

MINUTES OF THE HOUSE COMMITTEE ON COMMERCIAL & FINANCIAL INSTITUTIONS

The meeting was called to order by Rep. Harold P Dyck at
Chairperson

3:30 ~~am~~/p.m. on February 28, 1985 in room 527S of the Capitol.

All members were present except:

Committee staff present: Bill Wolff, Legislative Research Department
Bruce Kinzie, Revisor of Statutes Office
Myrta Anderson, Legislative Research Department
Virginia Conard, Committee Secretary

Conferees appearing before the committee:

Rep. Bruce Mayfield
John Wurth, Securities Commissioner
Rep. David Heinemann
Leroy Schmidt, Secretary, Kansas Association
of Certified Development Companies
Harold Stones, Executive Vice President
Kansas Bankers Association
Mark Ward, Big Lake Regional Council
of Certified Development Companies,
Manhattan

Ms. Jean O'Brien, Shawnee County
Register of Deeds
Ms. Gerry Ray, Legislative Liason for
Johnson County Bd of Commissioners
Beverly Bradley, Kansas Association
of Counties
Trom Groneman, Register of Deeds,
Wyandotte County
Kim Dewey, Intergovernmental Coordin-
ators, Sedgwick County

Chairman Harold Dyck called the meeting to order and called on the first conferee, Rep. Bruce Mayfield, who testified for HB2360. Mr. Mayfield said that this bill increases from 15 to 35 the number of individuals who could be limited partners in a private offering limited partnership in the State of Kansas. (See Attachment I for further details.)

John Wurth, Securities Commissioner, also testified in support of HB2360.

There being no further conferees for HB2360, the chairman called on Rep. David Heinemann, author of HB2354. Rep. Heinemann said that he was concerned about the government small business 503 program and wanted through this bill to eliminate the payment of mortgage fees on loans under the 503 program. Currently, Registers of Deeds require certified development companies to pay the mortgage fees under the 503 program.

Leroy Schmidt, Secretary of the Kansas Association of Certified Development Companies, testified in favor of HB2354. Mr. Schmidt said that the borrowers ask why they have to pay registration tax on loans that are federally funded while other federally funded loans are not similarly taxed. He said there are discrepancies among the different counties in Kansas about these fees charges by registers of deeds and that a ruling is needed to clarify whether registers of deeds should charge these mortgage fees.

Harold Stones, executive vice president of the Kansas Bankers Association, submitted a proposed amendment to HB2354. (See Attachment II)

Mark Ward of the Big Lake Regional Council of Certified Development Companies, Manhattan, spoke in favor of HB2354.

The chairman called on the first conferee opposing HB2354, Jean O'Brien, Shawnee County Register of Deeds, who asked to be withdrawn as an opposing conferee today.

Ms. Gerry Ray, speaking on behalf of Johnson County Register of Deeds Rubie Scott, said that this bill as written could cost Johnson County up to \$2 million a year in registration fees.

Mrs. Beverly Bradley, Kansas Association of Counties, introduced Tom Groneman, Register of Deeds of Wyandotte County, who testified in opposition to HB2354. (See Attachment III for details.) Mr. Groneman also distributed copies of a March 21, 1977, Attorney General Opinion on Mortgage Registration Tax Exemption. (Attachment IV)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON COMMERCIAL & FINANCIAL INSTITUTIONS,
room 527-S, Statehouse, at 3:30 ~~xxx~~ ~~pm~~ /p.m. on February 28, 19 85

Kim Dewey, Intergovernmental Coordinator of Sedgwick County, testified in opposition to HB2354, stating that this bill in its present form would affect greatly the County General Fund. (See Attachment V)

There being no further conferees for HB2354, the chairman called on Mike Heitman, deputy bank commissioner, who testified on behalf of HB2428, which amends the statute governing the examination fees for the State Banking Commission. (See Attachment VI.)

Following a period of questioning by the committee members, Chairman Dyck asked Mr. Heitman to draft a paper in response to the questions raised by the committee members, and to include in that paper the charges of federally chartered banks which are assessed for examinations, and a comparison of fees charged in another state, such as Missouri.

