product (Magnusson-Moss) Warranty Act	15 USC 2301-2312
10/28/75	Fair Credit Billing Act	15 USC 1666
10/28/75	Equal Credit Opportunity Act	15 USC 1691
11/18/75	FTC Holder In Due Course Rule	16 CFR 433, 40 FR 53506
3/23/77	Truth In (Consumer) Leasing Act of 1976	15 USC 1667
3/23/78	Presidential Executive Order 12044 (expired 6/30/80)	43 FR 12661
5/10/80	Electronic Funds Transfer Act	15 USC 1693
9/31/82	Truth In Lending Simplification and Reform Act of 1980	15 USC 1601 et seq

TABLE 5 STATE PLAIN ENGLISH LAWS

Name of State	regarding Consumer Contracts		regarding Insurance Contracts	
	Effective Date	Citation	Effective Date	Citation
1 Ala. 2 Alas. 3 Ariz. 4 Ark. 5 Calif.			1979	Ins. Dept. Rule 4-14-212 et seq. Ark. Stat. Ann. 66-3251 to 3258
6 Colo. 7 Conn. 8 Del. 9 Fla. 10 Ga.	10/1/79	Conn. Gen. Stat. 42-151 to 158	10/1/79	Conn. Gen. Stat. 38-685 to 68x Ins. Dept. Reg. 24 and 27 Ins. Dept. Rule 4-41.01 et seq
11 Ha. 12 Id. 13 Ill. 14 Ind. 15 Io.	7/1/81	Haw. Rev. Stat. 487A-1		
16 Kan. 17 Ken. 18 La. 19 Me. 20 Md.	9/14/79	Me. Rev. Stat. 10-1121 to 1126	6/1/84 7/1/77	Ins. Dept. Bull. 1979-23 Me. Rev. Stat. 24A-2438 to 2445 Md. Code Ann. 48A-490D
21 Mass. 22 Mich. 23 Minn. 24 Miss. 25 Mo.	7/1/83	Minn. Stat. Ann. 325 G. 29 to 36	3/6/78	Mass. Gen Law Ann 175-28 Minn. Stat. Ann. 72C.01 to .13 Mo. Ann. Stat. 375.920
26 Mont. 27 Neb. 28 Nev. 29 N.H. 30 N.J.	10/16/81	N.J. Stat. Ann. 56: 12-1 to-18	8/6/79	N. J. Stat. Ann. 17B: 17-17 to 25
31 N.M. 32 N.Y. 33 N.C. 34 N.D. 35 Ohio	11/1/78	N.Y. Gen. Oblig. Law 5-702	7/1/80 3/1/81 1/9/80	N.Y. Insur. Law 142-a N.C. Gen. Stat. 58-364 to 372 Ohio Rev. Code Ann. 3902.01 to .08
36 Okla. 37 Ore. 38 Penn. 39 R.I. 40 S.C.			1/1/82 1979	Okla. Stat. Ann. 36-3611 Insur. Dept. Reg. 31-64.1 R.I. Gen. Law 27-5-9.1 S.C. Code 58-360
41 S.D. 42 Tenn. 43 Tex. 44 Utah 45 Vt.				Border Order 37691
46 Va. 47 Wash. 48 W.V. 49 Wis. 50 Wy.	7/9/81	W. Va. Code 46A-6-109	1979 7/9/81 5/8/80	Va. Code 38.1-367.2 Ins. Bull. 78-2 W. Va. Code 33-29-1 to-9 Wis. Stat. Ann. 631.22

(CLOSED END PROMISSORY NOTE AND DISCLOSURE STATEMENT)

Credit Union Borrower

(address)

Account No. _____ Note No. _____

Amount of Note \$ _____ Date _____

Promise To Pay: To repay money loaned. I/We jointly and individually promise to pay the amount shown to the credit union named above at the above address (or to whomever the credit union tells me/us) in the payments of \$ _____ each, which includes principal and interest on the unpaid balance at the annual interest rate of _____%. I/We promise to pay the first payment on _____ and the same amount on the _____ day of each month after that until the loan has been paid in full, but I/we may make earlier payments without penalty and in that way reduce interest charges.

Default: If I/we fail to make payment on time, die, become insolvent or file for bankruptcy, the credit union may declare the entire balance to be immediately due and payable.

Notice: I/We individually waive technical legal notices such as presentment, demand, protest or dishonor.

