

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

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

9 00 a.m./~~p.m.~~ on February 19, 1985 in room 529-S of the Capitol.

All members were present except:

Committee staff present:

Bill Wolff, Legislative Research  
Bruce Kinzie, Revisor of Statutes

Conferees appearing before the committee:

Mike Germann, Kansas Railroad Association  
Jim Maag, Kansas Bankers Association  
Marvin Umholtz, Kansas Credit Union League  
Bud Grant, Kansas Chamber of Commerce and Industry  
Jim Turner, Kansas League of Savings Institutions  
Pat Barnes, Kansas Motor Car Dealers Association  
Terry Humphrey, Kansas Manufactured Housing Institute  
Stan Lind, Kansas Association of Finance Companies

The minutes of February 14 were approved.

The chairman called on Mike Germann, Kansas Railroad Association, for his request for the introduction of a bill. (See Attachment I.) Mr. Germann explained that the bill would permit a self insurer who qualifies under the statute to include vehicles which are leased.

The chairman said that the bill is needed to clarify the statute.

Sen. Burke made a motion to introduce the bill and refer it back to committee. Sen. Kerr seconded, and the motion carried.

The chairman announced that committee discussion would begin on SB 102 dealing with multi-bank holding companies. He asked if the committee would like to act upon the amendment which had been offered by the Securities Commissioner's office during the hearing on the bill.

Sen. Werts made a motion to amend SB 102 on line 43 by striking "bank holding company". Sen. Burke seconded, and the motion carried.

Staff informed the committee that since the time of the hearing on SB 102, it had been discovered that there is another technical problem appearing on line 97 involving proper punctuation. It was pointed out that there should be a comma after "gas royalties" instead of a semicolon otherwise it could be interpreted that every lease is a security.

Sen. Warren made a motion to strike the semicolon and insert a comma after "gas royalties" on line 97 of SB 102. Sen. Reilly seconded the motion, and it carried.

Sen. Werts made a motion to report SB 102 favorably as amended. Sen. Gannon seconded the motion.

Sen. Harder expressed his feeling that even though a statute is necessary, he feels that the committee is refereeing a feud between bankers, and he is not comfortable with the situation. He stated that if multi-banking is good for the state, then all bankers should agree on it.

The chairman called for a vote on the motion made by Sen. Werts, and the motion carried.

The hearing began on SB 123 relating to finance charges under the uniform consumer credit code which had been requested by the Kansas Bankers Association. Jim Maag, Kansas Bankers Association, gave testimony supporting the bill. (See Attachment II.)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,  
room 529-S, Statehouse, at 9:00 a.m. ~~p.m.~~ on February 19, 1985.

Marvin Umholtz, Kansas Credit Union League, followed with testimony in support of SB 123. (See Attachment III.)

The chairman asked Mr. Umholtz if the amendment of which he spoke in his testimony would include reinstating the statutory requirement for the one time thirty day notice of rate change. Mr. Umholtz answered that it would and that an entire new section would have to be amended into the bill.

Bud Grant, Kansas Chamber of Commerce and Industry, gave testimony in support of SB 123. (See Attachment IV.)

Sen. Karr asked what percent retailers are charging now and if there were examples of retailers lowering the rate. Mr. Grant answered that the rates vary, depending on the retailer's internal operations, and that he had no information on rates lowering.

The hearing continued with the testimony of Jim Turner, Kansas League of Savings Institutions. (See Attachment V.)

Pat Barnes, Kansas Motor Car Dealers Association, followed with testimony in support of the bill, his reason being that it is necessary due to the past history of fluctuating high interest rates.

Terry Humphrey, Kansas Manufactured Housing Industry, gave testimony in support of the bill. (See Attachment VI.)

Final testimony in support of SB 123 was given by Stan Lind, Kansas Association of Finance Companies. Mr. Lind passed out copies of charts as an aid in demonstrating to the committee that the 21% alternative rate ceiling is needed. (See Attachment VII.) He explained that charts one and two emphasize the fact that we have been on a roller coaster of prime rates for at least the past ten years. He added that the 21% ceiling is needed in case the prime rate goes back up. Charts three and four are a resume' of all consumer credit code states. He noted that in each state there is a permanent 21% rate with the exception of Kansas where it is temporary and Utah where it is 19.6%. Mr. Lind said that he believes that the 21% should be made permanent in Kansas rather than extending it for two more years as had been requested. He also suggested that a new section dealing with change of terms notice be amended into the bill as was mentioned in Mr. Umholtz's testimony.

With this, the hearing on SB 123 was concluded, and the bill was taken under advisement.

The meeting was adjourned.

SENATE COMMITTEE

ON

FINANCIAL INSTITUTIONS AND INSURANCE

OBSERVERS  
(Please print)

DATE	NAME	ADDRESS	REPRESENTING
2-19-85	Stan Lind	KCKs	Ks. Assn. of Fin. Cos.
" " "	DON PHELPS	TOPEKA	CONS. GR. COMM.
" " "	Mel Patton	"	" " "
"	Allan Cot	Lawrence	Intern Sen. Korr
"	Juel Wright	Topeka	Ks Credit Un League
"	PAT BARNES	TOPEKA	Ks. Motor Car Dealers Assn.
"	Glen Trichter	Lyndon	KIBA
"	Doug Brehm	Topeka	Intern - Atty General
"	Jim Mraz	"	KBA
"	Tommy Humphrey	Topeka	KMHI
"	Oris L. Lehman	Topeka	Commerce Bank & Trust
"	Jim Turner	Topeka	KLSI
"	Ellen Davis	Topeka	KLSI
"	Mike Germond	"	Ks Railroad Association
"	Rud Gorbat	"	KCCI
"	JIM SULLIVAN	"	Ks. Motor Car Dealers Assn.
"	Vernon Derjes	Ramona	Kansas Farmer Union
"	Tom D. Cook	Colby	Kansas Farmer Union
"	Tom Busel	Larned	Kansas Farmer Union
"	M.C. Umholtz	Topeka	KCU
"	LARRY MAGILL	"	IAK
"	Pete Mc Gill	"	KIBA
"	John C. Bottenberg	"	KIBA
"	JOHN B. BRUCKER	TOPEKA	KSACU
"	DENNIS DEHN	"	SEN. WERTS' INTERN

K.S.A. 1983 Supp. 40-3104 (f):

Any person in whose name more than 25 motor vehicles are registered in Kansas may qualify as a self-insurer by obtaining a certificate of self-insurance from the commissioner of insurance. The certificate of self-insurance issued by the commissioner shall cover such owned vehicles and those vehicles, registered in Kansas, leased to such person if the lease agreement requires that motor vehicle liability insurance on the vehicles be provided by the lessor<sup>ee</sup>. Upon application of any such person, the commissioner of insurance may issue a certificate of self-insurance, if the commissioner is satisfied that such person is possessed and will continue to be possessed of ability to pay any judgment obtained against such person arising out of the ownership, operation, maintenance or use of any motor vehicle registered in such person's name described in this subsection.

K.S.A. 40-3106 (a)

A motor vehicle owned by a nonresident shall not be operated in this state upon a highway or upon property open to use by the public, unless a motor vehicle liability insurance policy meeting the requirements of K.S.A. 40-3107 is in effect for such vehicle, or such nonresident has qualified as a self-insurer pursuant to K.S.A. 40-3104(f) or has filed the form referenced in K.S.A. 40-3106(b). Whenever the privilege of a nonresident operating a motor vehicle in this state is suspended for failure of the owner thereof to maintain financial security, in effect, the director shall report such violation to the motor vehicle administrator

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Attachment I

in the state wherein the vehicle is registered. The director is hereby authorized to enter into such reciprocal agreements with the motor vehicle administrator or other appropriate official in other jurisdictions as may be necessary to effectuate the provisions of this act.

