

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 February 28, 1984 in room 527-S of the Capitol.

All members were present except: Rep. David Louis, excused

Committee staff present: Bill Wolff
Bruce Kinzie
Virginia Conard

Conferees appearing before the committee: Rep. Denise Apt
Walter Scott, Associated Credit Bureaus of Kansas
Jeffrey Southard, Assistant Attorney General

Chairman Dyck called the meeting into session and called on first conferee for HB2948, Rep. Denise Apt from Allen County. Rep. Apt pointed out that proposed HB2948 was drafted to help ladies, both young and old alike, as well as anyone who have had problems with credit discriminations. She stated that they had some suggested amendments to HB2948. She urged the committee's support of this bill.

Rep. Dyck opened the meeting to questions. He asked the co-sponsors of the bill, and members of the committee, if they wished to make any comments. Rep. Dorothy Nichols testified, as a result of her personal experiences, for the need for such a bill.

Second conferee Walter Scott stated that he was not in opposition to HB2948 and distributed information relating to credit bureaus, women, and the equal credit opportunity act. (See Attachment I)

James M. Apodaca, Executive Director, Kansas Advisory Committee on Mexican American Affairs had prepared a written testimony which was distributed to the committee by the chairman. (See Attachment II)

Chairman Dyck asked Staff Member Bruce Kinzie to explain the three proposed amendments to HB2948. Chairman Dyck then suggested that the sponsors of this bill get together with the Revisor's Office and come back next Thursday with the version which they would like to present to the committee. (See Attachment III for the proposed amendments to HB2948.)

Jeffery Southard then testified for Substitute HB2650. (See Attachment IV for the Substitute HB2650 and see Attachment V for Mr. Southard's testimony.)

Regarding HB2126, Rep. David Miller reported that the subcommittee would have a report to make on Thursday.

On HB2639, Subcommittee Chairman Rep. Kenneth King distributed a written report. Rep. King moved that the report be amended to read, "the sub-committee unanimously recommends in this report to the Committee that HB2639 be killed AND REPORTED ADVERSELY."

Rep. Nichols seconded the motion. Motion carried. (See Attachment VI for report & recommendation of the subcommittee.)

Chairman Dyck then asked Dr. Wolff to give a briefing on HB2733. The committee agreed that HB2733, as well as HB2734 and HB2735 needed further study and that these three bills should be placed into a Senate bill if possible.

Regarding HB2909 Chairman Dyck stated that it had been suggested by one of the authors of this bill that it be put in one of the Senate bills.

Rep. Nichols moved that the minutes of the February 23, 1984, meeting be approved. Rep. Jarchow seconded the motion. Motion carried.

Meeting adjourned at 4:30 p.m.

The next meeting is March 1, 1984.

investigate for you and if you were right, issue a correction.

24. What do I do if I think I'm being discriminated against?

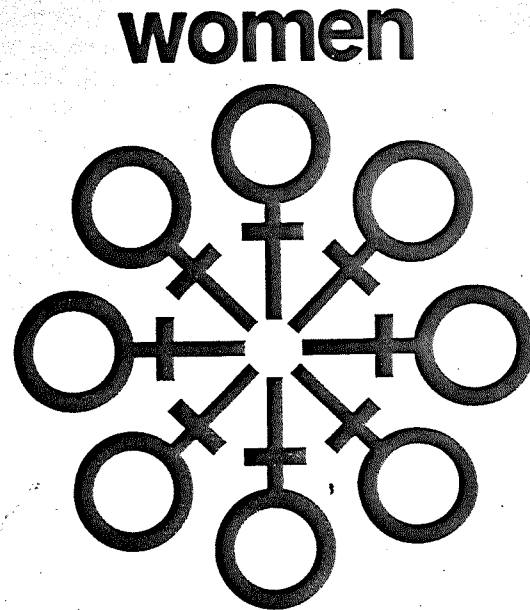
If you don't agree with the reasons listed in the denial notice, the first step is to contact the credit granter directly and talk it over.

Keep accurate records of all contacts you make. If you can't work things out to your satisfaction, you can always take your business to another credit granter. If you are convinced that illegal discrimination is involved, you can report the experience to the Federal Trade Commission or other appropriate federal agency enforcing the ECOA.

A Reminder . . .

The Equal Credit Opportunity Act is a very complicated law. This pamphlet is an attempt to provide you with many of the significant aspects of the law which assures you the right to be given equal consideration in any application for credit.

Good and responsible businesses welcome credit-worthy women as credit customers. Good and responsible credit bureaus recognize their role in maintaining credit histories for both men and women. After all, it's not only fair, but good business, since women make a majority of the country's credit purchases.



credit bureaus

**and the
equal
credit
opportunity
act**



Associated Credit Bureaus, Inc.
Houston, Texas

In today's credit-oriented economy, your local credit bureau plays an important role in the development and expansion of credit privileges for millions of Americans. The credit bureau serves as a clearinghouse of consumer credit information. Under the rules of the Fair Credit Reporting Act of 1971, the credit bureau collects information from credit granters on how consumers pay their bills. This makes up your credit history or credit report. When a consumer applies for a new credit account, the credit granter most often depends on a report from the local credit bureau to make an intelligent decision about granting credit privileges to the consumer.

