Approved 3-20-86
Date

MINUTES OF THE House COMMITTEE ON Insurance.

The meeting was called to order by Vice Chairman Dale Sprague at
Chairperson

3:30 xx a.m./p.m. on March 19, 1986 in room 521-S of the Capitol.

All members were present except:

Rep. Graeber, Rep. King, Rep. Lowther, all excused
Rep. Hoy, excused

Committee staff present:

Ms. Emalene Correll, Research Department
Ms. Melinda Hanson, Research Department
Mr. Gordon Self, Revisor's Office
Ms. Deanna Willard, Committee Secretary

Conferees appearing before the committee:

Mr. Tom Robison, Beneficial Management Corporation
Mr. Dick Brock, Kansas Insurance Department
Mr. Jeff Southard, Attorney General's Office
Prof. Paul Rasor, WU Law School
Mr. Stan Lind, Ks. Assoc. of Financial Services

The meeting was called to order by the Vice Chairman.

Hearing on: SB 454 - concerning credit property insurance
Hearing on: SCR 1633 - concerning credit insurance

Ms. Melinda Hanson informed the committee that this bill would amend the Kansas Uniform Consumer Credit Code to permit credit property insurance to cover goods other than those secured by a purchase money security interest. Under current law, lenders are allowed to insure certain household furnishings but not to use them as collateral.

Mr. Tom Robison, Beneficial Management Corporation, stated that SB 454 would allow lenders to be in the same position as in 1985 before the FTC enacted a regulation that prohibited a potential borrower from listing household items as collateral. (Attachment 1.) Currently, only non-essential items can be listed on security agreements as collateral. The borrower must sign that he does not have personal property insurance and, also, that he wishes to purchase coverage on his household items. Personal lines agents often cannot, or do not wish to, write a policy for under $10,000. Currently, the maximum amount of credit insurance is $1,500; SCR 1633 would raise this amount to $3,000.

Mr. Dick Brock, Kansas Insurance Department, said that the department supports the bill. The people who will be purchasing this insurance have no other insurance on their contents. The UCCC defines what items can be used as collateral.

Mr. Jeff Southard, Deputy Attorney General, presented Attorney General Opinion No. 86-42 regarding the Consumer Credit Code--Property and Liability Insurance--Property Insurance. (Attachment 2.) His areas of concern were (1) use of the proceeds when the lender is the loss payee; (2) 16a-2-501 may already provide for this type of transaction; and (3) "packing" - trying to load the customer up with insurance that has nothing to do with the transaction in

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

order to make more profit.

Prof. Paul Rasor, Washburn University Law School, appeared on behalf of the Kansas Consumer Credit Commissioner, to oppose the bill with the opinion that it is harmful to consumers. (Attachment 3.) He said that the bill would force the customer to buy the insurance.

Mr. Stan Lind, Kansas Association of Financial Services, spoke for the bill. He said that for years, everyone could mortgage any personal property they wished; recent action by the Federal Trade Commission prevents certain household goods from being used as collateral. Personal furnishings are now divided into "non-essentials" and "essentials." This action applies to anyone who lends under the UCCC. A lender can now use only "non-essential" or "luxury" items for collateral and can only require insurance on those items, though insurance coverage could be provided the consumer on other items if he desired.

Per Mr. Brock, persons selling insurance on credit transactions are exempted from licensing. He said the SCR 1633 was a procedural matter which would allow for the change to be made sooner.

Hearing on: SB 530 - concerning the committee on surety bonds and insurance

Ms. Melinda Hanson said that this bill would make technical changes in statutes governing activities of the State Committee on Surety Bonds and Insurance. She indicated that although some of the issues addressed in the bill arose during interim study of Proposal No. 15--Bonding of State Employees, the bill was not included in the final report of the interim committee and is not a direct product of their study.

Mr. Dick Brock said that the insurance commissioner chairs the committee on surety bonds and that Line 0028 allows a designee to act on behalf of the State Treasurer, Attorney General, or Insurance Commissioner rather than requiring each's personal appearance. Lines 0059-0060 clarify the ability of the KTA to go outside the committee for purchase of insurance. Line 0079 raises to $500 the amount at which sealed bids must be received on insurance purchases. Lines 0130 - 0132 allow the surety committee to control insurance on items being insured.