K.S.A. 1980 Supp. 40-3106 (b):

Every insurance company authorized to transact the business of motor vehicle liability insurance in this state shall file with the commissioner as a condition of its continued transaction of such business within this state a form approved by the commissioner declaring that its motor vehicle liability policies, wherever issued, shall be deemed to provide the insurance required by K.S.A. 40-3107 when the vehicle is operated in this state. Any nonadmitted insurer may file such a form. A qualified self-insurer approved by an agency of the state in which the vehicle(s) are registered may certify its compliance with K.S.A. 40-3107 on a form prescribed by the commissioner.

- February 19, 1985

TO: Senate Committee on Financial Institutions and Insurance

FROM: Jim Maag, Director of Research  
Kansas Bankers Association

RE: SB 123

Mr. Chairman and members of the Committee:

We appreciate this opportunity to appear before the committee and discuss the provisions of SB 123 which amends several sections of the Kansas Uniform Consumer Credit Code. The 1983 Legislature passed HB 2079 which established under the Code an alternative rate ceiling of 21% for installment and revolving credit sales as well as consumer loans. That same bill also established a "sunset" date of July 1, 1985, for those alternative rates. SB 123 simply changes that sunset date from July 1, 1985, to July 1, 1987, thus continuing the 21% alternative rate for consumer credit sales and loans for two more years.

Section 3 of SB 123 amends that part of the Code relating to consumer loans (K.S.A. 16a-2-401) and is the section to which I would like to direct my comments. As veteran members of the committee who have worked with the Code are aware, this section allows lenders to contract for a finance charge using the "blended rate" method (36% for amounts from \$0 to \$570; 21% for amounts from \$571 to \$1900; and 14.45% for amounts in excess of \$1900) or the "alternative rate" method (21%). The alternative rate concept is a relatively recent addition to the Code and was originally set at 18% until it was moved to 21% by the 1982 Legislature. The alternative rate is used in practically all consumer loan transactions in excess of \$4000 and those loans, of course, constitute the great bulk of consumer lending done by banks.

The 21% alternate rate ceiling has now been in effect for three years and the history of consumer lending in that period shows what we have contended for some time - that consumer loan rates are set by competition and not by rate ceilings. Consumer loan rates in practically all instances have been well below the 21% ceiling in Kansas banks during this three-year period. The question logically follows that if that has been the case why is a 21% ceiling rather than some lower percentage necessary? Recent legislative history in this area would indicate that setting a ceiling too low in a volatile national economy can have detrimental results.

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Attachment II

Several members of this committee will recall that in 1981 we appeared before this committee requesting a 21% alternative rate to replace the existing 18% rate, but at that time (March, 1981) the prime rate had dropped slightly below 18% and it was decided that an 18% ~~ceiling for consumer loans was adequate~~ although as everyone is aware prime rates constitute the lowest possible rates for the best commercial customers and are always several points below consumer lending rates. However, soon after the Legislature adjourned in 1981, as the accompanying charts show, interest rates on a national and international basis increased dramatically and for most of the remaining months of that year even the prime rate remained above 18%.

The practical effect of keeping the 18% ceiling on consumer loans throughout 1981 was to sharply restrict the availability of consumer credit. Statistics from the office of the Consumer Credit Commissioner show a drop in the number of consumer loans of \$5000 or less of nearly 50% from 1979 through 1981. This simply meant that thousands of Kansans were not able to obtain consumer credit through traditional sources and were either forced to forego consumer purchases or turn to other less regulated sources of credit where they most assuredly paid extremely high interest rates.

Experts in the consumer credit field, such as Dr. Robert Johnson of Purdue University who has appeared before Kansas legislative committees, have pointed out that attempts to control consumer interest rates by creating low statutory ceilings dramatically impact the number of borrowers who will have available credit. He further notes that low ceilings tend to deny credit to a majority of high risk borrowers who can manage their debts satisfactorily. Thus, while "protecting" the five out of 100 high risk debtors who would probably default on their consumer loan, the 95% of high risk debtors in that same category and who could handle such debt have been effectively denied consumer credit.

In his appearance before the Special Committee on Commercial and Financial Institutions in 1983, Dr. Fred Miller of the University of Oklahoma Law School and a Uniform Code Commissioner, made the following comments concerning limitations on consumer loans:

"A final conclusion that can be drawn, in my opinion, is that a usury law doesn't help anyone. If you qualify under the legal rate, it doesn't help you get the credit. If you don't qualify it doesn't help you. Perhaps if a person turned down would accept that decision, unwise extension of credit would be prevented, but we all know that is not human nature and plenty of evidence shows these people pay inflated cash prices to get credit or go to loan sharks or otherwise obtain desired credit. You can no more legislate human nature than you can economics. If the cost

structure and a profit cannot be accommodated within the level that the legislature has set, then either some segment is prevented from getting credit, or most probably, they are sent into the illegal market, which has some consequences of its own."

Perhaps the question which needs to be answered is at what ceiling rate does the Legislature believe there will be no restriction on the availability of needed consumer credit? If the Kansas Legislature could control the cost of money within the state's border or if there were assurances that Congress will, in fact, take strong action to control the enormous national debt growth then a lower alternative rate ceiling might be justified. However, the continuing inability of Congress to deal with the federal budget deficit coupled with the recent inflation problems noted above lead us to believe that it is in the best interests of the Kansas consumer and the Kansas economy for the Legislature to set an alternative rate which allows sufficient flexibility to insure that legitimate consumer credit needs will be met.

Thank you, Mr. Chairman and members of the Committee, for the opportunity to discuss this important issue with you and we strongly urge that you recommend the passage of SB 123.



KANSAS BANKERS ASSOCIATION

MAXIMUM INTEREST RATES

(Effective July 1, 1984, and superceding all prior usury mailings.)

I. CONSUMER LOANS

- A. A loan is a "consumer loan" if (1) it is to a natural person; and (2) it is primarily for personal, family, or household purposes.
- B. Consumer loans of \$25,000 or less and not secured by real estate
1. This type of loan falls within the scope of the UCCC and a bank must use one of the following UCCC interest rate ceilings:
    - a. 21% on the unpaid balance; OR
    - b. A blended rate\* as follows:
      1. 36% on amounts from \$0 to \$570;
      2. 21% on amounts from \$571 to \$1900; and
      3. 14.45% on amounts in excess of \$1900.
- C. Consumer loans in excess of \$25,000 and not secured by real estate
1. This type of loan does not fall within the scope of the UCCC, nor is it controlled by the Freddie Mac-plus-1-and-1/2% real estate rate.
  2. For this type of loan, the general 15% usury rate applies.
  3. A bank may obtain a higher rate by contracting such a loan under the UCCC to obtain the 21% (or blended) rate.\*\*

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\*It is our opinion that, under the most favored lender doctrine, banks need not obtain a license to charge these blended rates. Literally, however, the state statute sets out the following blended rate schedule for unlicensed banks:

- 18% on amounts from \$0 to \$1,000; and
- 14.45% on amounts in excess of \$1,000.

Unlicensed banks should consult their local bank counsel for guidance in this matter.

D. Fixed rate consumer loans secured by real estate

1. First mortgages

- a. This type of loan does not automatically fall within the scope of the UCCC.
- b. In general, the maximum rate is 1 and 1/2% above the "Freddie Mac" rate which is published during the first week of each month.
- c. If a lender does not want to be limited to the Freddie Mac-plus-1-and-1/2% rate, it may contract the loan under the UCCC to obtain the 21% (or blended) rate.\*\*

2. Second mortgages (where bank does not hold the first mortgage)

- a. This type of loan automatically falls within the scope of the UCCC for all purposes except maximum interest rate purposes.
- b. In general, the maximum rate is 1 and 1/2% above the "Freddie Mac" rate which is published during the first week of each month.
- c. If a lender does not want to be limited to the Freddie Mac-plus-1-and-1/2% rate, it may contract the loan under the UCCC to obtain the 21% (or blended) rate.\*\*

E. Adjustable rate consumer loans secured by real estate

1. First mortgages do not automatically fall within the scope of the UCCC. Second mortgages (where bank does not hold the first mortgage) automatically fall within the scope of the UCCC for all purposes except maximum interest rate purposes.
2. There are no interest rate limitation for either first or second adjustable rate mortgages.
3. But note that national banks must comply with the Comptroller of Currency adjustable rate mortgage regulations; and state banks must comply with either (1) the Office of the Comptroller of Currency regulations or (2) the state adjustable rate mortgage regulations.

