

MINUTES OF THE House COMMITTEE ON Commercial & Financial Institutions

The meeting was called to order by Representative Harold P. Dyck at \_\_\_\_\_  
Chairperson

3:30 ~~xxxx~~/p.m. on March 20, 1986 in room 527-S of the Capitol.

All members were present except: Rep. Dillon, excused; Rep. Johnson, absent

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

Conferees appearing before the committee: Jim Maag, Kansas Bankers Association  
Jim Turner, Kansas League of Savings Institutions

Chairman Dyck opened the meeting and called on Jim Maag, Kansas Bankers Association Research Director, who urged the committee to consider favorably SB453, which concerns the liability of the depositor for lost or stolen machine-readable instruments. (See Attachment I for details.)

Second conferee Jim Turner stated that everything Mr. Maag had said for SB453 as applying to banks also is true for the savings and loans institutions and that he would also urge favorable consideration by the committee of the bill.

There being no further testimony on SB453, the chairman directed the committee's attention to the three bills, SB502, SB455, and SB457, which had been heard at the Committee's March 18, 1986, meeting.

Regarding SB502, which would eliminate the necessity to file financing statements to perfect a purchase money security interest in all consumer goods, Rep. Long suggested a compromise which would eliminate such filings only for a consumer good with a value of \$1,000 or less.

Rep. Long then made a motion to conceptually amend SB502 to eliminate the filing of a financing statement to perfect a purchase money security interest in a consumer good with a value of \$1,000 or less. Rep. Miller seconded.

Rep. Schmidt made a substitute motion to report SB502 adversely. Rep. Wilbert seconded. Motion failed.

Rep. Long's motion to conceptually amend SB502 was then voted on and passed.

Rep. Louis moved to recommend SB502 as amended favorably for passage. Rep. Miller seconded. Motion carried.

Rep. Sand moved that the proposed amendment to SB455 which amends Sec. 4 of K.S.A. 9-1609 (noted in detail in the 3-18-86 committee minutes) be approved. Rep. Ott seconded. Motion carried.

Rep. Louis moved that SB455 be amended as ballooned (See Attachment II for balloon.) Rep. Long seconded. Motion carried.

Rep. Francisco moved to recommend SB455 as amended favorably for passage. Rep. Nichols seconded. Motion carried.

Rep. Miller moved that SB457 be amended on line 0137 by striking "three" and re-inserting "five". Rep. Louis seconded. Motion carried.

Rep. Miller moved to recommend SB457 as amended favorably for passage. Rep. Nichols seconded. Motion carried.

Rep. Louis moved that the minutes of the March 18, 1986, meeting be approved. Rep. Sand seconded. Motion carried.



PUBLIC TESTIMONY

ON

SB 453

TO THE

HOUSE COMMITTEE ON

COMMERCIAL AND FINANCIAL

INSTITUTIONS

BY

KANSAS BANKERS ASSOCIATION

Attachment I  
CFI, House  
March 20, 1986

MARCH 20, 1986



The KANSAS BANKERS ASSOCIATION  
A Full Service Banking Association

March 20, 1986

TO: House Committee on Commercial and Financial Institutions

RE: SB 453 - Debit-card liability

Mr. Chairman and members of the Committee:

The State Affairs Committee of the Kansas Bankers Association is requesting that SB 453 which repeals K.S.A. 9-1111d be considered for passage. Currently that statute provides that if a person loses or has their automated teller machine (ATM) access card stolen their liability cannot exceed \$50 under any circumstance. This has resulted in significant losses to banks involved in ATM networks since there is no incentive for the cardholder to make a prompt reporting of the loss or theft. We are requesting that K.S.A. 9-1111d be repealed and that federal law and regulation be allowed to regulate cardholder liability in situations involving the loss or theft of these access cards.