The chairman then directed the committee's attention to HB2137, which had been heard at Tuesday's meeting and which had had an amendment proposed to it by Conferee Stanley Lind. The chairman asked staff member Bruce Kinsie to distribute the proposed amendment drawn up for HB2137 by the Office of the Revisor of Statutes. (Attachment VII)

The committee did not take any action on the bill.

The chairman then directed the committee's attention to HB2323, which had been heard at the last committee meeting. Rep. Dorothy Nichols distributed copies (Attachment VIII) of a letter from the Kansas Deputy Attorney General regarding HB2323. Since members did not have copies of the proposed amendment, the bill was passed over.

Rep. David Louis moved that the minutes of the February 26, 1985, be approved.
Rep. Bob Ott seconded the motion. Motion carried.

The meeting adjourned at 4:55 p.m.

BRUCE MAYFIELD
 REPRESENTATIVE, 22ND DISTRICT
 6707 W. 80TH STREET
 OVERLAND PARK, KANSAS 66204



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HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS
 MEMBER: EDUCATION
 PENSIONS, INVESTMENTS AND
 BENEFITS
 LEGISLATIVE, JUDICIAL AND
 CONGRESSIONAL APPORTIONMENT

TESTIMONY ON HB 2360

BY

BRUCE MAYFIELD

SUMMARY:

Currently, the total amount of individuals permitted to participate, as limited partners, in a private offering limited partnership in the State of Kansas is 15. This bill simply increases the number of individuals permitted to participate in a Kansas investment venture to 35.

The original limit of 15 was selected in a somewhat arbitrary fashion with the intent that some limit should be maintained to prevent possible fraud and corruption that might accompany massive syndications. Also, the current limit of 15 simply mirrored the old Federal limit which was also arbitrarily selected for the same reason. Most individuals involved in the investment community agree that the current law is out-dated and too restrictive. From the investor's perspective, this limit does not permit an average investor to participate in a larger investment project where a greater leverage brings a greater return on investment.

SUPPORT:

This proposed legislation has encountered a very positive response from virtually every person and group in the investment community. This includes the Securities Commissioner, John Wurth, who presently heads a task force established to study and propose changes in the entire Securities Act.

FISCAL NOTE:

No additional personnel will be required to oversee or administrate this proposed legislation; therefore, there is no anticipated fiscal note.

IMPACT:

The impact of enacting this proposed legislation would be an over-all stimulation of investment opportunities and economic growth within this state. As interest rates level off and the rate of appreciation of real property reduces, this bill will spark renewed enthusiasm toward investments in Kansas' small businesses, real estate syndications and other Kansas investment opportunities.

I urge your support for passage of this House Bill 2360.

Mr. Chairman:

Move to amend House Bill 2354 on Page 2, Line 61 by adding the words, ",all or part of which is" between the words "mortgage" and "guaranteed".

Section 1 (d) (6) would then read as follows:

"any mortgage, all or part of which is insured by the federal government or an agency thereof;"

This could provide some assistance to those farmers who will qualify for loan guarantees under the Debt Assistance Program being offered by the FmHA through commercial lenders. In some cases, although probably not many, if real estate is collateral, a new mortgage filing may be required when the loan is written down and refinanced. These people whose loans will be refinanced are probably least able to pay additional fees.

Harold A. Stones
KS Bankers Assn.

Chairman Harold Dyck:

Members of the House Commercial and Financial Institutions Committee:

Mr. Chairman, Members of the Committee, my name is Tom Groneman, I am the Chairman of the Legislative Committee of the Kansas Register of Deeds Association. I am here today to speak in opposition to HB 2354.

The Kansas Register of Deeds Association is opposed to this bill because of the fiscal impact it will have on the counties. At the present time the Federal Government and agencies thereof are exempt from mortgage registration tax. Mortgages made directly by the U. S. government where they own the obligation, (have loaned the money directly) and take a mortgage on the borrowers land to secure payment of the debt are exempt from taxation. What this bill will do is extend the immunity intended for the federal government to private lending institutions.