As a clearing house of consumer credit information, your credit bureau does not "rate" credit or determine who gets credit. That is the credit granter's individual decision based on his own internal standards. The credit bureau does *not* interview your friends, neighbors, or associates, and does *not* inquire into your social or personal life. The credit bureau is interested only in facts relating to your credit-worthiness.

* * * * *

Because of the central role played by credit bureaus in America's credit economy, Associated Credit Bureaus, Inc., the national trade association for the industry, has prepared this pamphlet for you. It is designed to provide guidance and to answer many of the questions you may have about credit and women.

1. What is the Equal Credit Opportunity Act?

The Equal Credit Opportunity Act (ECOA) is the federal law which, among other things, says that everyone has the right to apply for credit without fear of discrimination on the basis of sex or marital status. This means that you will be judged only on the basis of your "credit-worthiness." Your credit history at the credit bureau and your income are the two biggest factors which determine "credit-worthiness."

2. If I'm married and don't have my own credit history, will the ECOA help me get one?

Yes. One of the main purposes of the ECOA is to assist married women in establishing their own credit histories. Your credit history is essentially your bill-paying record. Historically, credit histories for both a husband and wife were found in a "joint" or combined file at the local credit bureau under the husband's name. Recognizing that the wife is entitled to the credit record of those accounts which

she uses with her husband or on which she has signed a contract to pay, the new law requires credit granters to report the payment history of the account to credit bureaus in both names, not just the one that appears on the credit card or billing statement. The result of this change is that the local credit bureau is able to identify a credit history for any married woman based on those accounts she shares with her husband and on which both have signed a contract to pay. Sally Jones, whose credit history may have been listed with "John Jones (wife: Sally)" is now identifiable as Sally Jones or whatever legal name she chooses to use on her credit history.

3. Is my new credit history important?

Yes, it's very important. The credit history stored by your local credit bureau tells a credit granter about your ability and willingness to pay your bills and indicates your general ability to handle credit. Because a poor credit history can seriously restrict your ability to obtain credit, it is important to maintain a history of prompt payment on all accounts.

4. How will the credit granters determine which way to report the "shared or joint" accounts to the credit bureau?

On any of your active charge accounts opened before June 1, 1977, this opportunity to change the way in which it is reported to the credit bureau will be achieved through a form mailed to you by the credit granter. This form should be filled out completely and returned so each credit granter will know how to report your account to the credit bureau. You may not receive a designation form if the creditor's records already show the users or participants on an account. Applications for credit used after June 1, 1977, will contain questions which allow you to designate the names and manner in which your account will be reported to the credit bureau.

It is important to remember that arrangements for designating the way in which your account is reported to the credit bureau must be made with the credit granter.

5. ECOA helps me get a credit history, but can it include unfavorable past credit information?

Yes. The good and poor credit history on accounts you use with your husband or for which both are contractually liable may be included in your credit history. The law does provide, however, that if you can prove to a credit granter at the time of an application for credit that information from certain

accounts does not reflect your personal ability or willingness to repay your personal obligations, the credit granter must disregard that unfavorable information.

6. Can I inspect my credit history to see if it is good, bad or not complete?

Yes. Contact your local credit bureau and make arrangements for a visit or telephone interview. After providing proper identification, you can review your history with a trained counselor, but a small fee may be charged. If you have been denied credit within the past thirty days because of information in a credit report, the Fair Credit Reporting Act requires the credit bureau to provide you with a free review of your credit history.

7. Can I correct inaccurate information in my credit history?

Yes. If you believe information in your credit history is not accurate, the credit bureau can investigate for you and try to resolve the dispute. If the credit bureau cannot solve the problem, you can file a brief statement of your side of the story in your credit history. That statement will be reported to all those who request credit reports on you in the future.

8. Does the credit bureau "rate" my credit history or decide if I get credit?

No. The credit bureau is only an information clearinghouse. The decision to grant credit is based on the individual, internal standards of each creditor and those standards can differ.

9. If I become divorced or widowed, will I lose my credit history?

No. If you have already had the charge accounts you used with your former husband reported to the credit bureau in your name, you will have a history that cannot be taken away. If you have failed to notify creditors that you used accounts with your husband before the divorce, you can go to the credit bureau and have the accounts included in your history. It may be necessary for the creditor to confirm you were a user of those accounts or liable with your husband for their repayment.

10. After a divorce, will I be able to get my own credit?

Yes. If you are credit-worthy in your own right. If you have a good credit history (including that

from before the divorce) and necessary income, you should have no trouble getting credit.

11. Can my credit accounts be closed just because I have changed my marital status?

No. A creditor cannot close your account or change its terms unless you demonstrate an inability or unwillingness to pay. However, the creditor can require you to submit a new application if the original charge account was based on your former husband's income.

12. If I'm married, must the charge accounts I use with my husband be reported to the credit bureau in my married name?

No. You can request your accounts to be reported to the credit bureau in any legal name (i.e., your birth-given first name and either your birth-given surname, your husband's surname, or a combined surname). You should be consistent in the name in which all your charge accounts are reported to the bureau, so you will have a complete history in that name.