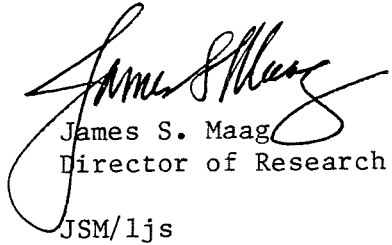
The federal Electronic Fund Transfer Act (the "EFT Act") and Federal Reserve Board Regulation E provide for cardholder liability of up to \$500 in a 60-day period if the cardholder fails to notify the bank of the loss or theft of the access card within two business days and, as a result unauthorized transfers occur which could have been prevented by giving notice within the two business days. If notice is given within two business days, the cardholder's maximum exposure is \$50. However, paragraph (b) (5) of Section 205.6 of Regulation E states that if state law allows for a lesser liability the state provision must take precedent over federal regulation.

As noted above, banks involved in ATM networks are experiencing large losses due to unauthorized transfers using lost or stolen access cards. Many of these losses could have been avoided if the cardholders had made prompt notification, but Kansas law discourages such prompt notification since the cardholder's liability is going to be the same whether they notify the bank within 2 days or 20 days.

When this problem is considered together with the fact that the thief or finder of the access card must also have discovered the cardholder's personal identification number (PIN) - which the cardholder must have negligently written on the card itself or attached to the card - then it is difficult to rationalize the minimal penalty imposed for not promptly reporting the loss or theft. By requiring the cardholder to give prompt notice the federal regulation creates a more equitable balance between the need for consumer protection and the need to limit the card issuer's exposure to ATM fraud losses. Therefore, we believe the repeal of K.S.A. 9-1111d which would then allow Regulation E to govern access card liability is vital to the continuation of sound AMT systems in Kansas.

House Committee on Commercial and Financial Institutions  
March 20, 1986  
Page Two

Thank you for the opportunity to appear before the committee on the provisions of SB 453 and we strongly urge the committee to give favorable consideration to the measure.



James S. Maag  
Director of Research  
JSM/ljs

(2) If two or more consumers hold a joint account from or to which electronic fund transfers can be made, the financial institution need provide only one set of the disclosures required by the regulation for each account.

(c) *Additional information; disclosures required by other laws.* At the financial institution's option, additional information or disclosures required by other laws (for example, Truth in Lending disclosures) may be combined with the disclosures required by this regulation.

## 6-308

## SECTION 205.5—Issuance of Access Devices

(a) *General rule.* A financial institution may issue an access device to a consumer only:

- (1) In response to an oral or written request or application for the device;<sup>1b</sup> or
- (2) As a renewal of, or in substitution for, an accepted access device, whether issued by the initial financial institution or a successor.
- (3) As a renewal of, or in substitution for, an access device issued before February 8, 1979 (other than an accepted access device, which can be renewed or substituted under paragraph (a)(2) of this section), provided that the disclosures set forth in sections 205.7(a)(1), (2), and (3) accompany the renewal or substitute device; except that for a renewal or substitution that occurs before July 1, 1979, the disclosures may be sent within a reasonable time after the renewal or substitute device is issued.

## 6-309

(b) *Exception.* Notwithstanding the provisions of paragraph (a)(1) of this section, a financial institution may distribute an access device to a consumer on an unsolicited basis if:

- (1) The access device is not validated;
- (2) The distribution is accompanied by a complete disclosure, in accordance with section 205.7(a), of the consumer's rights and liabilities that will apply if the access device is validated;

<sup>1b</sup> In the case of a joint account, a financial institution may issue an access device to each account holder for whom the requesting holder specifically requests an access device.

(3) The distribution is accompanied by a clear explanation that the access device is not validated and how the consumer may dispose of the access device if validation is not desired; and

(4) The access device is validated only in response to the consumer's oral or written request or application for validation and after verification of the consumer's identity by any reasonable means, such as by photograph, fingerprint, personal visit, or signature comparison.

An access device is considered validated when a financial institution has performed all procedures necessary to enable a consumer to use it to initiate an electronic fund transfer.