Late Payment: I/We promise to pay a late charge of _____

Security: To secure repayment, I/we jointly and individually pledge all shares, deposits, and certificates which I/we now or in the future have in the credit union to the extent of the unpaid balance of this note, but this pledge does not include amounts held under an "individual retirement account," "Keogh plan" or as an "All-Savers Certificate." I/We authorize the credit union to apply pledged amounts to repay this note in the event of default. If loan payments are up to date, I/we may withdraw pledged amounts as long as the balance in the pledged accounts does not go below the outstanding loan balance.

\$ _____

I/We also give as security for this loan the collateral described below.

Collateral: _____

(Seal)

Signature of Maker

Date

Witness

(Seal)

Signature of Maker

Date

Witness

(Seal)

Signature of (guarantor) (endorser) (surety)

Date

Witness

(Seal)

Signature of (guarantor) (endorser) (surety)

Date

Witness

NOTE: Boxes checked if applicable.

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate. %	FINANCE CHARGE The dollar amount the credit will cost me. \$	Amount Financed The amount of credit provided to me or on my behalf. \$	Total of Payments The amount I will have paid after I have made all payments as scheduled. \$
---	---	--	--

My payment schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due
	\$	
	\$	

Property Insurance: I may obtain property insurance from anyone I want that is acceptable to the credit union. If I get the insurance from the credit union I will pay \$ _____

Security: I am giving a security interest in my shares and/or deposits and/or certificates in this credit union;

the goods or property being purchased;

Collateral securing other loans with the credit union may also secure this loan.

_____; _____

Filing Fees: \$ _____ Non-Filing Insurance \$ _____

Late Charge: _____

Prepayment: If I pay off early, I will not have to pay a penalty.

Required Deposit: The annual percentage rate does not take into account my required deposit.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and repayment refunds and penalties.

e means an estimate

ITEMIZATION OF THE AMOUNT FINANCED

Itemization of Amount Financed of	Amount Given to Me Directly	Amount Paid on My Account	Prepaid Finance Charge	\$
\$	\$	\$	\$	To
Amount Paid to Others on My Behalf:	\$	\$		\$
\$ For Insurance	To	To		To

I hereby acknowledge receipt of a copy of this disclosure statement appropriately filled in prior to consummation of this transaction, and that it is correct.

Truth In Lending Disclosure received:

Signature of Borrower (Obligor) _____ Date _____ Signature of Obligor _____ Date _____

DRAFT TESTIMONY ON HB 2777
TO HOUSE COMMERCIAL AND FINANCIAL INSTITUTIONS
BY KANSAS DEPARTMENT ON AGING
FEBRUARY 9, 1984

BILL BRIEF:

HB 2777 requires plain language contracts in consumer transactions below \$50,000.

SUMMARY PROVISIONS:

1. HB 2777 requires the use of nontechnical language and sections appropriately divided and captioned in the following contracts:
 - a. Contracts for lease of space to be occupied for residential purposes.
 - b. Contracts to which a consumer is a party and for which the subject of the transaction involves personal, family or household purposes.
2. The bill's provisions will not apply to agreements in an amount in excess of \$50,000.
3. Requires the following state agencies to develop model forms of agreements which may be used in consumer transactions: State Bank Commission, State Banking Board, Savings and Loan Commissioner, Savings and Loan Board, the Administrator of the State Department of Credit Unions, the Credit Union Council, the Consumer Credit Commissioner, the Kansas Real Estate Commission and the Commissioner of Insurance.
4. Effective date of the act is January 1, 1986.

TESTIMONY:

The Department on Aging supports HB 2777 because of its potential to make contractual language more easily read and understood. The bill requires simplified contracts to be used in consumer transactions, however, the bill does not provide sanctions for non-compliance. The bill does require certain state agencies to develop model forms as an example. We would hope such a provision in law would encourage the use of contracts in a form which would be less technical and therefore easier for a consumer to understand.

Plain language laws are designed to clarify, not change, the terms of consumer contracts. Plain language laws do not:

1. Require the simplification of complex ideas.
2. Change the basic creditor-debtor relationship.
3. Require protections to be abandoned.
4. Spawn hordes of litigators.
5. Place a crushing burden on business.

Compliance is not difficult. Not only can business live comfortable with plain language laws, it will actually benefit from increased levels of trust and understanding among consumers.

Difficulty in understanding the rights and obligations written into a contract is not a problem peculiar to older persons. Most of us experience some difficulty in fully comprehending the specifics of a contract.