13. In a credit application can I be asked about my marital status, husband or former husband?

No. When you are applying for credit on the basis of your own credit-worthiness, you cannot be asked about your marital status, husband or former husband except under certain circumstances. You can be asked about your marital status and husband if you live in a community property state (see question 16). You can also be asked about your husband if he will be able to use your account, or if he will be partially or totally responsible for its payment. Finally, a potential credit granter can ask you to list any other accounts on which you are liable and the name in which those accounts are carried.

This final exception may tend to reveal your marital status. The spirit of the law, however, is that a credit granter can only ask you about your marital status, husband or former husband when that information clearly pertains to the use, payment or security of your account.

14. If I'm divorced and applying for credit, must I reveal any alimony or child support payments I receive?

No. You never have to reveal alimony or child support payments unless you want to have them considered as a part of your income. The credit granter then must count those payments as part of

your income. He may, however, verify the regularity with which those payments are made.

15. Can I be asked about my birth control practices or child bearing plans?

No. You cannot be asked about them because they have nothing to do with your credit-worthiness. Also, a credit granter cannot use any statistical tables to predict the likelihood you will have children in the future. However, the credit granter can ask how many dependent children you may have, since they may reflect an additional financial obligation.

16. What is a community property state and why is it important to me in the extension of credit?

The community property states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and the Commonwealth of Puerto Rico. These are states, generally speaking, where both husband and wife are co-owners of all property acquired during the marriage, legally responsible for each other's debts and obligations, and have equal or joint control of all property and income earned during the marriage. Therefore, a charge account belonging to the husband belongs equally to the wife and a credit granter can take legal action against either to collect a bill incurred by the other.

Also, in a community property state the credit granter may require the signatures of both the husband and wife on an application, if it is necessary to make any property used as security available to satisfy the debt in case of default.

17. Must I have my husband's signature on an application for credit?

No. You cannot be required to have your husband sign your credit application for a separate account if you are credit-worthy in your own right. The only time his signature can be required is if you live in a community property state and his signature is necessary to make property available to secure the extension of credit.

18. If my income is insufficient for credit and I need a cosigner, must my husband be that cosigner?

No. A potential credit granter can require a cosigner if your own income is insufficient, but he cannot require that cosigner to be your husband.

19. Will my income from a part-time job, pension or similar source be discounted in my credit application?

No. It cannot be discounted. Any income you receive from a part-time job, pension, investments, social security, or a public assistance program must be judged as ordinary income. However, a credit granter can consider how long you have been receiving those payments and how long they are likely to continue.

20. Can my accounts be closed or the terms changed just because I have reached a certain age or retired?

No. A credit granter cannot close or change the terms of your account unless there is evidence of an inability or unwillingness to repay the account.

21. If I am married, but have no job, can I get a credit account of my own?

Yes, but you will have to prove some source of income sufficient to repay the account. For example, in a community property state you might rely on your husband's income. In a non-community property state your husband or another credit-worthy person might guarantee payment of the account.

22. If I don't have any credit of my own now, what is the best way to get it without the help of someone else?

The very best way is to develop a good employment record and have both a checking and savings account. Then, open a small charge account with a local retail store, or get a secured loan from a financial institution for the purchase of something like an automobile. Pay these obligations promptly and you will develop your own good credit history. As your credit history and credit-worthiness develop, you will find you will be able to secure additional credit. Be careful. Don't over-extend yourself or you may hurt what you have worked so hard to build.

23. If I'm denied credit, must they tell me why?

Yes. The ECOA requires a credit granter to give you the specific reasons for a denial, and, if requested within 60 days, provide those reasons in writing. If the denial was based on information from a credit bureau, the credit granter must tell you the name, location and phone number of that credit bureau. Then you can review your credit history at the credit bureau. If you believe there was incorrect information in the credit report, the credit bureau must re-

TESTIMONY PREPARED FOR THE
HOUSE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS
CONCERNING H.B. 2948

by James M. Apodaca
Executive Director
Kansas Advisory Committee on Mexican American Affairs

Mr. Chairman and Committee Members:

One of the functions of the Kansas Advisory Committee on Mexican American Affairs (KACMAA) is to serve as liaison between the Kansas Hispanic Community and Kansas State Government. It is in this capacity that I have prepared this written testimony to express support for HB 2948.

KACMAA feels that HB 2948 will enhance Hispanics' right to gain access to credit facilities in Kansas. KACMAA believes that any action that will alleviate discrimination against credit applicants on the basis of race, color, religion, national origin, sex, marital status or age is in the best interest of the State of Kansas.

On behalf of the Kansas Hispanic Community, we ask for your support of HB 2948.

HOUSE BILL No. 2948

By Representatives Apt, Aylward, Baker, Barr, Chronister, Flottman, W. Fuller, Hassler, Nichols and Roenbaugh

0018 AN ACT enacting the Kansas equal credit opportunity act.

0019 *Be it enacted by the Legislature of the State of Kansas:*

0020 Section 1. As used in this act:

0021 (a) "Applicant" means any person who applies to a creditor
0022 directly for an extension, renewal or continuation of credit, or
0023 applies to a creditor indirectly by use of an existing credit plan
0024 for an amount exceeding a previously established credit limit.