## 6-310

(c) *Relation to Truth in Lending.* (1) The act and this regulation govern:

- (i) Issuance of access devices;
  - (ii) Addition to an accepted credit card, as defined in 12 CFR 226.12(a)(2), footnote 21 (Regulation Z), of the capability to initiate electronic fund transfers; and
  - (iii) Issuance of access devices that permit credit extensions only under a preexisting agreement between a consumer and a financial institution to extend the credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account.
- (2) The Truth in Lending Act (15 USC 1601 et seq.) and 12 CFR Part 226 (Regulation Z), which prohibit the unsolicited issuance of credit cards, govern

- (i) Issuance of credit cards as defined in 12 CFR 226.2(a)(15);
- (ii) Addition of a credit feature to an accepted access device; and
- (iii) Issuance of credit cards that are also access devices, except as provided in paragraph (c)(1)(iii) of this section.

## 6-311

## SECTION 205.6—Liability of Consumer for Unauthorized Transfers

(a) *General rule.* A consumer is liable, within the limitations described in paragraph (b) of

this section, for unauthorized electronic fund transfers involving the consumer's account only if:

- (1) The access device used for the unauthorized transfers is an accepted access device;
- (2) The financial institution has provided a means (such as by signature, photograph, fingerprint, or electronic or mechanical confirmation) to identify the consumer to whom the access device was issued; and
- (3) The financial institution has provided the following information, in writing, to the consumer:

- (i) A summary of the consumer's liability under this section, or under other applicable law or agreement, for unauthorized electronic fund transfers and, at the financial institution's option, notice of the advisability of promptly reporting loss or theft of the access device or unauthorized transfers.

- (ii) The telephone number and address of the person or office to be notified in the event the consumer believes that an unauthorized electronic fund transfer has been or may be made.

- (iii) The financial institution's business days, as determined under section 205.2

- (d), unless applicable state law or an agreement between the consumer and the financial institution sets a liability limit not greater than \$50.

#### 6-312

(b) *Limitations on amount of liability.* The amount of a consumer's liability for an unauthorized electronic fund transfer or a series of related unauthorized transfers shall not exceed \$50 or the amount of unauthorized transfers that occur before notice to the financial institution under paragraph (c) of this section, whichever is less, unless one or both of the following exceptions apply:

- (1) If the consumer fails to notify the financial institution within two business days after learning of the loss or theft of the access device, the consumer's liability shall not exceed the lesser of \$500 or the sum of

- (i) \$50 or the amount of unauthorized electronic fund transfers that occur before the close of the two business days, whichever is less, and

- (ii) The amount of unauthorized electronic fund transfers that the financial institution establishes would not have occurred but for the failure of the consumer to notify the institution within two business days after the consumer learns of the loss or theft of the access device, and that occur after the close of two business days and before notice to the financial institution.

- (2) If the consumer fails to report within 60 days of transmittal of the periodic statement any unauthorized electronic fund transfer that appears on the statement, the consumer's liability shall not exceed the sum of

- (i) The lesser of \$50 or the amount of unauthorized electronic fund transfers that appear on the periodic statement or that occur during the 60-day period, and

- (ii) The amount of unauthorized electronic fund transfers that occur after the close of the 60 days and before notice to the financial institution and that the financial institution establishes would not have occurred but for the failure of the consumer to notify the financial institution within that time.

#### 6-313

(3) Paragraphs (b)(1) and (2) of this section may both apply in some circumstances. Paragraph (b)(1) shall determine the consumer's liability for any unauthorized transfers that appear on the periodic statement and occur before the close of the 60-day period, and paragraph (b)(2)(ii) shall determine liability for transfers that occur after the close of the 60-day period.

(4) If a delay in notifying the financial institution was due to extenuating circumstances, such as extended travel or hospitalization, the time periods specified above shall be extended to a reasonable time.

(5) If applicable state law or an agreement between the consumer and financial institu-

tion imposes lesser liability than that provided in paragraph (b) of this section, the consumer's liability shall not exceed that imposed under that law or agreement.

## 6-314

(c) *Notice to financial institution.* For purposes of this section, notice to a financial institution is given when a consumer takes such steps as are reasonably necessary to provide the financial institution with the pertinent information, whether or not any particular officer, employee, or agent of the financial institution does in fact receive the information. Notice may be given to the financial institution, at the consumer's option, in person, by telephone, or in writing. Notice in writing is considered given at the time the consumer deposits the notice in the mail or delivers the notice for transmission by any other usual means to the financial institution. Notice is also considered given when the financial institution becomes aware of circumstances that lead to the reasonable belief that an unauthorized electronic fund transfer involving the consumer's account has been or may be made.