Rep. Blumenthal moved that SB 530 be passed favorably; Rep. Bryant seconded the motion. The motion carried.

The minutes of the previous meeting were approved.

The meeting was adjourned at 4:40 p.m. by the Vice Chairman.

GUEST LIST

COMMITTEE: Ins. DATE: 3-19-86

NAME	ADDRESS	COMPANY/ORGANIZATION
Barb Head		Attorney General
Jeff Southard		Atty. Gen.
Tom Robison	Jeff City Mo	Beneficial
Paul Rasor	W.U. Law School	
Judy Stringer	Consumer Credit Commissioner	
Donna Smith	Topeka	Ks. Bar Assoc.
S L Lind	K.C.Ks.	Ks. Assn. of Fin. Cos.
Bob Tuigg	Ottawa	Consumer Credit Comm

generalizations about the efficacy of disclosures somewhat speculative.

Thus, even though the disclosure alternative might have produced some benefits, we concluded that disclosure would provide a less adequate remedy for existing market failures than would the prohibitory rule promulgated by the Commission. Inefficiently high use of certain creditor remedies results not only from lack of consumer awareness, but from other problems as well. Moreover, lack of consumer awareness of other relevant issues would not be addressed by the disclosure of creditor remedies. For example, some consumers may underestimate the risk of default, and some consumers may not understand legal procedure well enough to grasp the implications of some remedies (*e.g.* confessions of judgment) even if they are told that such provisions are in the contract.[14]

2. Costs

The principal cost of a disclosure rule would be the resources needed to provide the forms, individualize them for various consumer contracts, and explain them to borrowers, together with the resources needed to enforce the rule. Unlike the accepted rule, which restricts the use of collateral and collection procedures, the disclosure alternative would not prohibit the use of contract terms between informed borrowers and creditors. As a result, a disclosure alternative would avoid most of the costs of the accepted rule and any resulting effects on the cost and availability of credit.

3. Commission Decision

The Commission concluded that the benefits of the promulgated rule would exceed those of the disclosure alternative. Although the Commission also found that the costs of the promulgated rule would exceed those of the disclosure alternative, it concluded that the net benefits of the promulgated rule would exceed the net benefits that would result from a rule based on disclosures. In particular, a disclosure alternative would not address other impediments to shopping that prevent creditors from competing to supply the creditor remedies which informed borrowers would most prefer.

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[14] For example, in a discussion of disclosure with respect to confessions of judgment, the Presiding Officer reported an argument that disclosure would be inadequate. "[E]ven if there is a bold-face disclosure, it was said that the idea of a suit without notice or a hearing is so foreign to the American consumer that he fails to comprehend it." *Presiding Officer's Report* at 90, *citing* Carolyn C. McTighe, Legal Aid Society of Cleveland, R-I(c)-38.

Accordingly, Title 16 of the Code of Federal Regulations is amended by the addition of new Part 444.

PART 444—CREDIT PRACTICES

Sec.
444.1 Definitions.
444.2 Unfair credit practices.
444.3 Unfair or deceptive cosigner practices.
444.4 Late charges.
444.5 State exemptions.

Authority: Sec. 18(a), 88 Stat. 2193, as amended 93 Stat. 95 (15 U.S.C. 57a); 80 Stat. 383, as amended, 81 Stat. 54 (5 U.S.C. 552).

§ 444.1 Definitions.

(a) *Lender.* A person who engages in the business of lending money to consumers within the jurisdiction of the Federal Trade Commission.

(b) *Retail installment seller.* A person who sells goods or services to consumers on a deferred payment basis or pursuant to a lease-purchase arrangement within the jurisdiction of the Federal Trade Commission.

(c) *Person.* An individual, corporation, or other business organization.

(d) *Consumer.* A natural person who seeks or acquires goods, services, or money for personal, family, or household use.

(e) *Obligation.* An agreement between a consumer and a lender or retail installment seller.

(f) *Creditor.* A lender or a retail installment seller.

(g) *Debt.* Money that is due or alleged to be due from one to another.

(h) *Earnings.* Compensation paid or payable to an individual or for his or her account for personal services rendered or to be rendered by him or her, whether denominated as wages, salary, commission, bonus, or otherwise, including periodic payments pursuant to a pension, retirement, or disability program.