At this time it would be difficult to ascertain the exact fiscal impact this bill would have on the County General Fund without contacting each lender on each loan to determine if the mortgage was insured or guaranteed. However, with the mortgages on record that recite that they are guaranteed or insured along with the V.A., F.H.A., F.H.A. Title 1 Home Improvement loans that we know are insured or guaranteed we can estimate that the passage of this bill would cut mortgages fees paid to the counties by at least fifty percent. In my county this will mean a loss of at least \$250,000.

Another concern we have with this bill is the burden of determining whether the mortgage is in fact a federally insured or guaranteed loan. I would be glad to answer any questions you may have.



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

March 21, 1977

ATTORNEY GENERAL OPINION NO. 77-103

Mr. Laurel D. McClellan
Wilson County Attorney
430 North Seventh Street
Fredonia, Kansas 66736

RE: Taxation - Mortgage Registration Tax - Exemption

SYNOPSIS: The mortgage registration fee is a tax upon the debt or obligation secured by the instrument offered for recording, and is in lieu of all other taxation upon that debt. The tax is paid by the owner of that debt, who pays the tax at the time of recording a lien against real estate to secure payment. Where an agency of the federal government owns the debt, a state may not tax the federal agency in securing payment of that debt. It is different where a private bank loans the money, owns the debt, seeks to record a mortgage lien to secure payment, and claims exemption because the Farmers Home Administration, a federal agency, has guaranteed repayment of the loan. The imposition of the registration tax on the bank is no direct burden on the federal agency, nor does it impair its usefulness. The bank cannot clothe itself with the immunities of the agency.

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Dear Mr. McClellan:

You say that the United States Department of Agriculture, acting through the Farmers Home Administration, guarantees private loans made by accredited lending institutions. You have an accredited private bank which has loaned its own money to a private borrower and wants to secure the loan by a mortgage on the borrowers land. The FHA has guaranteed payment of any loss suffered by the bank in making this loan. You ask if there is any exemption from registration tax of this particular mortgage because the FHA has guar-

ATTACHMENT 4

2/28/85

r. Laurel D. McClellan
March 21, 1977
Page Two

anted the loan.

Where a federal agency makes the loan itself, owns the obligation, and takes a mortgage on the borrower's land to secure repayment of the loan to the agency, there is no question but that the general rule, of exemption of federal agencies and instrumentalities from state or local taxation, applies. Home Owners Loan Corp. v. Anderson, 145 Kan. 209, Syl. #1, 64 P.2d 14 (1937).

But we do not have that situation here. This mortgagee is a private bank. It has loaned its own money to a private borrower. It wants a mortgage recorded against land to secure repayment of its loan. Even if the borrower be an exempt body, this does not excuse the private bank from the registration tax. Assembly of God v. Sangster, 178 Kan. 678, 680, 290 P.2d 1057 (1955). It is the mortgagee who is interested in recording a mortgage, and it is he who pays the fee.

The registration tax is imposed, not directly on the FHA, but directly upon the bank. This tax does not burden any governmental function of the federal agency, or impair its usefulness and efficiency, or frustrate the purpose of national legislation. Clinton v. State Tax Comm., 146 Kan. 407, 71 P.2d 857 (1937), cited in support of text in 84 C.J.S. 396, Taxation, Sec. 207. Federal Agencies.

A bank once tried to avoid a mortgage registration tax, claiming it was only a necessary procedural step in a federal plan and scheme, and failed. First National Bank in Dallas v. Lowman, 193 Kan. 349, 395 P.2d 313 (1964). Even a Federal Court in a railroad reorganization order has no authority to order mortgages filed without payment of the Kansas registration taxes. Missouri Pacific Railroad Co. v. Deering, 184 Kan. 283, 336 P.2d 482, cert. den. 361 U.S. 12, 4 L.Ed. 2d 51, 80 S.Ct. 84, rehearing denied, 361 U.S. 904, 4 L.Ed. 2d 159, 80 S.Ct. 206 (1959).