- F. For all consumer purpose real estate loans, the bank may collect from the borrower actual filing fees and other reasonable expenses without including those amounts in the interest rate. On the other hand, points collected to increase a banks effective rate of interest must be included as part of the interest rate.

## II. AGRICULTURAL OR BUSINESS LOANS

- A. The "agricultural or business" loan category includes any loan used for an agricultural or business purpose, regardless of the type of collateral securing the loan. Specifically note that an agricultural/business purpose loan falls within this category even if it is secured by real property, and this remains true even if the secured real property is the principal dwelling of the customer.
- B. Agricultural/business loans do not automatically fall within the scope of the UCCC.
- C. There are no interest rate limitations for agricultural or business purpose loans.

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\*\*To contract a loan under the UCCC, the note must contain wording similar to the following: "The parties agree that this loan is subject to Sections 1 through 131 of the Kansas Uniform Consumer Credit Code, including those provisions establishing maximum interest rates." Once a loan is contracted under the UCCC, all UCCC provisions apply.

KANSAS BANKERS ASSOCIATION

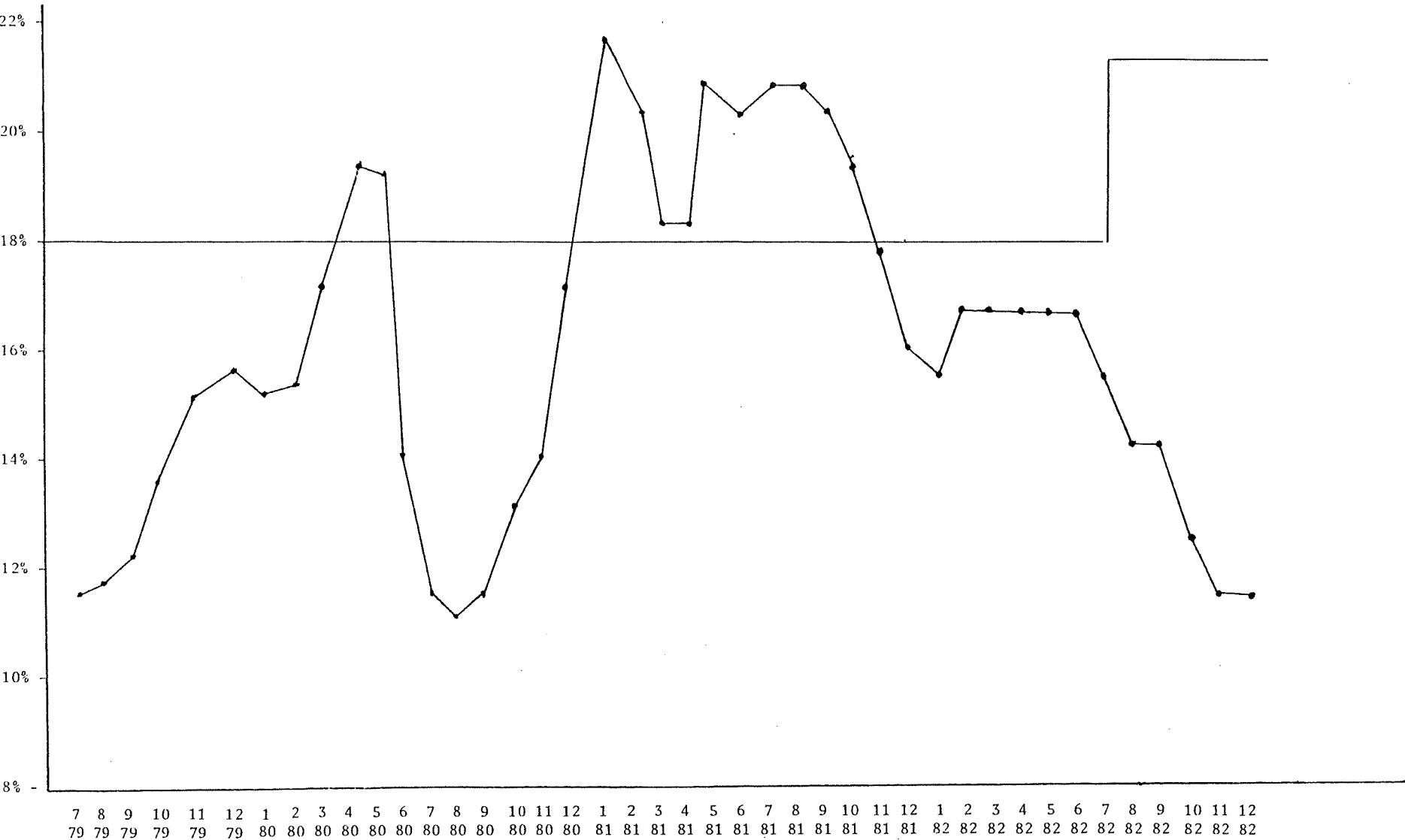
USURY RATE CHART

(Effective August 1, 1983)

TYPE OF LOAN	21% or Blended Rate	Freddie Mac plus 1&1/2%	15%	No Limit
Consumer Loan, <u>Not</u> Secured by Real Estate Under \$25,000 Over \$25,000	X		X	
Consumer Loan, Secured by Real Estate Fixed Rate Adjustable Rate		X		X
Agricultural or Business Loan				X

NOTE: Any loan can be contracted under the UCCC to obtain the UCCC maximum interest rate of 21% (or the blended rate). To effectively contract a loan under the UCCC, the promissory note must contain wording similar to the following:

"The parties agree that this loan is subject to Sections 1 through 131 of the Kansas Uniform Consumer Credit Code, including those provisions establishing maximum interest rates."



NEW YORK PRIME RATE

TESTIMONY ON S.B. 123  
AN ACT amending the uniform consumer credit code;  
relating to finance charges

Presented to the  
SENATE COMMITTEE ON  
FINANCIAL INSTITUTIONS AND INSURANCE

February 19, 1985  
by the

KANSAS CREDIT UNION LEAGUE

Mr. Chairman, members of the Committee:

I am Marvin Umholtz, Vice President of Credit Union Development for the Kansas Credit Union League (KCUL). Our association represents 97% of the 168 state-chartered and 46 federally-chartered credit unions located in Kansas. Credit unions are non-profit financial cooperatives chartered under state or federal law which are owned by the people who save and borrow there. Kansas credit unions serve the personal financial needs of over 400,000 individual credit union members and have almost \$1 billion in combined assets. Kansas credit unions range in asset size from approximately \$26,000 to \$61 million and range in size of membership from 57 members to 25,000 members.

KCUL POSITION

I appreciate having this opportunity to appear before the Committee in support of S.B. 123, the bill designed to continue the "alternative 21%" Uniform Consumer Credit Code (UCCC) consumer loan rate ceiling for another two years. Additionally, we urge this Committee to amend the bill by also extending for two years the sunset of the existing "temporary 30-day notice" for change in finance charge of an open end credit account found in subsection (5) of K.S.A. 1984 Supp. 16a-3-204. More information concerning this proposed amendment appears later in our testimony.

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Attachment III

UCCC RATE CEILING APPLICABILITY TO CUs

Section 3 of S.B. 123 amending K.S.A. 1984 Supp. 16a-2-401 is the only section of this measure which governs the rate ceilings on consumer loans made by state-chartered credit unions. Sections 1 and 2 deal with consumer credit sales.

S.B. 123 has no applicability to the 46 federally-chartered credit unions located in Kansas. Federal credit unions (FCU), unlike other financial institutions, have a federal statute which governs their loan rate ceilings. The federal statute, (12 U.S.C. 1757(5)(A) (vi)) sets a 15% ceiling but allows the National Credit Union Administration (NCUA) Board (federal CU regulator) to set higher limits under certain circumstances. The current FCU rate limit is 21% on the entire outstanding balance. All types of loans made by FCUs are governed by the 21% ceiling.