## 6-315

(d) *Relation to Truth in Lending.* (1) A consumer's liability for an unauthorized electronic fund transfer shall be determined solely in accordance with this section if the electronic fund transfer

(i) Was initiated by use of an access device that is also a credit card as defined in 12 CFR 226.2(a)(15), or

(ii) Involves an extension of credit under an agreement between a consumer and a financial institution to extend the credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account.

(2) A consumer's liability for unauthorized use of a credit card that is also an access device but that does not involve an electronic fund transfer shall be determined solely in accordance with the Truth in Lending Act and 12 CFR 226 (Regulation Z).

## 6-316

## SECTION 205.7—Initial Disclosure of Terms and Conditions

(a) *Content of disclosures.* At the time a consumer contracts for an electronic fund transfer service or before the first electronic fund transfer is made involving a consumer's account, a financial institution shall disclose to the consumer, in a readily understandable written statement that the consumer may retain, the following terms and conditions of the electronic fund transfer service, as applicable:

(1) A summary of the consumer's liability under section 205.6, or other applicable law or agreement, for unauthorized electronic fund transfers and, at the financial institution's option, the advisability of promptly reporting loss or theft of the access device or unauthorized transfers.

(2) The telephone number and address of the person or office to be notified when the consumer believes that an unauthorized electronic fund transfer has been or may be made.

(3) The financial institution's business days, as determined under section 205.2(d).

(4) The type of electronic fund transfers that the consumer may make and any limitations on the frequency and dollar amount of transfers. The details of the limitations need not be disclosed if their confidentiality is essential to maintain the security of the electronic fund transfer system.

(5) Any charges for electronic fund transfers or for the right to make transfers.

(6) A summary of the consumer's right to receive documentation of electronic fund transfers, as provided in sections 205.9, 205.10(a), and 205.10(d).

(7) A summary of the consumer's right to stop payment of a preauthorized electronic fund transfer and the procedure for initiating a stop-payment order, as provided in section 205.10(c).

(8) A summary of the financial institution's liability to the consumer for its failure to make or to stop certain transfers under section 910 of the act.



company the renewal or renewal or substitute "accepted"—and the liability for unauthor- consumer uses or signs it, ne else to use it.

ce—functions of PIN. a personal identifica- consumer's request, could both (1) a way of vali- and (2) the means to (required as a condi- ity for unauthorized

205.6(a)(2))

nce—example of non- a institution issues an and PIN to a consumer, sumer to initiate elec- The institution instructs use the card and PIN s come to an office of fication of the consum- procedure comply with

he consumer could in PIN to initiate transfers ed not to do so); thus, met the requirement ess device be unvalidat- 5.5(b)(1))

nce—example of com- acts as in question 5-6, tion's ATM system is not to accept the con- N. After the consumer on of the card, the insti- computer so that the ork in the system. Does dure comply with the

e institution verifies the some reasonable means 3. (§ 205.5(b)(4))

ssuance—verification of

*identity.* Must an institution verify identity by one of the methods listed in the regulation?

A: No, they are merely examples. Any reasonable means of verifying identity will comply. Even if an institution uses reasonable means, however, if it fails to verify identity correctly—so that an imposter succeeds in having a device validated—the consumer is not liable for any unauthorized transfers from the consumer's account. (§§ 205.5(b)(4), 205.2(a)(2), and 205.6(a)(1))

Q5-9: *Unsolicited issuance—access device with overdraft feature.* The regulation permits the unsolicited issuance of an access device. Under this provision, may an institution issue a combined credit card/access device to a consumer, without a request or application for the card?