In our opinion the statutory registration fee should be assessed as required by K.S.A. 79-3101 et seq., even though the FHA has guaranteed repayment of the loan. The FHA cannot cast its cloak of exemption over non-exempt taxpayers. See our opinion no. 75-447, dated December 4, 1975.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS:CJM:gw

Testimony of Kim C. Dewey
Board of Sedgwick County Commissioners
House Committee on Commercial and Financial Institutions
HB 2354
February 28, 1985

The Board of Sedgwick County Commissioners and the Sedgwick County Register of Deeds oppose the exemptions from mortgage registration fees provided in HB 2354. Total mortgage registration fees collected in Sedgwick County in 1984 amounted to \$2,192,242. These revenues were credited to the County General Fund.

We conservatively estimate that HB 2354 would result in a reduction of these fees by 50%. These revenues would have to be made up by an increase in property taxes or a reduction in county services. Since the property tax lid would prevent a levy increase to make up the difference, our only choice would be a reduction of services.

The Legislature has already severely reduced revenues flowing to the counties over the past five years, by requiring earlier distribution of tax collections and other measures which drastically affected the interest earnings of counties. The elimination of the intangible tax constituted the loss of another major revenue source. No compensating source of revenue was provided. Quite simply, the counties cannot afford to lose any more. We respectfully request that you consider the many State functions and services which are administered by the counties and paid for through county levied property taxes, and the impact such a drastic reduction of revenues will have on those services.

TESTIMONY OF: MICHAEL D. HEITMANN DEPUTY BANK COMMISSIONER
KANSAS BANKING DEPARTMENT

PRESENTED TO: THE HOUSE COMMITTEE ON COMMERCIAL AND FINAN-
CIAL INSTITUTIONS

DATE: FEBRUARY 28, 1985

HB 2428 amends K.S.A. 9-1703 which governs the method of funding the operations of the Kansas Department of Banking.

Currently, the department examines state banks every 18 months. Each time a bank or trust company is examined, that institution pays the department a fee which is calculated according to the total resources of the bank and a schedule approved by the Banking Board. Currently, the minimum fee assessment is \$400.00. The fees generated by the examinations fund the banking department's budget. If a bank is not examined by the department, it is not assessed a fee.

The amendment changes the method the department assesses its fees from a fee paid per examination to a flat annual assessment payable in two installments. For the assessment, the bank receives an examination; however, any additional examinations or special visits will incur additional charges. The minimum fee assessment will be raised to \$1,000.00. The department may impose a penalty on a bank or trust company which fails to pay its annual assessment.

The department needed a more uniform system of funding the budget to assure that an established amount of revenue would come into the department. In addition, the flat assessment to all banks will assure that each bank shares equally in the financial support of the banking department.

VII

HOUSE BILL No. 2137

By Committee on Commercial and Financial Institutions

1-31

0017 AN ACT relating to interest rates; concerning applicability ~~of~~
0018 ~~contract rate~~ to certain loans; amending K.S.A. 1984 Supp.
0019 16-207 and repealing the existing ~~section~~

thereof

and 16-a-1-301

sections

0020 *Be it enacted by the Legislature of the State of Kansas:*

0021 Section 1. K.S.A. 1984 Supp. 16-207 is hereby amended to
0022 read as follows: 16-207. (a) Subject to the following provision, the
0023 parties to any bond, bill, promissory note or other instrument of
0024 writing for the payment or forbearance of money may stipulate
0025 therein for interest receivable upon the amount of such bond,
0026 bill, note or other instrument of writing, at a rate not to exceed
0027 15% per annum unless otherwise specifically authorized by law.
0028 (b) The maximum rate of interest per annum for notes se-
0029 cured by all real estate mortgages and contracts for deed to real
0030 estate executed on or after the effective date of this act shall be at
0031 an amount equal to 1 1/2 percentage points above the yield of
0032 thirty-year fixed rate conventional home mortgages committed
0033 for delivery within 61 to 90 days accepted under the federal
0034 home loan mortgage corporation's daily offerings for sale on the
0035 last day on which commitments for such mortgages were re-
0036 ceived in the preceding month unless otherwise specifically
0037 authorized by law. Such interest rate shall be computed for each
0038 calendar month and be effective on the first day thereof. The
0039 secretary of state shall publish notice of such maximum interest
0040 rate not later than the second issue of the Kansas register pub-
0041 lished each month. The initial rate of interest upon any conven-
0042 tional loan evidenced by a note secured by a real estate mortgage
0043 shall not exceed the rate quoted in the application executed by
0044 the borrower on the day on which application for such conven-
0045 tional loan is made.