Additionally, the rate ceilings in Section 3 of S.B. 123 do not apply to loans made by state-chartered credit unions for the following types of lending:

1. Agricultural purpose (deregulated ceiling)
2. Business purpose (deregulated ceiling)
3. First mortgage conventional real estate (K.S.A. 1984 Supp. 16-207)
4. "Alternative Mortgage Transactions" (as defined by Congress) -- a loan secured by an interest in residential real property, a dwelling or manufactured home in which the interest rate or finance charge may be adjusted or renegotiated. (12 U.S.C. 3803(a)(2); 12 CFR 701.21(a) and (b); Title VIII of P.L. 97-230; F.R. -Vol. 49, No. 149 Wednesday, August 1, 1984, p. 30683 & ff.)
5. The UCCC definition of "Consumer loan" also outlines other loans which are not covered. (K.S.A. 1984 Supp. 16a-1-301(13)(b))
6. However, any loan may be specifically contracted to be under the UCCC by the parties to the loan. (K.S.A. 16a-1-109)

Section 3 of S.B. 123 does apply to consumer loans made by state-chartered credit unions, which are governed by the UCCC and are defined as "consumer loan" in K.S.A. 1984 Supp. 16a-1-301(13). Although not a complete legal definition, a UCCC consumer loan is one made to an individual for personal, family or household purposes which is payable in installments or a finance charge is made, and which does not exceed \$25,000 in amount.

Consumer loans are typically those made to buy a car, boat, household goods, or similar items which are financed by a credit union or other financial institution. Loans made with financial institution credit cards like VISA or Mastercard are also typically consumer loans.

SEE ATTACHMENT I for additional information concerning UCCC consumer lending rate ceilings.

#### CREDIT UNIONS FAIR TO MEMBERS

Historically credit unions have been able to offer their members very reasonable loan rates--well below the legal ceilings and often times well below the prevailing market rates.

Fairness is a built-in characteristic of CUs. Credit unions are governed by their member-owners, who elect directors on the basis of one-member-one-vote, with no proxy voting permitted. There are no outside shareholders and no profits. Earnings are returned to members in the form of better service, lower rates on loans or higher returns on savings. At credit unions, the highest priority is put on people.

According to a recent nationwide survey conducted for the trade newspaper American Banker, credit union members are the most satisfied consumers of financial services. Compared to customers of banks and thrifts, more than twice as many credit union members reported that they get an excellent deal from their credit unions. Examples of what people like most about their credit unions: higher savings rates,



more readily available loans, expanded services, and personal, courteous treatment.

#### KANSAS EXAMPLE--VISA CREDIT CARDS

A good example of "credit union fairness" in Kansas which involves consumer lending is the credit union approach to providing credit card services to their members. Statistics gathered as of the end of January 1985 reveal that 16 Kansas credit unions offer VISA credit cards. Although the programs are relatively new, 7% of the members of these CUs have asked for and received their credit cards--over 10,000 CU members. Over \$4.5 million was loaned out as of 1-31-85.

Although the existing loan rate ceiling is 21%, the most that a CU member is paying on his or her VISA balance is 18% (includes a grace-period where balance can be paid off monthly with no finance charge). Five of the 16 credit unions are charging 18% with a grace period, one charges 16% with a grace period, eight charge 16% without a grace period, one charges 16.5% without a grace period and one charges 15% without a grace period.

It is important to remember as we discuss consumer loan rate ceilings that Kansas cannot restrict the interest rates charged its citizens by out-of-state lenders. Recently a number of large out-of-state banks have been actively soliciting credit card business in Kansas. These institutions can "export" their states' rates ceilings to Kansas.

#### LEGISLATURE RESPONSIVE

In recent years, the Kansas Legislature has been responsive to the requests of KCUL and other creditor groups for consumer loan rate ceilings which do not unreasonably "choke-off" lending in the state. Most recently, the passage of 1983 HB 2079, which extended the alternative 21% rate ceiling provision until July 1, 1985 and is now existing law, clearly shows the Legislature's awareness

of the need for reasonable rate ceilings and recognition that the tiered rate structures of K.S.A. 1984 Supp. 16a-2-401(1) and (2) were not and are not adequate for today's market environment -- which can fluctuate dramatically.

Although we applaud the Legislature for the positive actions it has taken in the area of interest rate ceilings in past years, our association continues to support the concept of allowing the operation of the market place to determine the rate of return on savings and the cost of borrowing. Having just stated that our association supports the deregulation of consumer loan rate ceilings for credit union loans made to their members, let me clarify that we are not asking this Committee to enact deregulation legislation this year. In 1985, we are in full support of extending until July 1, 1987 the 21% alternative rate ceiling and the temporary 30-day notice for change in finance charge on open end credit accounts.

KANSAS LEGISLATIVE HISTORY  
OF CONSUMER LOAN RATE MAXIMUMS

The Kansas Legislature has enacted "alternative consumer loan rate ceiling" legislation since 1980. Initially a temporary (one year sunset) 18% alternative was authorized. That same 1980 legislation (L. 1980, ch.77, sec.3 and 4) also enacted a temporary 30-day notice of change in finance charge provision. In 1981, both temporary provisions were extended one year (L. 1981, ch.94, sec.3 and 4). In 1982, the alternative rate ceiling was raised to 21% and extended for a year, as was the 30-day notice provision (L. 1982, ch.93, sec.3 and 5). In 1983, the Legislature extended both provisions for two years (L. 1983, ch.79, sec.3 and 4).

SEE ATTACHMENT II for more information concerning the Legislative History of state-chartered credit union consumer loan rate maximums.

PROPOSED AMENDMENT TO SB 123;  
EXTEND 30-DAY NOTICE PROVISION

KCUL urges this Committee to amend S.B. 123 by adding the provisions of K.S.A. 1984 Supp. 16a-3-204 and changing the sunset date found in subsection (5) from July 1, 1985 to July 1, 1987. (SEE ATTACHMENT III for a copy of the statute.) As indicated earlier, this amendment will make S.B. 123 consistent with UCCC loan rate ceiling legislation passed in prior years.

The proposed amendment is designed to continue the current authority for a creditor to change the finance charge in an open end credit account with a single 30-day notice to the consumer. Unless the "temporary 30-day notice" provision found in K.S.A. 16a-3-204 is extended beyond its sunset date, credit unions and other lenders using open end credit will be required to give three consumer notices over a 6 month period in order to change the finance charge as well as other terms of the loan.

The 3-notice, 6 month requirement would still be applicable to all other terms of the loan if this proposed amendment is adopted (ex: payment amount, length of term of loan). Federal Truth-in-Lending regulation requires only a 15-day notice (12 CFR 266.9(c)).

Although most people think of open end credit as the type of lending made with a credit card, open end lending can be done across a loan officer's desk by using an open end contract. In Kansas, nearly 75% of all loans made by credit unions are open end -- including car loans, vacation loans, etc..

Open end credit differs from closed end credit in concept and execution. Closed end credit is a "one shot deal" -- it has a beginning and an end. Open end contracts anticipate that the credit union member will be in an ongoing relationship with the credit union -- returning in the future to borrow again when the CU member has a new credit need.

CU members like the convenience of open end lending. There is less paperwork involved; once the account is established, the member can obtain future advances with a minimum of time and hassle. The original contract remains valid for years.

The ongoing nature of open end credit and the need to remain responsive to fluctuations in market rates requires that creditors have the 30-day notice ability-- too much can happen in six months. The 30-day notice has worked well since 1980, and should be extended.

#### CREDIT AVAILABILITY

Many research studies have indentified that the end result of artificially low consumer loan rate ceilings is that lenders cease making consumer loans. Prudence dictates that this be done in order to protect the financial condition of the lending institution.

The Task Force on Capital Formation, organized by the Kansas Department of Economic Development in 1981, included in its Final Report to the Governor, Dec. 23, 1981, a recommendation "that the fixed usury ceiling on consumer loans should be eliminated."

Additionally, in February 1982, the Federal Reserve Bank of Chicago released a 41 page report entitled, "The Effects of Usury Ceilings; The Economic Evidence." Among other factors, it discussed the resultant credit rationing caused by artificially low usury ceilings.