0025 (b) "Credit" means the right granted by a creditor to a debtor
0026 to defer payment of debt or to incur debts and defer its payment
0027 or to purchase property or services and defer payment therefor.

0028 (c) "Creditor" means any person who regularly extends,
0029 renews or continues credit; any person who regularly arranges
0030 for the extension, renewal or continuation of credit; or any
0031 assignee of an original creditor who participates in the decision
0032 to extend, renew or continue credit.

0033 (d) "Person" means a natural person, a corporation, govern-
0034 ment or governmental subdivision or agency, trust, estate, part-
0035 nership, cooperative or association.

0036 (e) ~~"Commission" means the commission on civil rights
0037 created pursuant to K.S.A. 44-1003, and amendments thereto.~~

0038 (f) "Adverse action" means a denial or revocation of credit, a
0039 change in the terms of an existing credit arrangement, or a refusal
0040 to grant credit in substantially the amount or on substantially the
0041 terms requested. Such term does not include a refusal to extend
0042 additional credit under an existing credit arrangement where the
0043 applicant is delinquent or otherwise in default, or where such
0044 additional credit would exceed a previously established credit
0045 limit.

Creditor shall not include public utilities regulated by the Kansas Corporation Commission which have filed tariffs or practices related to billing and collection with that Commission.

"Commissioner" means the consumer credit commissioner.

0046 Sec. 2. (a) It shall be unlawful for any creditor to discrimi-
0047 nate against any applicant, with respect to any aspect of a credit
0048 transaction:

0049 (1) On the basis of race, color, religion, national origin, sex,
0050 marital status or age, provided the applicant has the capacity to
0051 contract;

0052 (2) because all or part of the applicant's income derives from
0053 any public assistance program; or

0054 (3) because the applicant has in good faith exercised any
0055 right under this act.

0056 (b) It shall not constitute discrimination for purposes of this
0057 act for a creditor:

0058 (1) To make an inquiry of marital status if such inquiry is for
0059 the purpose of ascertaining the creditor's rights and remedies
0060 applicable to the particular extension of credit and not to dis-
0061 criminate in a determination of credit-worthiness;

0062 (2) to make an inquiry of the applicant's age or of whether the
0063 applicant's income derives from any public assistance program if
0064 such inquiry is for the purpose of determining the amount and
0065 probable continuance of income levels, credit history or other
0066 pertinent element of credit-worthiness;

0067 (3) to use any empirically derived credit system which con-
0068 siders age if such system is demonstrably and statistically sound,
0069 except that in the operation of such system the age of an elderly
0070 applicant may not be assigned a negative factor or value; or

0071 (4) to make an inquiry or to consider the age of an elderly
0072 applicant when the age of such applicant is to be used by the
0073 creditor in the extension of credit in favor of such applicant.

0074 (c) It is not a violation of this section for a creditor to refuse to
0075 extend credit offered pursuant to:

0076 (1) Any credit assistance program expressly authorized by
0077 law for an economically disadvantaged class of persons if such
0078 refusal is required by or made pursuant to such program;

0079 (2) any credit assistance program administered by a nonprofit
0080 organization for its members or an economically disadvantaged
0081 class of persons if such refusal is required by or made pursuant to
0082 such program; or

0083 (3) any special purpose credit program offered by a profit-
0084 making organization to met special social needs if such refusal is
0085 required by or made pursuant to such program.

0086 Sec. 3. (a) Within 30 days or such longer reasonable time as
0087 specified in rules and regulations adopted by the ~~commission~~ for
0088 any class of credit transaction, after receipt of a completed
0089 application for credit, a creditor shall notify the applicant of its
0090 action on the application.

0091 (b) Each applicant against whom adverse action is taken shall
0092 be entitled to a statement of reasons for such action from the
0093 creditor. A creditor satisfies this obligation by:

0094 (1) Providing statements of reasons in writing as a matter of
0095 course to applicants against whom adverse action is taken; or

0096 (2) giving written notification of adverse action which dis-
0097 closes: (A) The applicant's right to a statement of reasons
0098 within 30 days after receipt by the creditor of a request made
0099 within 60 days after such notification; and (B) the identity of

0100 the person or office from which such statement may be obtained.
0101 Such statement may be given orally if the written notification
0102 advises the applicant of his right to have the statement of reasons
0103 confirmed in writing on written request.

0104 (c) A statement of reasons meets the requirements of this
0105 section only if it contains the specific reasons for the adverse
0106 action taken.

0107 (d) Where a creditor has been requested by a third party to
0108 make a specific extension of credit directly or indirectly to an
0109 applicant, the notification and statement of reasons required by
0110 this section may be made directly by such creditor, or indirectly
0111 through the third party, provided in either case that the identity
0112 of the creditor is disclosed.

0113 (e) The requirements of subsections (b), (c) and (d) may be
0114 satisfied by verbal statements or notifications in the case of any
0115 creditor who did not act on more than 150 applications during
0116 the calendar year preceding the calendar year in which the
0117 adverse action is taken.