A: Yes, provided that (1) the only credit feature is a preexisting overdraft credit line attached to the consumer asset account (or a similar line of credit that maintains a specified minimum balance in the account), and (2) the institution complies with the regulation's procedures for an unsolicited issuance. (§ 205.5(c)(1)(iii))

Q5-10: *Unsolicited issuance—other combined credit card/access devices.* Does the answer to question 5-9 mean that an institution is prohibited from issuing, on an unsolicited basis, any other type of combined credit card/access device?

A: No. Section 226.12(a)(1) of Regulation Z (Truth in Lending) permits creditors to issue, on an unsolicited basis, a card that may become a credit card provided that (1) the card at the time of issuance has a substantive purpose other than obtaining credit and cannot be used as a credit card and (2) any credit privilege that subsequently attaches is attached only upon the consumer's request. (The substantive purpose could be to initiate electronic fund transfers.) The rules of Regulation E on unsolicited issuance of access devices will, of course, continue to apply. (§§ 205.5(c)(2)(iii) and (b))

**SECTION 205.6—Liability of Consumer for Unauthorized Transfers**

Q6-1: *Unauthorized transfers—access device not involved.* If unauthorized transfers do not involve the use of an access device such as a debit card, may any liability be imposed on the consumer?

A: If the consumer fails to report an unauthorized electronic fund transfer within 60 days of transmittal of the periodic statement reflecting the transfer, the consumer could be subject to liability. (See questions 2-26 and 7-7.) (§ 205.6(a) and (b))

Q6-2: *Failure to disclose business days.* If a financial institution meets other conditions (including disclosure of liability) but fails to disclose its business days, can it hold the consumer liable for unauthorized transfers involving a lost or stolen access device?

A: No, unless applicable state law or an agreement between the consumer and the financial institution sets a liability limit of \$50 or less. (§ 205.6(a)(3)(iii))

Q6-3: *Means of identification—multiple users.* If more than one access device is issued to access a particular consumer account, must the financial institution provide a means to identify each separate user in order to impose liability for unauthorized transfers?

A: No. The financial institution may provide means to identify the separate users but is not required to do so. (§ 205.6(a)(2))

Q6-4: *Means of identification—use of PIN.* Does the use of a personal identification number (PIN) or other alphabetical or numerical code satisfy the requirement of electronic or mechanical confirmation for identifying the consumer to whom an access device was issued?

A: Yes. (§ 205.6(a)(2))

Q6-5: *Application of liability provisions—examples.* What are some examples of when and how the following would apply: (1) the \$500 liability limit provision, (2) both the \$500

limit and the unlimited liability provisions, and (3) only the \$50/unlimited liability provisions? (§ 205.6(b)(1), (2) and (3))

A: Situation 1—\$500 Limit Applies

Date	Event
June 1	C's card is stolen.
June 2	\$100 unauthorized transfer.
June 3	C learns of theft.
June 4	\$25 unauthorized transfer.
June 5	Close of two business days.
June 7-8	\$600 in unauthorized transfers that could have been prevented had notice been given by June 5.
June 9	C notifies bank.

Computation of C's liability:

Paragraph (b)(1) will apply to determine C's liability for any unauthorized transfers that occur before notice is given.

	C's liability:
Amount of transfers before close of two business days: \$125	\$ 50 (maximum liability for this period)
Amount of transfers, after close of two business days and before notice to institution, that would not have occurred but for C's failure to notify within two business days: \$600	\$450 (because maximum liability is \$500)
C's total liability	<u>\$500</u>

Situation 2—Both \$500 and Unlimited Liability Provisions Apply

Date	Event
June 1	C's card is stolen.
June 3	C learns of theft.
June 5	Close of two business days.
June 7	\$200 unauthorized transfer that could have been prevented had notice been given by June 5.
June 10	Periodic statement is transmitted to C (for period from May 10 to June 9).
June 15	\$200 unauthorized transfer that could have been prevented had notice been given by June 5.
July 10	Periodic statement of C's account is transmitted to C

August 4	(for period from June 10 to July 9). \$300 unauthorized transfer that could have been prevented had notice been given by June 5.
August 9	Close of 60 days after transmittal of statement showing unauthorized transfer.
August 10	Periodic statement of C's account is transmitted to C (for period from July 10 to August 9).
August 15	\$100 unauthorized transfer that could have been prevented had notice been given by August 9.
August 20	C notifies bank.