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0046 (c) No penalty shall be assessed against any party for pre-
0047 payment of any home loan evidenced by a note secured by a real
0048 estate mortgage where such prepayment is made more than six
0049 months after execution of such note.

0050 (d) The lender may collect from the borrower: (1) The actual
0051 fees paid a public official or agency of the state, or federal
0052 government, for filing, recording or releasing any instrument
0053 relating to a loan subject to the provisions of this section; and

0054 (2) reasonable expenses incurred by the lender in connection
0055 with the making, closing, disbursing, extending, readjusting or
0056 renewing of loans subject to the provisions of this section.

0057 (e) Any person so contracting for a greater rate of interest
0058 than that authorized by this section shall forfeit all interest so
0059 contracted for in excess of the amount authorized under this
0060 section; and in addition thereto shall forfeit a sum of money, to
0061 be deducted from the amount due for principal and lawful
0062 interest, equal to the amount of interest contracted for in excess
0063 of the amount authorized by this section and such amounts may
0064 be set up as a defense or counterclaim in any action to enforce
0065 the collection of such obligation and the borrower shall also
0066 recover a reasonable attorney fee.

0067 (f) The interest rates prescribed in subsections (a) and (b) of
0068 this section shall not apply to a business or agricultural loan. For
0069 the purpose of this section unless a loan is made primarily for
0070 personal, family or household purposes, the loan shall be con-
0071 sidered a business or agricultural loan. For the purpose of this
0072 subsection, a business or agricultural loan shall include credit
0073 sales and notes secured by contracts for deed to real estate.

0074 (g) Loans made by a qualified plan, as defined in section 401
0075 of the internal revenue code, to an individual participant in such
0076 plan or to a member of the family of such individual participant,
0077 are not subject to the interest rates prescribed in subsections (a)
0078 and (b) of this section.

0079 (h) The interest rates prescribed in subsections (a) and (b) of
0080 this section shall not apply to a note secured by a real estate
0081 mortgage or a contract for deed to real estate where the note or
0082 contract for deed permits adjustment of the interest rate, the term

0083 of the loan or the amortization schedule.

0084 (i) The interest rate prescribed in subsection (a) shall not
0085 apply to a ~~loan or a credit sale made primarily for personal,~~
0086 ~~family or household purposes~~ where the amount financed ex-
0087 ceeds \$25,000.

subsections (a) and (b)

consumer transaction, as defined in K.S.A. 16a-1-301, and amendments thereto,

3. 0088 Sec. ~~2.~~ K.S.A. 1984 Supp. 16-207 ~~is~~ hereby repealed.

are

Sec. 2. - attached

4. 0089 Sec. ~~3.~~ This act shall take effect and be in force from and
0090 after its publication in the statute book.

and 16a-1-301

Sec. 2. K.S.A. 1984 Supp. 16a-1-301 is hereby amended to read as follows: 16a-1-301. In addition to definitions appearing in subsequent articles, in K.S.A. 16a-1-101 through 16a-9-102, and amendments thereto:

(1) "Actuarial method" means the method, defined by rules adopted by the administrator, of allocating payments made on a debt between the amount financed and the finance charge pursuant to which a payment is applied first to the accumulated finance charge and the balance is applied to the unpaid amount financed.

(2) "Administrator" means the administrator designated in the article (article 6) on administration (section 16a-6-103).

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance.

(4) "Amount financed" means the total of the following items:

(a) In the case of a sale, the cash price of the goods, services, or interest in land, less the amount of any down payment whether made in cash or in property traded in, and the amount actually paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest in, a lien on, or a debt with respect to property traded in;

(b) in the case of a loan, the net amount paid to, receivable by, or paid or payable for the account of the debtor, plus the amount of any discount excluded from the finance charge (paragraph (b) of subsection (18) of section 16a-1-301); and

(c) in the case of a sale or loan, to the extent that payment is deferred and the amount is not otherwise included and is authorized and disclosed to the customer:

(i) Amounts actually paid or to be paid by the creditor for registration, certificate of title, or license fees, and

(ii) permitted additional charges (section 16a-2-501).