0118 Sec. 4. (a) Each party to a marriage may apply for the sepa-
0119 rate extension of consumer credit in any case where each party to

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0120 a marriage voluntarily applies for separate credit from the same
0121 creditor.

0122 (b) When each party to a marriage separately and voluntarily
0123 applies for and obtains separate credit accounts with the same
0124 creditor, those accounts shall not be aggregated or otherwise
0125 combined for purposes of determining permissible finance
0126 charges or permissible loan ceilings.

0127 Sec. 5. No provisions of this act imposing liability shall
0128 apply to any act done or omitted by a creditor done in good faith.

0129 Sec. 6. Every person subject to this act shall keep posted in a
0130 conspicuous place or places on the person's premises notices to
0131 be prepared or approved by the ~~commission~~, which shall set
0132 forth excerpts of this act and such other relevant information
0133 which the ~~commission~~ considers necessary to explain the act.

0134 ~~Sec. 7. Any person aggrieved by any alleged unlawful credit
0135 practice may file a complaint with the commission, the commis-
0136 sion shall process a complaint in the manner provided for proc-
0137 essing complaints of unlawful employment practices, and the
0138 complaint shall be heard and orders issued, in the same manner
0139 as provided for unlawful employment practices under the Kansas
0140 act against discrimination. Rehearing and judicial review of the
0141 commission's decision in the case shall be conducted in the
0142 manner provided by K.S.A. 44-1010 and 44-1011, and amend-
0143 ments thereto.~~

0144 ~~Sec. 8. (a) No person shall willfully resist, prevent, impede
0145 or interfere with the commission or any of its members or
0146 representatives in the performance of duty under this act or shall
0147 willfully violate any order of the commission.~~

0148 (b) Violation of this section is a misdemeanor punishable by
0149 ~~imprisonment for not more than one year or by a fine of not more
0150 than \$500, or both.~~

0151 ~~(c) Lawful use of procedures for review of a commission
0152 order shall not be considered a violation of this section.~~

0153 ~~Sec. 9. (a) Any creditor who fails to comply with any re-
0154 quirement imposed under this act shall be liable to the aggrieved
0155 applicant for any actual damages sustained by such applicant
0156 acting either in an individual capacity or as a member of a class.~~

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0157 ~~(b) Any creditor, other than a government or governmental~~
 0158 ~~subdivision or agency, who fails to comply with any requirement~~
 0159 ~~imposed under this act shall be liable to the aggrieved applicant~~
 0160 ~~for punitive damages in an amount not greater than \$10,000, in~~
 0161 ~~addition to any actual damages provided in subsection (a) of this~~
 0162 ~~section, except that in the case of a class action the total recovery~~
 0163 ~~under this subsection shall not exceed the lesser of \$500,000 or 1~~
 0164 ~~per centum of the net worth of the creditor. In determining the~~
 0165 ~~amount of such damages in any action, the court shall consider,~~
 0166 ~~among other relevant factors, the amount of any actual damages~~
 0167 ~~awarded, the frequency and persistence of failures of compliance~~
 0168 ~~by the creditor, the resources of the creditor, the number of~~
 0169 ~~persons adversely affected and the extent to which the creditor's~~
 0170 ~~failure of compliance was intentional.~~

8.

0171 Sec. ~~10.~~ (a) The provisions of this act shall be construed
 0172 liberally for the accomplishment of its purposes.

0173 (b) Nothing in this act shall be construed to mean that a
 0174 creditor shall be forced to extend credit to an uncredit-worthy
 0175 person.

0176 Sec. ~~11.~~ The ~~commission~~ may adopt rules and regulations to
 0177 carry out the provisions of this act.

9.

0178 Sec. ~~12.~~ This act shall take effect and be in force from and
 0179 after its publication in the statute book.

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10.

Substitute for HOUSE BILL NO. 2650

By Committee on Commercial and Financial Institutions

AN ACT concerning the uniform consumer credit code; relating to finance charges; amending K.S.A. 1983 Supp. 16a-2-401 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1983 Supp. 16a-2-401 is hereby amended to read as follows: 16a-2-401. (1) With respect to a consumer loan, including a loan pursuant to open end credit, a lender may contract for and receive a finance charge, calculated according to the actuarial method, not exceeding 18% per year on the unpaid balance of the amount financed not exceeding \$1,000 and 14.45% per year on that portion of the unpaid balance in excess of \$1,000.

(2) As an alternative to the rates set forth in subsection (1), with respect to a supervised loan made under a license issued by the administrator, including a loan pursuant to open end credit, a supervised lender may contract for and receive a finance charge, calculated according to the actuarial method, not exceeding the equivalent of the greater of either of the following:

The total of: (a) Thirty-six percent per year on that part of the unpaid balance of the amount financed which is \$300 or less; and

(b) twenty-one percent per year on that part of the unpaid balance of the amount financed which is more than \$300, but does not exceed \$1,000; and

(c) fourteen and forty-five hundredths percent per year on that portion of the unpaid balance of the amount financed which is more than \$1,000; or

(d) eighteen percent per year on the unpaid balance of the

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amount financed.