Computation of C's liability:

Paragraph (b)(1) will apply to determine C's liability for unauthorized transfers that appear on the periodic statement and unauthorized transfers that occur before the close of the 60-day period. (The transfers need not both appear on the periodic statement and occur before the close of the 60-day period.) The maximum liability under (b)(1) is \$500.

	C's liability:
Amount of transfers before close of two business days: \$0	\$ 0
Amount of transfers, after close of two business days and before close of 60-day period, that would not have occurred but for C's failure to notify within two business days: \$700	\$500 (maximum liability)

Paragraph (b)(2)(ii) will apply to determine C's liability for transfers occurring after the close of the 60-day period. There is no dollar ceiling on liability under paragraph (b)(2)(ii).

Amount of transfers, after close of 60 days and before notice, that would not have occurred but for C's failure to notify within 60 days: \$100	\$100
C's total liability:	<u>\$600</u>

Situation 3—\$50/Transfers Apply

Facts same as in Situation 1. C does not learn of theft until August 20. Transfers.

Computation of C's liability: In this situation, the \$50 limit applies.

Amount of transfers appearing on the periodic statement or occurring during the 60-day period: \$700

Amount of transfers, after close of 60-day period and before notice, that would not have occurred but for C's failure to notify within 60 days: \$100

C's total liability:

Q6-6: Knowledge of consumer's receipt of unauthorized transfer reflects unauthorized nature of the theft of the access device.

A: Receipt of the periodic statement is a factor in determining whether C had knowledge of the unauthorized transfer. C may be deemed to represent that the consumer had knowledge of the unauthorized transfer (§ 205.6(b)).

Q6-7: Notice of loss of card gives notice at an address other than the cardholder's address.

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Situation 3—\$50/Unlimited Liability Provi-  
 sions Apply

Facts same as in situation 2, except that C  
 does not learn of the card theft, but ques-  
 tions the account balance and notifies bank  
 on August 20 of possible unauthorized  
 transfers.

*Computation of C's liability*

In this situation only paragraph (b)(2)  
 applies.

	<i>C's liability:</i>
Amount of transfers ap- pearing on the periodic state- ment or occur- ring during the 60-day period: \$700	\$ 50 (maximum liability for this period)
Amount of transfers, after close of 60-day period and be- fore notice, that would not have occurred but for C's failure to notify within 60 days: \$100	\$100
C's total liability:	<u>\$150</u>

Q6-6: *Knowledge of loss or theft of access de-  
 vice.* May a financial institution treat the con-  
 sumer's receipt of a periodic statement that  
 reflects unauthorized transfers as establishing  
 that the consumer had knowledge of loss or  
 theft of the access device?

A: Receipt of the periodic statement reflecting  
 unauthorized transfers may be considered a  
 factor in determining whether the consumer  
 had knowledge of the loss or theft, but cannot  
 be deemed to represent conclusive evidence  
 that the consumer had such knowledge.  
 (§ 205.6(b))

Q6-7: *Notice of loss or theft.* The consumer  
 gives notice at an address or telephone num-  
 ber other than that specified by the financial

institution. Is the notice valid for purposes of  
 limiting the consumer's liability?

A: Yes. The institution has received notice for  
 purposes of limiting the consumer's liability if  
 notice is given in a reasonable manner at some  
 other address or telephone number of the in-  
 stitution. (§ 205.6(c))

Q6-8: *Notice of loss or theft—content of notice.*  
 The regulation refers to the consumer's taking  
 such steps as are reasonably necessary to pro-  
 vide the financial institution with the perti-  
 nent information about the loss or theft of an  
 access device. If a consumer is unable to fur-  
 nish the institution with an account number  
 or card number when reporting a lost or sto-  
 len access device, has the consumer given ade-  
 quate notice?