A number of states have recognized the negative impact on their citizens of artificially low consumer loan rate maximums. Over a dozen have gone so far as to effectively deregulate consumer lending (Examples: Idaho Code 28-42-201, Utah Code Annotated 70B-3-201(4); 31-1-106 Montana Code Annotated), allowing the parties to the loan to agree on the terms and conditions.

SUMMARY

As a practical matter, the 21% consumer loan rate ceiling under current law and as extended by S.B. 123, is above the current market rates for loans typically made by credit unions to their members.

Credit unions hope that the 21% will be adequate for now and in the near future. A repeat of the "roller coaster" market rates of 1980-81 would be the only event which would cause extreme problems. Because credit union members rely on the credit union as their source of consumer loans, the Kansas Credit Union League supports S.B. 123, urges the adoption of the proposed amendment, and encourages the Committee to recommend S.B. 123, with the proposed amendment, favorably for passage.

Thank you, Mr. Chairman, for providing this opportunity to appear before the Committee. I will respond to questions at your direction.

LIST OF ATTACHMENTS:

- I. Kansas-chartered Credit Unions Consumer Loan Rate Maximums
- II. Legislative History: Kansas UCCC Consumer Loan Rate Maximums
- III. K.S.A. 1984 Supp. 16a-3-204 Proposed Amendment

KANSAS-CHARTERED CREDIT UNIONS  
CONSUMER LOAN RATE MAXIMUMS

Kansas' Uniform Consumer Credit Code

A state-chartered credit union may use one or more of four possibilities concerning the maximum consumer loan rate ceiling as governed by the Kansas version of the Uniform Consumer Credit Code (UCCC). The section of the UCCC which impacts consumer loans made by financial institutions (K.S.A. 16a-2-401) outlines the following options:

1. K.S.A. 16a-2-401 (1) establishes rate ceilings applicable to "Supervised Financial Organizations" as defined by K.S.A. 16a-1-301(37), which includes state-chartered credit unions. The following rate structure is provided:

Loan Amount	\$0 - \$1,000	18% APR	Rates may be
	over - \$1,000	14.45%	blended per
			subsection (3)

2. K.S.A. 16a-2-401(2) establishes rate ceilings applicable to a "Supervised Loan" (defined - K.S.A. 16a-1-301 (39)) made under a "license" issued by the administrator of the UCCC - The Consumer Credit Commissioner. The Consumer Credit Commissioner issues "licenses" pursuant to K.S.A. 16a-2-301. A state-chartered credit union may apply for and receive a lenders "license." The following rate structure is provided:

Loan Amount	\$0 - \$570*	36% APR	Rates may be
	over \$570 - \$1,900*	21%	blended per
	over \$1,900*	14.45%	subsection (3)
	or 18% on the entire balance		

\*Statutory loan amounts may be increased by an index pursuant to K.S.A. 16a-2-401a as implemented by K.A.R. 75-6-24

3. K.S.A. 16a-2-401(9) establishes a temporary alternative rate provision of 21% on the entire outstanding balance of the loan. The alternative 21% rate ceiling is available to state-chartered credit unions. The 21% alternative rate will not be available after June 30, 1985, unless extended by an act of the Legislature and the Governor's signature.
4. K.S.A. 16a-2-401(6) establishes an alternative allowable minimum finance charge on very small loans. The statute reads: "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."

OTHER OPTIONS

Federal Pre-emption of State Rate Ceilings

Public Law 96-221, March 31, 1980, provides for pre-emption of any state constitutional or statutory usury rate provision. A credit union insured by the

National Credit Union Share Insurance Fund may charge an interest rate up to 1% in excess of the discount rate on 90-day commercial paper at the Federal Reserve bank in its district or the rate allowed by its state law, whichever is greater. (12 U.S.C. 1785(g))

#### Kansas Credit Union Law "Federal Conformity"

The "Federal Conformity Statute" in the Kansas Credit Union Law (K.S.A. 17-2244) provides a mechanism whereby the Credit Union Administrator, with the approval of the Credit Union Council, may act to authorize any credit union to engage in any activity in which such credit union could engage where they operate as a federally chartered or federally insured credit union at the time such authority is granted. In October of 1981, certain state-chartered credit unions requested and obtained the authority pursuant to this law to charge the same rate as a federal credit union. This authority has not been revoked.

Currently, the Federal Credit Union Act provides a maximum rate of 15% APR on the unpaid balance. However, the National Credit Union Administration (NCUA) Board may authorize a higher rate for periods up to 18 months under certain conditions. The NCUA Board has set 21% APR as the maximum rate until January 25, 1986. (12 U.S.C. 1757(5)(A)(vi); 12 C.F.R. 701.21-1A)

#### State-chartered Federally Insured Credit Unions As Most Favored Lenders

In the Federal Register (Vol. 45, No. 230, Pg. 78624) of Wednesday, November 26, 1980, the National Credit Union Administration issued a "Statement of Interpretation and Policy" (IRPS 80-11) which was summarized by NCUA as follows:

"SUMMARY: This document states that Section 205(g)(1) of the Federal Credit Union Act grants most favored lender status to a state chartered federally insured credit union. It also states that Section 205(g)(1) applies only when a credit union is granting a loan other than a first mortgage loan, a business loan of \$1,000 or more, or an agricultural loan of \$1,000 or more. As a result, when the interest rate a credit union could normally charge on such a loan is less than one percent over the discount rate for 90-day commercial paper, the credit union can charge an interest rate of up to one percent plus the discount rate or it can charge any interest rate any other lender (such as a bank or a savings and loan association) could charge on the same loan under state law. This interpretation and policy statement is being issued in response to requests from a credit union and a trade association."

- Note: 1. "Consumer Loan" under the UCCC is defined by K.S.A. 16a-1-301(13)
2. K.S.A. 16a-1-109 provides that any loan may be contracted to be governed by the UCCC.

LEGISLATIVE HISTORY  
Kansas UCCC Consumer Loan Rate Maximums  
K.S.A. 16a-2-401

DATES	DATES	CITATION
°July 1, 1983 through June 30, 1985	°Tiered rates in subsections (1) and (2) available °Alternative 21% APR on entire balance available in subsection (9)	L. 1983, ch. 79, sec. 3* Effective: 7/1/83
°July 1, 1982 through June 30, 1983	°Tiered rates in subsections (1) and (2) available °Alternative 21% APR on entire balance available in subsection (8) (was raised from 18% to 21% this year)	L. 1982, ch. 93, sec. 3* Effective: 7/1/82
°July 1, 1981 through June 30, 1982	°Tiered rates in subsections (1) and (2) available °Alternative 18% APR on entire balance available in subsection (8)	L. 1981, ch. 94, sec. 3* Effective: 7/1/81
SPECIAL NOTES: 1. Pursuant to the Kansas CU Law (K.S.A. 17-2244) the CU Administrator and the CU Council authorized a number of credit unions to charge the same rate of 21% APR which was allowed for federal credit unions. This occurred after October 21, 1981 and has not been revoked.		
2. During the first quarter of 1980, certain credit unions applied for and obtained "lenders licenses" under the UCCC from the Consumer Credit Commissioner pursuant to K.S.A. 16a-2-301. Such licenses are required for each location (home and branch offices) and are subject to annual renewal.		
°May 17, 1980 through June 30, 1981	°Tiered rates in subsections (1) and (2) available °Original enactment of "temporary" 18% APR on the entire balance alternative rate available in subsection (8) °Original enactment of authority to change the finance charge in an open end credit account with a single 30-day notice to the consumer.	L. 1980, ch. 77, sec. 3 Effective: Publication in the official State paper 5/17/80

\*Included section extending the 30-day notice authority.