(3) This section does not limit or restrict the manner of calculating the finance charge, whether by way of add-on, discount, or otherwise, so long as the rate of the finance charge does not exceed that permitted by this section. The finance charge may be contracted for and earned at the single annual percentage rate that would earn the same finance charge as the graduated rates when the debt is paid according to the agreed terms and the calculations are made according to the actuarial method. If the loan is precomputed:

(a) The finance charge may be calculated on the assumption that all scheduled payments will be made when due; and

(b) the effect of prepayment is governed by the provisions on rebate upon prepayment (section 16a-2-510).

(4) The term of a loan for the purposes of this section commences on the date the loan is made. Differences in the lengths of months are disregarded and a day may be counted as 1/30th of a month. Subject to classifications and differentiations the lender may reasonably establish, a part of a month in excess of 15 days may be treated as a full month if periods of 15 days or less are disregarded and that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

(5) Subject to classifications and differentiations the lender may reasonably establish, the lender may make the same finance charge on all amounts financed within a specified range. A finance charge so made does not violate subsections (1) and (2) if:

(a) When applied to the median amount within each range, it does not exceed the maximum amount permitted in subsections (1) and (2); and

(b) when applied to the lowest amount within each range, it does not produce a rate of finance charge exceeding the rate calculated according to paragraph (a) by more than 8% of the rate calculated according to paragraph (a).

(6) Notwithstanding subsections (1) and (2), a lender may contract for and receive a minimum finance charge of not more than \$5 when the amount financed does not exceed \$75, or not more than \$7.50 when the amount financed exceeds \$75.

(7) This section shall not apply to a loan secured by an interest in land the interest rate of which is governed by subsection (b) of K.S.A. 16-207, and amendments thereto, unless made subject hereto by agreement.

(8) Subsections (1), (2) and (9) of this section shall not apply to a loan secured by an interest in land subordinate to a prior mortgage and held by a lender other than the lender of the first mortgage, the interest rate of which is governed by subsection (b) or (h) of K.S.A. 16-207, and any amendments thereto, unless made subject hereto by agreement.

(9) As an alternative to the rates set forth in subsection (1) and subsection (2)(d), during the period beginning on the effective date of this act and ending July 1, 1985, a supervised lender may contract for and receive a finance charge not exceeding 21% per year on the unpaid balance of the amount financed.

(10) A lender shall not contract for or receive a nonrefundable prepaid finance charge, except as permitted by rules and regulations adopted by the commissioner. Such rules and regulations may permit the lender to contract for and receive a nonrefundable origination fee of up to, but not to exceed, 3% discounted from the amount financed.

Sec. 2. K.S.A. 1983 Supp. 16a-2-401 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Attachment I

STATEMENT OF JEFFREY S. SOUTHARD,
ASSISTANT ATTORNEY GENERAL

TO: House Commercial and Financial Institutions Committee

RE: Substitute for House Bill No. 2650

DATE: February 28, 1984

On behalf of Attorney General Stephan, I would like to thank the Committee for this opportunity to appear and speak in favor of the above measure. As the attorney who renders assistance on civil (non-litigation) matters to the Consumer Credit Commissioner, I am familiar with the background for this bill, and in fact appeared before the committee last week when it was initially introduced. I believe the changes contained in this bill would accomplish two things: (1) clarify the intent of the legislature as to adjustable term loans made under the UCCC; and (2) allow the commissioner to set by regulation the maximum amount of points which can be charged.

K.S.A. 16a-2-401 was amended in 1982 through the addition of a subsection (8). This was done at the same time that subsection (h) was added to K.S.A. 16-207. Both subsections authorized lenders to make loans in which the rate of interest, the term of the loan or the amortization schedule could be adjustable. In that the UCCC's coverage of real estate loans only extends to second mortgage loans in which another lender holds the first lien, these loans are specifically referred to in subsection (8) of K.S.A. 16a-2-401. The subsection was intended to remove such loans from the finance charge ceiling contained in several other subsections, for the adjustable rate feature would be meaningless if the initial finance charge was already at the ceiling allowed by law. However, as the subsection is worded, it states that "this section" shall not apply to adjustable term loans. "This section" includes both the finance charge provisions and other, unrelated sections. The amendment to subsection (8) would make it clear that only the finance charge limits are inapplicable to adjustable rate loans, which are otherwise governed by the terms of the UCCC.

*Atch. II
2/28/84*

The second change would add a new subsection (10) to K.S.A. 16a-2-401, and concerns the charging of points. Points are a form of finance charge which are collected up-front. For example, if a consumer wishes to borrow 1,000 and is charged 5 points in addition to the finance charge, he must actually borrow \$1,050 in order to receive the desired sum. The \$50 is retained by the lender as points. Until the present, points were not used much under the UCCC, since in the event of prepayment they were included in the prepaid finance charge which was subject to refund, in whole or in part. Now, with the presence of subsection (8) in K.S.A. 16a-2-401, at least one finance company has taken the position that the provisions concerning rebate upon prepayment do not apply, with the result that non-refundable points, sometimes up to 10 or more, are assessed. The effect of this practice allows the company to advertise a lower finance charge rate, but leaves the consumer, in the end, paying the same amount. Further, in the event of prepayment, a consumer is worse off than under even the Rule of 78'th's.