(i) *Household goods.* Clothing, fur[illegible] appliances, one radio and one television, linens, china, crockery, kitchenware, and personal effects (including wedding rings) of the consumer and [illegible] dependents, provided that the following are not in[illegible] within the scope of the term "h[illegible]old goods":

(1) Works of art;

(2) Electronic entertainment eq[illegible] (except one television and o[illegible]);

(3) [illegible] antiques; and

(4) Jewelry (except wedding rings).

(j) *Antique.* Any item over one hu[illegible] such i[illegible] or [illegible] without changing their original form or character.

(k) *Cosigner.* A natural person who renders himself or herself liable for the obligation of another person without compensation. The term shall include any person whose signature is requested as a condition to granting credit to another person, or as a condition for forbearance on collection of another person's obligation that is in default. The term shall not include a spouse whose signature is required on a credit obligation to perfect a security interest pursuant to state law. A person who does not receive goods, services, or money in return for a credit obligation does not receive compensation within the meaning of this definition. A person is a cosigner within the meaning of this definition whether or not he or she is designated as such on a credit obligation.

§ 444.2 Unfair credit practices.

(a) In connection with the extension of credit to consumers in or affecting commerce, as commerce is defined in the Federal Trade Commission Act, it is **an unfair act or practice within the meaning of Section 5 of that Act for a lender or retail installment seller directly or indirectly to take or receive from a consumer an obligation that:**

(1) Constitutes or contains a cognovit or confession of judgment (for purposes other than executory process in the State of Louisiana), warrant of attorney or other waiver of the right to notice and the opportunity to be heard in the event of suit or process thereon.

(2) Constitutes or contains an executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held, owned by, or due to the consumer, unless the waiver applies solely to property subject to a security interest executed in connection with the obligation.

(3) Constitutes or contains an assignment of wages or other earnings unless:

(i) The assignment by its terms is revocable at the will of the debtor, or

(ii) The assignment is a payroll deduction plan or preauthorized payment plan, commencing at the time of the transaction, in which the consumer authorizes a series of wage deductions as a method of making each payment, or

(iii) The assignment applies only to wages or other earnings already earned at the time of the assignment.

(4) Constitutes or contains a nonpossessory security interest in household goods other than a purchase money security interest.

Attachment 1
House Insurance
3-19-86

FEDERAL TRADE COMMISSION

16 CFR Part 444

Trade Regulation Rule; Credit Practices

AGENCY: Federal Trade Commission.

ACTION: Final trade regulations rule.

SUMMARY: The Federal Trade Commission issues a final rule, the purpose of which is to restrict certain remedies used by lenders and retail installment sellers in consumer credit contracts. The remedies affected by this rule are: Confessions of judgment, waivers of exemption, wage assignments, security interests in household goods, and certain late charges. The rule further prohibits misrepresentations of cosigner liability and provides that potential cosigners be furnished a "Notice to Cosigner" which explains in general terms their obligations and liabilities.

This notice contains the rule's Statement of Basis and Purpose, incorporating a Regulatory Analysis, and the text of the final rule.

EFFECTIVE DATE: March 1, 1985.

ADDRESS: Requests for copies of the rule, the Statement of Basis and Purpose and Regulatory Analysis should be sent to Public Reference Branch, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Christopher W. Keller, Division of Credit Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580 (202) 724-1580.

SUPPLEMENTARY INFORMATION:

List of Subjects in 16 CFR Part 444

Consumer credit contracts, Cosigner disclosures, Trade practices, Truth in lending.

By direction of the Commission. Commissioner Calvani did not participate.

Dated. February 17, 1984.

Benjamin I. Berman,

Acting Secretary.

CREDIT PRACTICES RULE; STATEMENT OF BASIS AND PURPOSE AND REGULATORY ANALYSIS

I. History of the Proceeding

A. Introduction

This proceeding focuses on the relationship between consumers and the institutions from whom they seek and obtain credit for purposes other then the purchase of real estate. It originated as a result of: (1) An extensive survey conducted by the National Commission on Consumer Finance which examined the consumer credit market and reached a variety of conclusions based upon empirical data and econometric analysis;[1] and (2) an investigation of the consumer finance industry conducted by the Bureau of Consumer Protection from the Fall of 1972 until the Spring of 1974, to determine whether the use of certain collection remedies was an unfair practice under Section 5 of the FTC Act.[2]