DATES	IMPACT	CITATION
°April 12, 1975 through May 16, 1980	°Tiered rates in subsection (1) available °Licensed lender tiered rates in subsection (2) were changed as follows: 2nd tier changed from 10% to 21%, the 3rd tier was added (current subsection (2) paragraph (c)) as was the licensed lender alternative to the tiers --(2)(d)--of 18% APR on the entire balance	L. 1975, ch. 126, sec. 1 Effective: publica- tion in the official State paper 4/12/75
SPECIAL NOTE: L. 1975, ch. 126, sec. 2 was the original enactment of what is now K.S.A. 16a-2-401a which provides for the indexing of the dollar amounts found in subsection (2), the licensed lender tiers. Subsection (3) was also added to clearly allow for the blending of the rates allowed by subsections (1) and (2).		
°March 1, 1974 through April 12, 1975	°Added subsection (6) which allowed for minimum finance charges of \$5 on amounts of \$75 or under, or \$7.50 over \$75. (This subsection was available from its enactment and is still in effect.)	L. 1974, ch. 91, sec. 1
°12:01 a.m. January 1, 1974 through Feb. 28, 1974	°Original enactment of the Kansas version of the UCCC; provided for subsection (1) tiered rates and subsection (2) licensed lender tiers of 36% maximum on amounts under \$300 and 10% on the balances over \$300 °Repealed CU Act loan rate ceiling in K.S.A. 1972 Supp. 17-2214	L. 1973, ch. 85, sec. 27 Effective: 12:01 a.m., 1/1/74
°Prior to January 1, 1974	°State-chartered credit unions' loan rate maximum was in the Kansas CU Act (K.S.A. 17- 2214) and was set at 1% per month on the unpaid balance	K.S.A. 17-2214

SPECIAL NOTE: Although K.S.A. 17-2214 was amended by L. 1970, ch. 88, section 1 (effective: 7/1/70) to allow the CU administrator to approve a higher loan rate ceiling as long as the rates did not exceed those found in Article 2 of Chapter 16 of the Kansas Statutes Annotated, the loan rate ceiling found in K.S.A. 17-2214 up until the enactment of the Kansas UCCC essentially remained unchanged from the original enactment of the Kansas Credit Union Law, L. 1929, ch. 141, sec.14 (which was enacted by 1929 S.B. 248). At that time the rate was set at 1% per month (12% APR) on the unpaid balances.

K.S.A. 1984 Supp.

**16a-3-204. (UCCC) Change in terms of open end credit accounts.** (1) If a creditor makes a change in the terms of an open end credit account without complying with this section any additional cost or charge to the consumer resulting from the change is an excess charge and subject to the remedies available to consumers (section 16a-5-201) and to the administrator (section 16a-6-113).

(2) A creditor may change the terms of an open end credit account whether or not the change is authorized by prior agreement. Except as provided in subsection (3), the lender shall give to the consumer written notice of any change at least three times, with the first notice at least six months before the effective date of the change.

(3) The notice specified in subsection (2) is not required if:

(a) The consumer after receiving notice of the change agrees in writing to the change;

(b) the consumer elects to pay an amount designated on a billing statement as including a new charge for a benefit offered to the consumer when the benefit and charge constitute the change in terms and when the billing statement also states the amount payable if the new charge is excluded;

(c) the change involves no significant cost to the consumer;

(d) the consumer has previously consented in writing to the kind of change made and notice of the change is given to the consumer in two billing cycles prior to the effective date of the change; or

(e) the change applies only to debts incurred after a date specified in a notice of the change given in two billing cycles prior to the effective date of the change.

(4) The notice provided for in this section is given to the consumer when mailed to the consumer at the address used by the creditor for sending periodic billing statements.

(5) Notwithstanding subsection (2), from and after the effective date of this act and until July 1, 1985, a creditor may change the finance charge in an open end credit ac-

count after 30 days' written notice is given to the consumer.

**History:** L. 1973, ch. 85, § 44; L. 1980, ch. 77, § 4; L. 1981, ch. 94, § 4; L. 1982, ch. 93, § 5; L. 1983, ch. 79, § 4; July 1.

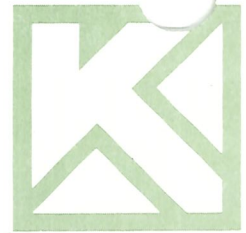
Change to:

July 1, 1987

# LEGISLATIVE TESTIMONY

## Kansas Chamber of Commerce and Industry

500 First National Tower One Townsite Plaza Topeka, KS 66603-3460 (913) 357-6321



A consolidation of the  
Kansas State Chamber  
of Commerce,  
Associated Industries  
of Kansas,  
Kansas Retail Council

### KANSAS CHAMBER OF COMMERCE AND INDUSTRY

testimony before the

### SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

SB 123

February 19, 1985

Mr. Chairman and Members of the Committee:

My name is Bud Grant and I appear here today on behalf of the Kansas Retail Council and the Kansas Chamber of Commerce and Industry. I appreciate the opportunity to appear before the Committee today in support of Senate Bill 123.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses plus 215 local and regional chambers of commerce and trade associations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

At the time the Legislature first enacted the alternative interest rate within the Uniform Consumer Credit Code (UCCC), the nation was experiencing a prime interest in the 20's, and double digit inflation. A third factor was that the interest rates in the code had been placed there in the early 70's, and the simple passage of time made this issue, so important to financial institutions and retailers, a prime candidate for review.

- MORE -

2/19/85  
Attachment IV

The solution to the interest rate problem developed by the Legislature was to provide an alternative interest rate in 1980 of 18%, and to increase that alternative to 21% in 1982. Most of the factors which brought the retail community before you in 1980 exist today. Virtually all the factors which make up the costs of providing credit to you and I have increased. The Consumer Price Index stood at 281 in December of 1980...in December of 1984, by comparison, it stood at 363. You can imagine how the cost of postage, social security, payroll, utilities, and rent have increased since the early 70's. When these credit expenses exceed credit revenues, they must be recovered in the cash selling price of the goods. This obligates the cash customer to subsidize the credit customer when credit revenues mandated by law are inadequate to cover credit expenses...a situation which you and I and the retailer know is not fair. SB 123, and its provision to extend the sunset, will help avoid this unfair situation.

Thank you again Mr. Chairman and members of the Committee for affording me the opportunity of appearing today in support of SB 123. I urge your favorable consideration.



**KLSI** Kansas  
League of  
Savings  
Institutions

JAMES R. TURNER, President • Suite 612 • 700 Kansas Ave. • Topeka, KS 66603 • 913/232-8215

February 19, 1985

TO: SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE  
FROM: JIM TURNER, KANSAS LEAGUE OF SAVINGS INSTITUTIONS  
RE: S.B. 123 - EXTENSION OF UCCC CEILING

The Kansas League of Savings Institutions appreciates the opportunity to appear before the Senate Committee on Financial Institutions and Insurance in support of S.B. 123 which would extend the 21% UCCC usury ceiling for two years to July, 1987.

While we are all pleased by the overall reduction of all interest rate levels in the past 18 months, economic conditions remain volatile and many economists are predicting that there could be substantial upward interest rate spirals in late 1985 unless Congress adequately addresses the budget deficit issue. Should the Legislature allow the 21% rate ceiling to lapse and upward interest spirals occurred, we would again find ourselves in the 1981-82 predicament of credit not being available to Kansas consumers because market rates could not be achieved.

We would remind the committee that certain individuals and business must borrow regardless of interest rates. To allow the reversion to an artificial ceiling not only would not protect such individuals but could easily force them into bankrupt situations because credit was not available. Market conditions determine interest rates. Money and credit will flow to those areas of the country where market conditions persist.

Also, we would point out that despite allegations in 1982 that the passage of 21% would result in all lenders charging this rate..... this did not occur. Rates in Kansas for the past two years have resulted from market conditions and competition in the market place. Given competitive market rates we are pleased to advise the committee that our savings and loan members have expanded their commitment to consumer lending by 25% in the past two years, thereby providing the consumer greater options to shop for rates and terms. This expansion will only be continued if a competitive rate remains available in the market place.

2/19/85

Attachment IV



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Senate Committee on Financial Institutions and Insurance  
Page 2  
February 19, 1985

Finally, a two-year extension of the UCCC rate as provided by S.B. 123 allows the Legislature to continue the oversight process in this area. We deem this to be appropriate as it allows lenders to continue to function, provides options to consumers, and retains the Legislature as guardians of the consumer rate process.