The attached two sheets demonstrate how this works in the case of an actual loan. A consumer who wishes to borrow \$34,225 can go one of two ways. Under the traditional method, he pays an interest rate of 17.1%, makes a total of 120 payments at \$596.99 and pays a total of \$71,638.80. After 19 payments, he has reduced the principal balance to \$31,859.53. Under the new approach, he pays an interest rate of 15%, makes a total of 120 payments at \$596.94, and pays a total of \$71,632.80. However, after 19 payments, he has a principal balance of \$34,136.87, or a little less than \$100 under what he initially borrowed. Should he now wish to pay off the loan, he will have to come up with \$34,136.87, or more than \$2,100 than he would under the other method. Non-refundable points do make a difference, although the distinction is a subtle one which most consumers do not understand.

The proposed new subsection (10) would allow the commissioner to set, by regulation, a limit on the amount of non-refundable finance charge which can be imposed. The top level, 3 points, is

in the ballpark with what is now being charged by banks and savings and loan institutions. In that non-refundable points only come into play when a real estate loan is made under the UCCC with adjustable terms, I would suggest adding the phrase "in a loan made under the provisions of subsection (8) of this section." This would tie the non-refundable point limit clearly into the type of loan where they have been made.

Thank you for your consideration of this measure. If I can be of any assistance in your deliberations, please let me know.

INSTALLMENT LOAN

PRINCIPAL **\$34,225.00**
 FEES FIN. \$0.00
 # of PAYMENTS 120
 PAYMENTS/YEAR 12
 TODAY'S DATE
 2-03-1984
 1ST PAYMENT DATE
 3-03-1984
 DAYS to PAYMENT # 1
 (360) 30
 INTEREST RATE 17.1000%
 INSURANCE CODE 0.0

PAYMENT \$596.99
 COST/DAY \$0.00

ITEMIZATION

TODAY'S DATE
 2-03-1984
 1ST PAYMENT DATE
 3-03-1984
 DAYS to PAYMENT # 1
 (360) 30

PRINCIPAL \$34,225.00
 FEES FIN. \$0.00

PRIN+FEES \$34,225.00

INSURANCE CODE 0.0
 LIFE \$0.00
 A&H \$0.00
 LVL. LIFE \$0.00

TOTAL INS \$0.00
 COST/DAY \$0.00

AMT. FIN. \$34,225.00

INTEREST \$37,413.80
 ODD DAYS \$0.00
 BASE CHARGES \$0.00

TOTAL FINANCE CHARGE
\$37,413.80

* PYMTS **\$71,638.80**

APR 17.0999

 PAYMENTS/YEAR 12

1-120 PAYMENTS =

\$596.99

 CONSUMER
 CREDIT
 COMMISSIONER

INTEREST RATE **17.1000%**

PAYMENT # 1
 INTEREST \$487.71
 PRINCIPAL \$109.28
 BALANCE \$34,115.72

PAYMENT # 2
 INTEREST \$486.15
 PRINCIPAL \$110.84
 BALANCE \$34,004.88

INTEREST \$484.57
 PRINCIPAL \$112.42
 BALANCE \$33,892.46

PAYMENT # 4
 INTEREST \$482.97
 PRINCIPAL \$114.02
 BALANCE \$33,778.44

PAYMENT # 5
 INTEREST \$481.34
 PRINCIPAL \$115.65
 BALANCE \$33,662.79

PAYMENT # 6
 INTEREST \$479.69
 PRINCIPAL \$117.30
 BALANCE \$33,545.49

PAYMENT # 7
 INTEREST \$478.02
 PRINCIPAL \$118.97
 BALANCE \$33,426.52

PAYMENT # 8
 INTEREST \$476.33
 PRINCIPAL \$120.66
 BALANCE \$33,305.86

PAYMENT # 9
 INTEREST \$474.61
 PRINCIPAL \$122.38
 BALANCE \$33,183.48

PAYMENT # 10
 INTEREST \$472.86
 PRINCIPAL \$124.13
 BALANCE \$33,059.35

PAYMENT # 11
 INTEREST \$471.10
 PRINCIPAL \$125.89
 BALANCE \$32,933.46

PAYMENT # 12
 INTEREST \$469.30
 PRINCIPAL \$127.69
 BALANCE \$32,805.77

PAYMENT # 13
 INTEREST \$467.48
 PRINCIPAL \$129.51
 BALANCE \$32,676.26

PAYMENT # 14
 INTEREST \$465.64
 PRINCIPAL \$131.35
 BALANCE \$32,544.91

PAYMENT # 15
 INTEREST \$463.76
 PRINCIPAL \$133.23
 BALANCE \$32,411.68

PAYMENT # 16
 INTEREST \$461.87
 PRINCIPAL \$135.12
 BALANCE \$32,276.56

PAYMENT # 17
 INTEREST \$459.94
 PRINCIPAL \$137.05
 BALANCE \$32,139.51

PAYMENT # 18
 INTEREST \$457.99
 PRINCIPAL \$139.00
 BALANCE \$32,000.51

PAYMENT # 19
 INTEREST \$456.01
 PRINCIPAL \$140.98
 BALANCE \$31,859.53

INSTALLMENT LOAN

PRINCIPAL \$34,225.00 ✓
FEES FIN. \$2,775.00 pts
of PAYMENTS 120
PAYMENTS/YEAR 12
TODAY'S DATE
2-03-1984
1ST PAYMENT DATE
3-04-1984
DAYS to PAYMENT # 1
(365) 30
INTEREST RATE 15.0000%
INSURANCE CODE 0.0