The Commission published an Initial Notice of Rulemaking in the **Federal Register** on April 11, 1975.[3] Written comments were received through August 5, 1977. Comments were received from industry, consumers, legal services, state attorneys general, labor unions, consumer organizations and other interested parties. A Final Notice of Rulemaking was published on June 24, 1977, setting forth the time and places for public hearings on the proposed rule and enumerating 14 issues which the Presiding Officer designated under § 1.13(d)(1) of the Commission's Rules of Practice.[4] Hearings were conducted in Dallas, Texas; Chicago, Illinois; San Francisco, California; and Washington, D.C., from September 12, 1977, to January 30, 1978. Rebuttal submissions were received untill May 1, 1978.

The written comments, the materials placed on the record by the Presiding Officer and the Commission staff, the hearing transcripts and exhibits, and the rebuttal statements comprise the principal evidentiary record of this proceeding. After the receipt of rebuttal statements, reports to the Commission based on the rulemaking record were prepared by the Presiding Officer,[5] who made findings on designated issues, and by the Commission staff,[6] who summarized and analyzed the record evidence and made recommendations to the Commission for a revised Trade Regulation Rule. The Bureau of Economics also submitted comments and recommendations to the Commission for a revised rule.[7]

Pursuant to § 1.13(h) of the Commission's Rules of Practice, publication of the Final Staff Report initiated a sixty-day comment period which afforded the public an opportunity to comment on the reports of the Presiding Officer and the staff. This comment period was extended and closed on January 16, 1981. A summary of post-record comments was placed on the public record.

On April 14, 1983, the rulemaking staff's memorandum recommending a final modified proposed rule, and memoranda from the staff of the Bureau of Economics, and the Directors of the Bureaus of Consumer Protection and Economics were placed on the public record. On June 6 and 7, 1983, the Commission heard oral presentations from prior rulemaking participants who had been invited to present their views directly to the Commission as provided in § 1.13(i) of the Commission's Rules, 16 CFR 1.13(i).[8]

On June 13, 1983, the Commission met to consider whether to adopt a final rule, and if so, what form the rule should take. Although as to the rule as a whole no final determination was made during that meeting, the Commission deleted the provisions of the staff proposed rule concerning attorneys' fees and deficiency balances and directed the staff to draft proposed disclosures for the remaining provisions of the rule. The Commission further directed the staff to draft alternative proposals for a limitation on household goods security interests and third party contacts. The staff was instructed to draft a modified disclosure for cosigners. The Commission indicated tentative support for a ban on confessions of judgment and wage assignments. The Commission further indicated support for the late

[1] "Consumer Credit in the United States," *Report of the National Commission on Consumer Finance* (1972).

[2] Memorandum to Commission dated April 18, 1974.

[3] 40 FR 16347. This Notice contained a Statement of Reason for the Proposed Rule which set forth the legal theory applied to the acts and practices at issue in the proceeding, as well as a list of 12 questions which the Commission deemed particularly pertinent and upon which comment was specifically invited.

[4] 42 FR 32261, June 24, 1977.

[5] Report of the Presiding Officer on Proposed Trade Regulation Rule: Credit Practices, August 11, 1978 (hereinafter cited as "Presiding Officer's Report").

[6] Credit Practices Staff Report and Recommendation on Proposed Trade Regulation Rule 16 CFR Part 444, August 1980 (hereinafter cited as "Staff Report").

[7] Memorandum by Edward Manfield, Bureau of Economics, August 18, 1980.

[8] The participants were Commonwealth of Massachusetts, Department of the Attorney General; Credit Union National Association, Inc.; the Legal Aid Society of Cleveland; Professors James Barth and Anthony Yezer, George Washington University; National Automobile Dealers Association; American Financial Services Association. (Throughout the major portion of the proceeding this organization was denominated National Consumer Finance Association (NCFA) and will be so termed in relevant citations in this statement); Consumer Federation of America; George Wallace, Rutgers School of Law; Federal Reserve Board; American Retail Federation and National Retail Merchants Association, New Orleans Legal Assistance Corp.; Consumer Bankers Assoc., American Bankers Association, California Bankers Association, and Independent Bankers Association of America; National Consumer Law Center; and Legal Assistance Foundation of Chicago.