A: Yes. In instances where the consumer is  
 unable to provide the number, the notice is  
 still valid for purposes of limiting the consum-  
 er's liability if the notification otherwise suffi-  
 ciently identifies the account in question. Such  
 a situation could arise, for example, if the con-  
 sumer's wallet is stolen and the consumer is  
 away from home. (§ 205.6(c))

Q6-9: *Applicable liability provisions—cash ad-  
 vances from credit line.* A credit card that is  
 also an access device is used to obtain unau-  
 thorized cash advances from a line of credit at  
 an automated teller machine. Do the consum-  
 er liability provisions of Regulation E, or  
 those of Regulation Z, apply?

A: Regulation Z applies. Since the unau-  
 thorized cash advances do not involve a  
 consumer asset account, an electronic fund  
 transfer has not occurred that would make  
 the transaction subject to Regulation E.  
 (§ 205.6(d)(2))

Q6-10: *Applicable liability provisions—check-  
 ing account with overdraft feature.* If the unau-  
 thorized transfers in question 6-9 were in-  
 stead withdrawals from a checking account  
 and they resulted in cash advances from an  
 overdraft line of credit, which liability provi-  
 sions apply?

A: Regulation E applies, because the transfer

was an electronic fund transfer; there was an extension of credit only as a consequence of the overdraft protection feature on the checking account. (§ 205.6(d)(1))

**Q6-11: Applicable liability provisions—withdrawals from checking account/credit line.** If a consumer's access device is also a credit card and the device is used to make unauthorized withdrawals from the checking account and, separately, to obtain cash advances directly from the line of credit, which liability provisions apply?

**A:** Both Regulation E and Regulation Z apply. Regulation E would apply to the unauthorized transfers involving the checking account, while Regulation Z would apply to the transfers involving the credit line. As a result, a consumer might be liable for up to \$50 under Regulation Z and, in addition, for \$50, \$500, or an unlimited amount under Regulation E. (§ 205.6(d))

#### SECTION 205.7—Initial Disclosure of Terms and Conditions

**Q7-1: Timing of disclosures—early disclosure.** An institution is required to give initial disclosures either (1) when the consumer contracts for an EFT service or (2) before the first electronic fund transfer to or from the consumer's account. If an institution provides initial disclosures when a consumer opens a checking account and the consumer does not sign up for an EFT service until 11 months later, has the institution satisfied the disclosure requirements?

**A:** Yes, if the EFT contract is between the consumer and a third party for preauthorized electronic transfers to be initiated by the third party to or from the consumer's account. In this case, the financial institution need not repeat disclosures previously given unless the terms and conditions required to be disclosed are different from those that were given.

If, on the other hand, the EFT contract is directly between the consumer and the financial institution—for the issuance of an access device, or for a telephone bill-payment plan, for example—the institution should provide

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the disclosures at the time of contracting. Disclosures given before the time of contracting will satisfy the regulation only if they occurred in close proximity thereto. (§ 205.7(a))

**Q7-2: Timing of disclosures—Social Security direct deposits.** In the case of Social Security direct deposits, the financial institution receives no prenotification. How can the institution comply with the disclosure requirements?

**A:** Before direct deposit of Social Security payments can occur, both the consumer and the institution must complete a Form 1199. The institution can make disclosures at that time. (§ 205.7(a))

**Q7-3: Form of disclosures.** Are there special rules for disclosure statements concerning such matters as type size, number of pages, or the relative conspicuousness of various terms?

**A:** No. The regulation imposes no requirements concerning matters of form, although it does specify that the disclosures must be given in a readily understandable written statement that the consumer may retain. (§ 205.7(a))

**Q7-4: Spanish language disclosures.** In Puerto Rico, where communications normally are in Spanish, may a financial institution provide the required disclosures in Spanish?

**A:** Yes, disclosures in Spanish will satisfy the readily understandable requirement, provided that disclosures in English are given to consumers who request them. (§ 205.7(a))

**Q7-5: Disclosures covering all EFT services offered.** Must the disclosure statement given to a consumer relate only to the particular EFT services that the consumer will receive?