PAYMENT \$596.94
COST/DAY \$0.00

♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦
ITEMIZATION
♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦

TODAY'S DATE
2-03-1984
1ST PAYMENT DATE
3-04-1984
DAYS to PAYMENT # 1
(365) 30

PRINCIPAL \$34,225.00
FEES FIN. \$2,775.00

PRIN+FEES \$37,000.00

INSURANCE CODE 0.0
LIFE \$0.00
A&H \$0.00
LVL. LIFE \$0.00

TOTAL INS \$0.00
COST/DAY \$0.00

AMT. FIN. \$37,000.00

INTEREST \$34,632.80
ODD DAYS \$0.00
BASE CHARGES \$0.00

TOTAL FINANCE CHARGE
\$34,632.80

* PYMTS \$71,632.80

APR 14 1984

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PAYMENTS/YEAR 12

1-120 PAYMENTS =
\$596.94

♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦
CONSUMER
CREDIT
COMMISSIONER
♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦

INTEREST RATE 15.0000%

PAYMENT # 1
INTEREST \$462.50
PRINCIPAL \$134.44
BALANCE \$36,865.56

PAYMENT # 2
INTEREST \$460.82
PRINCIPAL \$136.12
BALANCE \$36,598.82

INTEREST \$459.12
PRINCIPAL \$137.82
BALANCE \$36,591.62

PAYMENT # 4
INTEREST \$457.40
PRINCIPAL \$139.54
BALANCE \$36,452.08

PAYMENT # 5
INTEREST \$455.65
PRINCIPAL \$141.29
BALANCE \$36,310.79

PAYMENT # 6
INTEREST \$453.88
PRINCIPAL \$143.06
BALANCE \$36,167.73

PAYMENT # 7
INTEREST \$452.10
PRINCIPAL \$144.84
BALANCE \$36,022.89

PAYMENT # 8
INTEREST \$450.29
PRINCIPAL \$146.65
BALANCE \$35,876.24

PAYMENT # 9
INTEREST \$448.45
PRINCIPAL \$148.49
BALANCE \$35,727.75

PAYMENT # 10
INTEREST \$446.60
PRINCIPAL \$150.34
BALANCE \$35,577.41

PAYMENT # 11
INTEREST \$444.72
PRINCIPAL \$152.22
BALANCE \$35,425.19

PAYMENT # 12
INTEREST \$442.81
PRINCIPAL \$154.13
BALANCE \$35,271.06

PAYMENT # 13
INTEREST \$440.89
PRINCIPAL \$156.05
BALANCE \$35,115.01

PAYMENT # 14
INTEREST \$438.94
PRINCIPAL \$158.00
BALANCE \$34,957.01

PAYMENT # 15
INTEREST \$436.96
PRINCIPAL \$159.98
BALANCE \$34,797.03

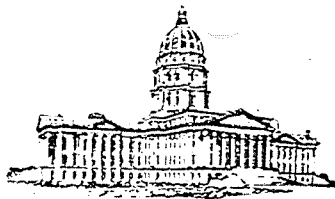
PAYMENT # 16
INTEREST \$434.96
PRINCIPAL \$161.98
BALANCE \$34,635.05

PAYMENT # 17
INTEREST \$432.94
PRINCIPAL \$164.00
BALANCE \$34,471.05

PAYMENT # 18
INTEREST \$430.89
PRINCIPAL \$166.05
BALANCE \$34,305.00

PAYMENT # 19
INTEREST \$428.81
PRINCIPAL \$168.13
BALANCE \$34,136.07 ←

KENNETH R. KING
 REPRESENTATIVE, SEVENTY-SEVENTH DISTRICT
 BUTLER COUNTY



TOPEKA

HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS
 VICE CHAIRMAN PUBLIC HEALTH AND WELFARE
 MEMBER ASSESSMENT AND TAXATION
 COMMERCIAL AND FINANCIAL INSTITUTIONS
 LEGISLATIVE JUDICIAL AND
 CONGRESSIONAL APPORTIONMENT

February 24, 1984

NOTIFICATION OF SUB-COMMITTEE ACTION

HOUSE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS

The sub-committee has met and discussed the proposed changes in the U.C.C.C. statutes. After a thorough review of the proposed changes, the sub-committee unanimously recommends in this report to the Committee that House Bill 2639 be killed.

Kenneth King
 KENNETH KING, Chairman, Sub-Committee

Ivan Sand
 IVAN SAND, Member

Kenneth Francisco
 KENNETH FRANCISCO, Member

Atch. VI
2/28/84