We would urge the committee's earliest attention to reporting S.B. 123 favorable for passage.

James R. Turner  
President

JRT:bw





**KANSAS MANUFACTURED HOUSING INSTITUTE**  
100 East Ninth Street • Suite 205 • Topeka, Kansas 66612 • (913) 357-5256

TESTIMONY BEFORE SENATE  
FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE  
FEBRUARY 19, 1985

TO : Senator Neil Arasmith, Chairman, Financial Institutions and  
Insurance Committee  
FROM: Terry Humphrey, Executive Director, Kansas Manufactured Housing Institute  
SUBJ: In Support of Senate Bill 123

Mr. Chairman and members of the committee, I am Terry Humphrey, Executive Director of Kansas Manufactured Housing Institute. Thank you for the opportunity to appear before you in support of Senate Bill 123.

The Kansas Manufactured Housing Institute is a trade association representing all facets of the manufactured housing industry, i.e. manufacturers, retailers, park owners, suppliers, financial institutions, insurance companies, service companies and transport companies.

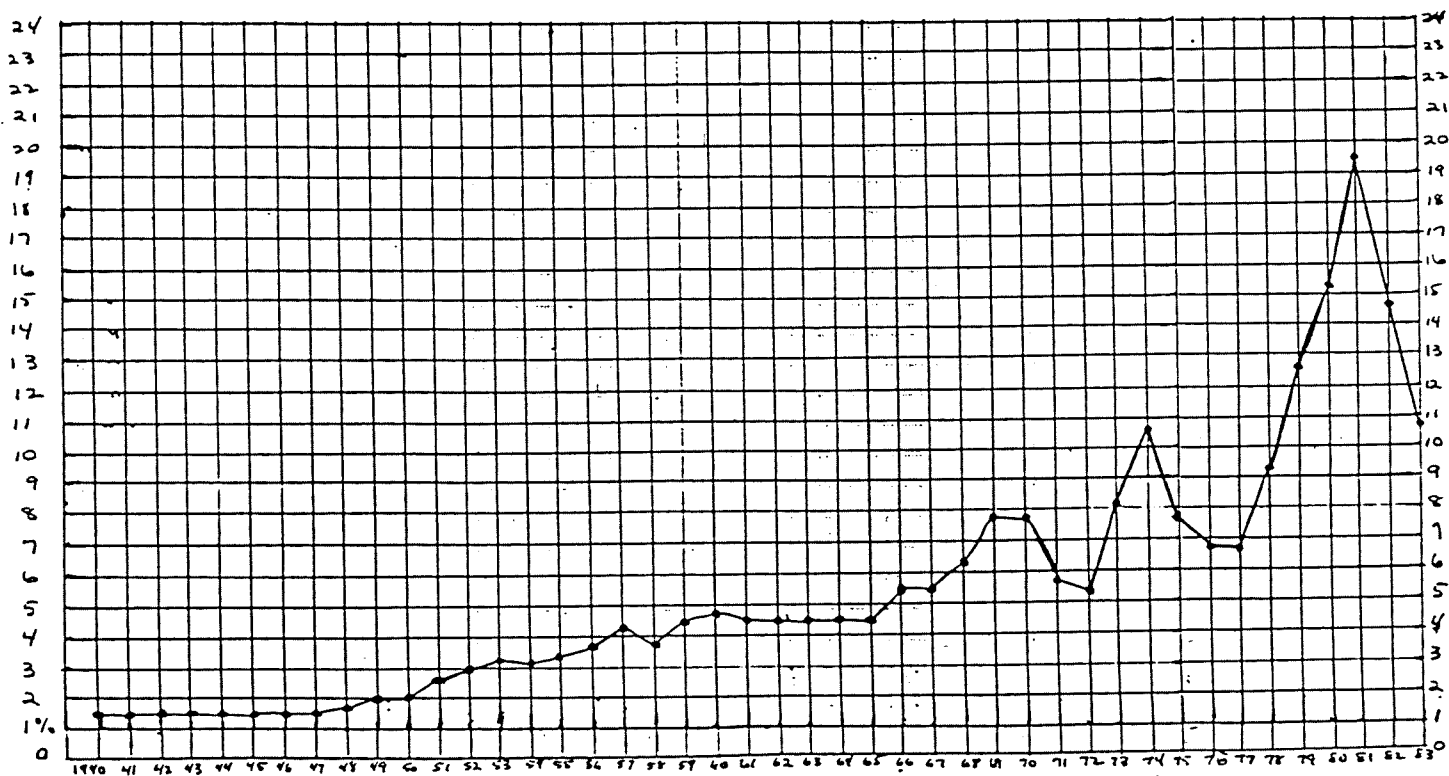
K.M.H.I. supports Senate Bill 123 which allows for the continuance of the present 21% maximum interest rate under the Uniform Consumer Credit Code. Since interest rates are set by market conditions, as well as competition within the marketplace we feel that the 21% interest rate cap allows enough flexibility for mobile home retail lending to be available.

In 1981 when the prime rate was very high loans on manufactured housing reached highs of 18% a.p.r. In 1983 as the national prime began to come down manufactured home loans were available at 15 and 16% a.p.r. By December of 1984 due to decreasing prime rates manufactured home loans were available to customers at 13.50 a.p.r.

As you can see the prime rate basically controls the retail loan rate to customers therefore, we suggest the continuance of the 21% interest rate maximum to cover those times when interest rates might move up again. K.M.H.I. respectfully requests the passage of Senate Bill 123. Thank you.