(5) "Billing cycle" means the time interval between periodic billing statement dates.

(6) "Cash price" of goods, services, or an interest in land

means the price at which they are offered for sale by the seller to cash buyers in the ordinary course of business and may include (a) the cash price of accessories or services related to the sale, such as delivery, installation, alterations, modifications, and improvements, and (b) taxes to the extent imposed on a cash sale of the goods, services, or interest in land. The cash price stated by the seller to the buyer in a disclosure statement is presumed to be the cash price.

(7) "Closing costs" with respect to a debt secured by an interest in land includes:

(a) Fees or premiums for title examination, title insurance, or similar purposes including surveys;

(b) fees for preparation of a deed, settlement statement, or other documents;

(c) escrows for future payments of taxes and insurance;

(d) fees for notarizing deeds and other documents;

(e) appraisal fees; and

(f) credit reports.

(8) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. Whether a term or clause is conspicuous or not is for decision by the trier of fact.

(9) "Consumer" means the buyer, lessee, or debtor to whom credit is granted in a consumer credit transaction.

(10) "Consumer credit sale":

(a) Except as provided in paragraph (b), a "consumer credit sale" is a sale of goods, services, or an interest in land in which:

(i) Credit is granted either by a seller who regularly engages as a seller in credit transactions of the same kind or pursuant to a credit card other than a lender credit card,

(ii) the buyer is a person other than an organization,

(iii) the goods, services, or interest in land are purchased primarily for a personal, family or household purpose,

(iv) either the debt is by written agreement payable in

installments or a finance charge is made, and

(v) with respect to a sale of goods or services, the amount financed does not exceed \$25,000.

(b) A "consumer credit sale" does not include:

(i) A sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card; or

(ii) unless the sale is made subject to K.S.A. 16a-1-101 through 16a-9-102, and amendments thereto, by agreement (section 16a-1-109), a sale of an interest in land, other than sales governed by subsection (10)(b)(iii) of this section, if the finance charge does not exceed 12% per year calculated according to the actuarial method on the unpaid balances of the amount financed on the assumption that the debt will be paid according to the agreed terms and will not be paid before the end of the agreed term; or

(iii) a sale by contract for deed of real estate the interest rate of which is governed by subsection (b) or (h) of K.S.A. 16-207, and any amendments thereto.

(11) "Consumer credit transaction" means a consumer credit sale, consumer lease, or consumer loan or a modification thereof including a refinancing, consolidation, or deferral.

(12) "Consumer lease": A "consumer lease" is a lease of goods:

(a) Which a lessor regularly engaged in the business of leasing makes to a person, other than an organization, who takes under the lease primarily for a personal, family or household purpose;

(b) in which the amount payable under the lease does not exceed \$25,000;

(c) which is for a term exceeding four months; and

(d) which is not made pursuant to a lender credit card.

(13) "Consumer loan":

(a) Except as provided in paragraph (b), a "consumer loan" is a loan made by a person regularly engaged in the business of making loans in which:

- (i) The debtor is a person other than an organization;
- (ii) the debt is incurred primarily for a personal, family or household purpose;
- (iii) either the debt is payable in installments or a finance charge is made; and
- (iv) ~~either~~ the amount financed does not exceed \$25,000 ~~or the debt is secured by an interest in land.~~

(b) Unless the loan is made subject to K.S.A. 16a-1-101 through 16a-9-102, and amendments thereto, by agreement (section 16a-1-109), a "consumer loan" does not include:

- (i) A loan secured by a first real estate mortgage; or
- (ii) a loan secured by a second or other subordinate mortgage if the second or other subordinate mortgage is granted to the same lender as the first mortgage; or
- (iii) a loan made by a qualified plan, as defined in section 401 of the internal revenue code, to an individual participant in such plan or to a member of the family of such individual participant.