However, there is evidence that consumer fraud occurs more among the older population than other age groups. Clarity of forms may help alleviate this problem. For the elderly, like most people, the technical and legal jargon commonly used in real estate, insurance, banking and other contracts is extremely difficult to understand. The types of agreements for which contracts are used are typically standard contracts and offer little opportunity for consumers to negotiate on the terms of the agreement. This makes it very important that they understand those terms. Many of the elderly cannot afford an attorney to advise them of what a contract says. For these elderly Kansans, their financial status means that they often sign agreements which they do not understand. The courts have repeatedly held that it makes no difference whether you can prove that you did not understand the terms of a contract at the time it was signed -- you are still held to those terms.

Older consumers may not be familiar with new types of transactions such as savings plans in effect today. Use of contracts with formats which clearly delineate the terms of agreement would help assure an understanding of the transaction by the older consumer. I urge your adoption of HB 2777.

Thank you for this opportunity to address this issue.

JG:rd

THE ASSOCIATED LANDLORDS OF KANSAS, INC.
P.O. BOX 4282, SHAWNEE MISSION, KS. 66204

Attachment V



February 9, 1984

Testimony for House Bill 2777

The Associated Landlords of Kansas (TALK) appear in opposition to House Bill 2777. It is our conclusion that the bill's requirement that lease agreements be prepared in "non-technical" language is far too broad and vague to be useful. "Non-technical" language means so many things to so many people that it is not useful. Such a description will mean different things to a college graduate than it will mean to a high school drop-out. As many organizations, such as the U.S. armed forces, have found, simplifying language does not often lead to the desired results.

Further, we conclude that the Real Estate Commission, which regulates and licenses real estate brokers and agents in the state, has very little to do with the routine leasing of individual owner residential property. The other state agencies referenced have even less to do with residential real estate leasing and probably could only confuse the issues further.

Model agreements drafted by state agencies are likely to closely parallel the state's Landlord-Tenant Act, which, although it in itself is not a problem, will leave major gaps in most agreements. Few agencies will be likely to draft sample agreements that will satisfy either tenants or owners. Both groups will probably condemn the standard drafted agreements, or attempt to embellish them. Such embellishment will probably make the agreements more and more technical.

Since the more than 900 members of TALK are largely individual owners, working with single-family houses, and managing and maintaining their properties themselves, this bill will potentially work a significant hardship. Almost none of our members are lawyers, meaning that any new agreements they attempt to draft in compliance with the law will either be potentially defective or have to be reviewed by attorneys. Such reviews will doubtless cost significant sums of money, and will not change the content of the agreement at all, only re-word it, at an increased cost.

This bill appears to be an attempt to fix something that isn't broken. The members of TALK would urge you to not report the bill out of committee. If there is any additional or other information that TALK could provide in regards to this issue, we will be more than happy to assist in any way we can.

Atch. V
2/9/84

TESTIMONY ON H.B. 2777

AN ACT relating to written agreements
for certain consumer transactions;

Presented to the

HOUSE COMMITTEE ON
COMMERCIAL AND FINANCIAL INSTITUTIONS

February 9, 1984
by the

KANSAS CREDIT UNION LEAGUE

Mr. Chairman, Members of the Committee:

*Note: Marvin Umholtz appeared
in place of Mr. Holt.*

I am Jim Holt, Executive Vice President for the Kansas Credit Union League (KCUL). Our association represents over 94% 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 HB 2777. Credit unions have historically provided counseling to their members to assist them in understanding the many documents involved in the provision of financial services. The concepts presented by this bill are admirable and credit unions are very much in support of these concepts.

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.

*Atch. VI
2/9/84*

This is clearly to the benefit of both -- the members have a better understanding of their obligations to the credit union.

KCUL has presented testimony on bills similar to HB 2777 in the past (1980 SB 649, 1981 SB 268, 1983 SB 206 and others). Understandable language has been and is taken into consideration when KCUL and its member credit unions develop contracts and forms. True to stated policy, this is done voluntarily without the threat of legal penalties and liabilities.

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 uncertainties of legal interpretation simply to get at a minority of potential "wrong-doers." Even if a credit union was in good faith compliance with HB 2777, it would still be subject to lawsuits, and would have to spend members money to defend itself.

If HB 2777 becomes Kansas law, I would like to assure this Committee that credit unions would do everything they can to comply with the provisions of this act. While not all have been tested in the courts, I would suspect that contracts and forms currently used by credit unions would generally be in compliance with the provisions of HB 2777. Never-the-less the expense of a complete legal review and reprinting for technical changes would run into the tens of thousands of dollars.

Closing on a philosophical note, I would like to raise the question as to whether the problem addressed by this bill can be best 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 HB 2777.