2/19/85  
Attachment VI

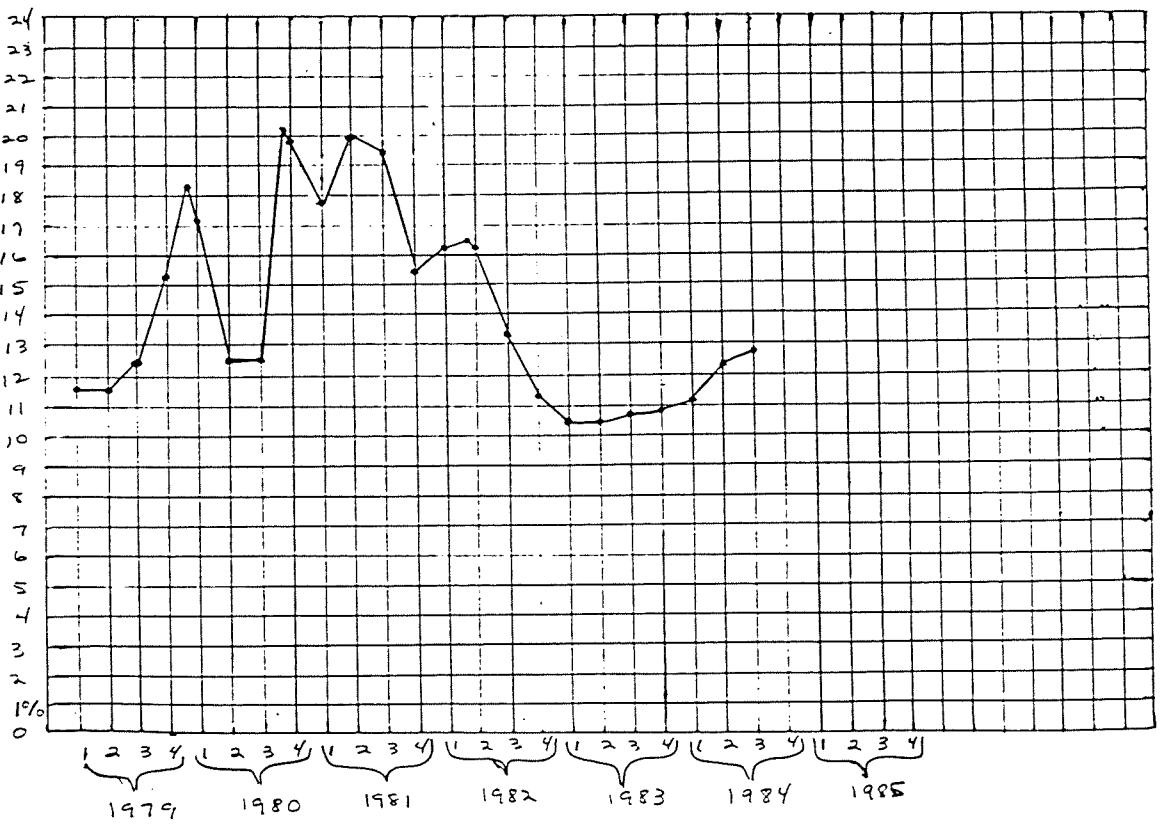




Annual Average Prime Rate for Commercial Loans from 1940 to 1983

2/19/85  
Attachment VII

PRIME RATE BY QUARTER  
1979 THRU 1984



COMPARISON OF THE KANSAS UNIFORM CONSUMER CREDIT CODE  
 LOAN RATES WITH THE OTHER UCCC STATES  
 JANUARY 1985

STATE	First Step	Second Step	Third Step	Alternate Rate	Revolving Rate
KANSAS	36% to \$570	21% to \$1900	14.45% to \$25000	18% Temporarily 21% sunset 7-1-85	36-21-14.45% on the same steps shown opposite or 18% Temporarily 21%
COLORADO	36% to \$630	21% to \$2100	15% to \$25000	21%	21%
UTAH	36% to \$840	21% to \$2800	15% to \$70000	19.6%	No Limit
OKLAHOMA	30% to \$630	21% to \$2100	15% to \$45000	21%	30-21-15% on the same steps as shown opposite or 21%
IDAHO	No Limit	No Limit	No Limit	No Limit	No Limit
INDIANA	36% to \$720	21% to \$2400	15% to \$60000	21%	18%
WYOMING	36% to \$1000	21% to \$25000	N/A	N/A No Limit Over \$25000	Same as Columns 1 & 2
SOUTH CAROLINA	No Limit	No Limit	No Limit	No Limit	No Limit

COMPARISON OF THE KANSAS UNIFORM CONSUMER CREDIT CODE  
 INSTALMENT SALES RATES WITH THE OTHER UCCC STATES  
 JANUARY 1985

STATE	First Step	Second Step	Third Step	Alternative Rate	Revolving Rate
KANSAS	21% to \$300	18% to \$1000	14.45% to \$25000	No Permanent Alt. Temp. 21% Sun. 7-1-85	21-18-14.45% on the same steps shown opposite temporarily 21%
COLORADO	25% to \$630	20% to \$2100	15% to \$25000	21%	21%
UTAH	36% to \$840	21% to \$2800	15% to \$70000	19.6%	No Limit
OKLAHOMA	30% to \$630	21% to \$2100	15% to \$45000	21%	21%
IDAHO	36% to \$660	24% to \$2200	18% to \$55000	21%	21%
INDIANA	36% to \$720	21% to \$2400	15% to \$60000	21%	21%
WYOMING	36% to \$1000	21% to \$25000	N/A	N/A No Limit over \$25000	Same as Columns 1 & 2
SOUTH CAROLINA	No Limit	No Limit	No Limit	No Limit	No Limit

to payment pursuant to a consumer credit transaction and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the consumer, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the consumer may pay the original creditor.

**History:** L. 1973, ch. 85, § 43; Jan. 1, 1974.

**KANSAS COMMENT, 1973**

This section is derived from the UCC (K.S.A. 84-9-318 (3)) and is thus generally consistent with prior Kansas law.

**16a-3-204. (UCCC) Change in terms of open end credit accounts.** (1) If a creditor makes a change in the terms of an open end credit account without complying with this section any additional cost or charge to the consumer resulting from the change is an excess charge and subject to the remedies available to consumers (section 16a-5-201) and to the administrator (section 16a-6-113).

(2) A creditor may change the terms of an open end credit account whether or not the change is authorized by prior agreement. Except as provided in subsection (3), the lender shall give to the consumer written notice of any change at least three times, with the first notice at least six months before the effective date of the change.

(3) The notice specified in subsection (2) is not required if:

(a) The consumer after receiving notice of the change agrees in writing to the change;

(b) the consumer elects to pay an amount designated on a billing statement as including a new charge for a benefit offered to the consumer when the benefit and charge constitute the change in terms and when the billing statement also states the amount payable if the new charge is excluded;

(c) the change involves no significant cost to the consumer;

(d) the consumer has previously consented in writing to the kind of change made and notice of the change is given to the consumer in two billing cycles prior to the effective date of the change; or

(e) the change applies only to debts incurred after a date specified in a notice of the change given in two billing cycles prior to the effective date of the change.

(4) The notice provided for in this section is given to the consumer when mailed to the consumer at the address used by the creditor for sending periodic billing statements.

(5) Notwithstanding subsection (2), from and after the effective date of this act and until July 1, 1985, a creditor may change the finance charge in an open end credit account after 30 days written notice is given to the consumer.

**History:** L. 1973, ch. 85, § 44; L. 1980, ch. 77, § 4; L. 1981, ch. 94, § 4; L. 1982, ch. 93, § 5; July 1; Session of 1983, HB 2079, July 1, 1983.

**KANSAS COMMENT, 1973**

1. New developments in consumer credit practices may require changes in terms of revolving accounts. A national chain

department store may have hundreds of thousands of customers with revolving charge accounts and a bank may have hundreds of thousands of credit card customers with revolving loan accounts. An insurmountable problem would confront the store or bank were it necessary to obtain from each customer his signed consent to a change in terms. Experience in retail sales credit indicates that only a minority of customers take the trouble to return an express approval or disapproval of a change in terms proposed as a condition of the future use of revolving charge accounts. Nevertheless, merchants and banks should not be able to take advantage of customers by a change which is unfair, unanticipated or inadequately communicated.

This section enables creditors to change the terms of revolving accounts in a manner which is feasible for creditors yet safeguards the interests of their revolving account customers.

2. Subsection (2) provides to the creditor a means of making a proposed change effective as to customer balances in a revolving account both before and after notice to the customer of the change. For a creditor to comply with subsection (2), he must give the customer written notice of at least six months before the change is to take effect and repeat the notice twice during the six month period.

If the customer disapproves the change he may avoid any liability predicated on it: (a) with respect to the future, by refraining from making further purchases or loans under the revolving account, and (b) with respect to the balance in the account at the time of the notice of change, by paying it in full within six months.

3. The six-month notice requirement of subsection (2) is made inapplicable by subsection (3) in 5 situations. Subsection (3) (c) covers changes which involve no substantial cost to the customer; the other four involve overt action by the customer manifesting agreement, and adequate notice of the change to him.

4. Subsection (4) prescribes that a notice provided for in the section is given to the customer when mailed to him at the address used by the creditor for sending periodic billing statements.

5. Under the CCPA only 30 days prior notice is required. See 12 CFR § 226.7 (e).

**16a-3-205. (UCCC) Receipts; statements of account; evidence of payment.** (1) The creditor shall deliver or mail to the consumer, without request, a written receipt for each payment by coin or currency on an obligation pursuant to a consumer credit transaction. A periodic statement showing a payment received by mail complies with this subsection.

(2) Upon written request of the consumer, the person to whom an obligation is owed pursuant to a consumer credit transaction, other than one pursuant to open end credit, shall provide a written statement of the dates and amounts of payments made within the past fifteen (15) months and the total amount unpaid. The statement shall be provided without charge.

(3) After a consumer has fulfilled all obligations with respect to a consumer credit transaction, other than one pursuant to open end credit, the person to whom the obligation was owed shall upon request of the consumer, deliver or mail to the consumer written evidence acknowledging payment in full of all obligations with respect to the transaction.

**History:** L. 1973, ch. 85, § 45; Jan. 1, 1974.

**KANSAS COMMENT, 1973**

Requirements of written receipts for installments paid in currency, a statement of account to be provided on demand, and return of a cancelled note, are not new to Kansas law. A written receipt and return of a cancelled note were required under the old consumer loan act (former K.S.A. 16-412 (b)), and written receipts plus a statement of account upon demand by the con-