(14) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(15) "Credit card" means an arrangement pursuant to which a card issuer gives a cardholder the privilege of purchasing or leasing goods or services, obtaining loans, or otherwise obtaining credit from the card issuer or other persons.

(16) "Creditor" means a person who regularly extends credit in a consumer credit transaction which is payable by a written agreement in more than four installments or for which the payment of a finance charge is or may be required and is the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by written agreement. In the case of credit extended pursuant to a credit card, the creditor is the card issuer and not another person honoring the credit card.

(17) "Earnings" means compensation paid or payable to an individual or for such individual's account for personal services rendered or to be rendered by such individual, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension, retirement, or disability program.

(18) "Finance charge":

(a) "Finance charge" means the sum of:

(i) All charges payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit, including any of the following types of charges which are applicable; interest or any amount payable under a point, discount or other system of charges, however denominated; time price differential, service, carrying or other charge, however denominated; premium or other charge for any guarantee or insurance protecting the creditor against the consumer's default or other credit loss; and

(ii) charges incurred for investigating the collateral or credit-worthiness of the consumer or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable, unless the creditor had no notice of the charges when the credit was granted.

(b) The term does not include:

(i) Charges as a result of default, additional charges (section 16a-2-501), delinquency charges (section 16a-2-502), or deferral charges (section 16a-2-503), or

(ii) if a lender makes a loan to a debtor by purchasing or satisfying obligations of the debtor pursuant to a lender credit card and the purchase or satisfaction is made at less than the face amount of the obligation, the discount, or

(iii) closing costs as defined in section 16a-1-301(7).

(19) "Goods" includes goods not in existence at the time the transaction is entered into and merchandise certificates, but excludes money, chattel paper, documents of title, and

instruments.

(20) Except as otherwise provided, "lender" includes an assignee of the lender's right to payment but use of the term does not in itself impose on an assignee any obligation of the lender with respect to events occurring before the assignment.

(21) "Lender credit card" means a credit card issued by a supervised lender.

(22) "Loan":

(a) Except as provided in paragraph (b), a "loan" includes:

(i) The creation of debt by the lender's payment of or agreement to pay money to the debtor or to a third party for the account of the debtor;

(ii) the creation of debt either pursuant to a lender credit card or by a cash advance to a debtor pursuant to a credit card other than a lender credit card;

(iii) the creation of debt by a credit to an account with the lender upon which the debtor is entitled to draw immediately; and

(iv) the forbearance of debt arising from a loan.

(b) A "loan" does not include the payment or agreement to pay money to a third party for the account of a debtor if the debt of the debtor arises from a sale or lease and results from use of either a credit card issued by a person primarily in the business of selling or leasing goods or services or any other credit card which may be used for the purchase of goods or services and which is not a lender credit card.

(23) "Merchandise certificate" means a writing issued by a seller not redeemable in cash and usable in its face amount in lieu of cash in exchange for goods or services.

(24) "Official fees" means:

(a) Fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest related to a consumer credit sale, consumer lease, or consumer loan; or

(b) premiums payable for insurance in lieu of perfecting a security interest otherwise required by the creditor in connection with the sale, lease, or loan, if the premium does not exceed the fees and charges described in paragraph (a) which would otherwise be payable.

(25) "Open end credit" means an arrangement pursuant to which:

(a) A creditor may permit a consumer, from time to time, to purchase goods or services on credit from the creditor or pursuant to a credit card, or to obtain loans from the creditor or pursuant to a credit card;

(b) the unpaid balance of amounts financed and the finance and other appropriate charges are debited to an account;

(c) the finance charge, if made, is not precomputed but is computed on the outstanding unpaid balances of the consumer's account from time to time; and

(d) the consumer has the privilege of paying the balances in installments.

(26) "Organization" means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(27) "Payable in installments" means that payment is required or permitted by agreement to be made in (a) two or more periodic payments, excluding a down payment, with respect to a debt arising from a consumer credit sale pursuant to which a finance charge is made, (b) four or more periodic payments, excluding a down payment, with respect to a debt arising from a consumer credit sale pursuant to which no finance charge is made, or (c) two or more periodic payments with respect to a debt arising from a consumer loan. If any periodic payment other than the down payment under an agreement requiring or permitting two or more periodic payments is more than twice the amount of any other periodic payment, excluding the down payment, the consumer credit transaction is "payable in installments."