**A:** An institution may provide a disclosure statement covering all the EFT services that the institution offers, even if some consumers receiving the disclosures have not arranged to use all the services. (§ 205.7(a))

**Q7-6: Addition of new EFT services.** A consumer signs up for an EFT service and receives disclosures. If the consumer later arranges for other EFT services from the same

institution, must disclosures be given?

**A:** Yes, if the institution provides the additional disclosures also the case if a new service is provided. (See question 6-11)

**Q7-7: Disclosures—preauthorized transfers.** Must disclosures be given for preauthorized transfers to make a liability transfer to a consumer's number and address? (See question 6-11)

**A:** Yes, unless the institution imposes any liability on the consumer should the consumer fail to provide the number and address. (See question 6-11)

**Q7-8: Disclosures—no liability.** If a consumer chooses not to use a preauthorized electronic fund transfer, may the institution make any liability disclosures?

**A:** No; the institution must provide disclosures before it can do so.

**Q7-9: Summary of disclosures.** Must the institution provide a summary of the rights under the disclosures spell out the rights they are set forth?

**A:** No. These disclosures may be provided in any means of summary showing the terms to be provided, see appendix A and (8)

**Q7-10: Type of transfers.** Must disclosures be given for preauthorized transfers. Must disclosures be given for a type of transfer that the consumer

0046 bank, and advances to such corporation acquired or made after  
0047 July 1, 1973, and stock in a trust company, at no time shall be  
0048 carried on the books of the bank at a total amount in excess of  
0049 ~~one-half~~ 1/2 of the capital stock and surplus, or, if the bank's real  
0050 estate is that necessary for its accommodation in the transaction  
0051 of its business, ~~one-half~~ 1/2 of the capital stock, surplus and  
0052 capital notes and debentures of such bank, unless approval is  
0053 granted by the state bank commissioner.

0054 Any bank may acquire real estate in satisfaction of any debts  
0055 due it and may purchase real estate in satisfaction of any debts  
0056 due it, and may purchase real estate at judicial sales, but no bank  
0057 shall bid therefor at any judicial sale a larger amount than is  
0058 necessary to protect its debts and costs. No real estate acquired  
0059 in the satisfaction of debts or upon judicial sales shall be carried  
0060 as a book asset of the bank for more than five (5) ~~[10]~~ years. At the  
0061 termination of the five (5) ~~[10]~~ years such real estate shall be  
0062 charged off. The commissioner may grant an extension thereof  
0063 for an additional four (4) years, or any portion thereof, if in the  
0064 commissioner's judgment it will be to the advantage of the bank  
0065 to carry the real estate as an asset for such extended period.

0066 *Sec. 2. K.S.A. 17-5904 is hereby amended to read as follows:*  
0067 *17-5904. (a) No corporation, trust, limited corporate partnership*  
0068 *or corporate partnership, other than a family farm corporation,*  
0069 *authorized farm corporation, family trust, authorized trust or*  
0070 *testamentary trust shall, either directly or indirectly, own, ac-*  
0071 *quire or otherwise obtain or lease any agricultural land in this*  
0072 *state. The restrictions provided in this section do not apply to*  
0073 *the following:*

- 0074 (1) *A bona fide encumbrance taken for purposes of security.*
- 0075 (2) *Agricultural land when acquired as a gift, either by grant*  
0076 *or devise, by a bona fide educational, religious or charitable*  
0077 *nonprofit corporation.*
- 0078 (3) *Agricultural land acquired by a corporation in such*  
0079 *acreage as is necessary for the operation of a nonfarming busi-*  
0080 *ness. Such land may not be used for farming except under lease*  
0081 *to one or more natural persons, a family farm corporation,*  
0082 *authorized farm corporation, family trust, authorized trust or*

, except for agricultural land, as defined in K.S.A. 17-5903, and amendments thereto.

five

five

Agricultural land, as defined in K.S.A. 17-5903 and amendments thereto, acquired in satisfaction of debts or upon judicial rates shall be carried as a book asset of the bank for more than 10 years. At the termination of the 10 years such agricultural land shall be charged off.

or agricultural land

Attachment II  
CFI, House  
March 20, 1986

Attachment II