(28) "Person" includes a natural person or an individual,

and an organization.

(29) "Person related to" with respect to an individual means (a) the spouse of the individual, (b) a brother, brother-in-law, sister, sister-in-law of the individual, (c) an ancestor or lineal descendant of the individual or the individual's spouse, and (d) any other relative, by blood, adoption or marriage, of the individual or such individual's spouse who shares the same home with the individual. "Person related to" with respect to an organization means (a) a person directly or indirectly controlling, controlled by or under common control with the organization, (b) an officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization, (c) the spouse of a person related to the organization, and (d) a relative by blood, adoption or marriage of a person related to the organization who shares the same home with such person.

(30) "Precomputed": A finance charge or consumer credit transaction is "precomputed" if the debt is expressed as a sum comprising the amount financed and the amount of the finance charge computed in advance.

(31) "Presumed" or "presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Sale of goods" includes any agreement in the form of a bailment or lease of goods if the bailee or lessee agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the goods upon full compliance with such bailee's or lessee's obligations under the agreements.

(33) "Sale of an interest in land" includes a lease in which the lessee has an option to purchase the interest and all

or a substantial part of the rental or other payments previously made by the lessee are applied to the purchase price.

(34) "Sale of services" means furnishing or agreeing to furnish services and includes making arrangements to have services furnished by another.

(35) "Seller": Except as otherwise provided, "seller" includes an assignee of the seller's right to payment but use of the term does not in itself impose on an assignee any obligation of the seller with respect to events occurring before the assignment.

(36) "Services" includes (a) work, labor, and other personal services, (b) privileges with respect to transportation, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations, and the like, and (c) insurance.

(37) "Supervised financial organization" means a person, other than an insurance company or other organization primarily engaged in an insurance business:

(a) Organized, chartered, or holding an authorization certificate under the laws of this state or of the United States which authorize the person to make loans and to receive deposits, including a savings, share, certificate or deposit account; and

(b) subject to supervision by an official or agency of this state or of the United States.

(38) "Supervised lender" means a person authorized to make or take assignments of supervised loans, either under a license issued by the administrator (section 16a-2-301); or as a supervised financial organization (section 16a-1-301(37)) or as an agricultural credit corporation (section 16a-2-301).

(39) "Supervised loan" means a consumer loan, including a loan made pursuant to open end credit, in which the rate of the finance charge, calculated according to the actuarial method, exceeds 12% per year.

(40) "Written agreement" means an agreement such as a promissory note, contract or lease that is evidence of the

indebtedness. A letter that merely confirms an oral agreement does not constitute a written agreement for purposes of this subsection.



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

February 28, 1985

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

The Honorable Denise Apt
State Representative, 10th District
State Capitol, Room 182-W
Topeka, Kansas 66612

Re: House Bill No. 2323

Dear Representative Apt:

Attorney General Stephan has requested that I convey to you his feelings regarding the above bill, which would amend the Kansas Consumer Protection Act by adding provisions which deal with equal credit opportunity. Rather than incorporating the entire federal act, the bill would add definitions of applicant, credit and creditor, and would make certain credit decisions unconscionable acts.

At the present time, the consumer protection division of this office fields inquiries from the public on this type of question. As an assistant attorney general, I handled this responsibility for over 4 years, and while the volume of such inquiries is not large, it is steady. In that our office cannot enforce the provisions of the federal law, which effectively are enforced by no federal agency, the most we could do was try to arbitrate the problem, or look for some other type of violation of existing state law.

Passage of this measure would not add a new layer of bureaucracy in the state, and would dove-tail well with the type of thing which our office already is handling. It would, however, give us an effective means of dealing with abuses, which however infrequent, are now beyond the reach of any state agency.

I would be happy to respond to any further questions you or the committee might have.

Very truly yours,

Jeffrey S. Southard
Deputy Attorney General

JSS:js

ATTACHMENT 8

2/28/85