FILE

Subject ______________

Copy to ______________

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

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

March 17, 1986

ATTORNEY GENERAL OPINION NO. 86- 42

Judith K. Stringer, Commissioner
Office of Consumer Credit Commissioner
217 SE Fourth Street, 4th Floor
Topeka, Kansas 66603

Re: Consumer Credit Code -- Property and Liability Insurance -- Property Insurance; Damage to Property Unrelated to Credit Transaction

Synopsis: 1986 Senate Bill No. 454 would amend a section of the Kansas Uniform Consumer Credit Code [K.S.A. 16a-4-301(a)] to permit a lender to contract for or receive a separate charge for insurance against loss of or damage to property "all or part of which" is related to the credit transaction. The stated purpose of the bill is to allow a consumer to purchase credit property insurance on all of the consumer's household goods. If a loss occurred on goods insured pursuant to K.S.A. 16a-4-301(a) which are not listed on the security agreement, the consumer might or might not receive the proceeds from the insurance claim, depending on whether the lender was named as loss payee. Further, a lender may already sell credit property insurance under the provisions of K.S.A. 16a-2-501, subject to the restrictions of K.A.R. 75-6-9. Cited herein: K.S.A. 16a-1-102; 16a-2-501; 16a-4-301; K.A.R. 75-6-9.

* * *

Attachment 2
House Insurance
3-19-86

Dear Ms. Stringer:

As Consumer Credit Commissioner for the State of Kansas, you request our opinion on a question concerning 1986 Senate Bill No. 454, an act involving credit property insurance, which amends K.S.A. 16a-4-301. Specifically, you ask whether, in the event of a loss and a claim paid by an insurance company for household goods not listed on the security agreement, the creditor or the insured should receive the proceeds from the claim. Further, you ask whether a lender who is interested in selling such insurance may sell credit property coverage under the existing provisions of K.S.A. 16a-2-501.

The bill reads in part, as follows:

> "Be it enacted by the Legislature of the State of Kansas:
>
> "Section 1. K.S.A. 16a-4-301 is hereby amended to read as follows: 16a-4-301. (a) A creditor may not contract for or receive a separate charge for insurance against loss of or damage to property unless:
>
> "(a) The insurance covers a substantial risk of loss of or damage to property all or part of which is related to the credit transaction;
>
> "(b) the amount, terms, and conditions of the insurance are reasonable in relation to the character and value of the property insured or to be insured; and
>
> "(c) the term of the insurance is reasonable in relation to the terms of credit." (Added language is underscored.)

Absent the inclusion of a loss payee clause in the consumer's contractual agreement with the lender, the proceeds of the insurance would be received by the insured for replacement of the lost items. The contract to purchase insurance would be considered a wholly separate and distinct contractual agreement from the credit transaction. Therefore, if a loss occurred, the insured would receive the insurance proceeds. Further, given the intent of the code to encourage fair and economically sound credit practices [K.S.A. 16a-1-102(2)(e)], we question whether a lender could be named a loss payee in the case of damage done to property previously owned by the

consumer which is not in any way related to the credit transaction. However, this question remains open under the bill as it now reads.

Under the present code, a lender may sell credit property insurance pursuant to K.S.A. 16a-2-501. K.S.A. 16a-2-501 allows a lender to impose certain additional charges for consumer credit sales, including charges for insurance and provides, in part, as follows:

> "(1) In addition to the finance charge permitted by the parts of this article on maximum finance charges for consumer credit sales and consumer loans (parts 2 and 4), a creditor may contract for and receive the following additional charges in connection with a consumer credit transaction.
>
> "(a) Official fees and taxes;
>
> "(b) charges for insurance as described in subsection (2);
>
> "(c) annual charges, payable in advance, for the privilege of using a lender credit card which entitles the user to purchase goods or services from at least one hundred (100) persons not related to the issuer of the lender credit card, under an arrangement pursuant to which the debts resulting from the purchases are payable to the issuer;
>
> "(d) charges for other benefits, including insurance, conferred on the consumer, if the benefits are of value to him and if the charges are reasonable in relation to the benefits, are of a type which is not for credit, and are excluded as permissible additional charges from the finance charge by rule adopted by the administrator. (Emphasis added.)

Though a lender may sell credit property insurance pursuant to this section, it is important to note that the benefits conferred on the consumer as a result of the sale must be "of value" to the consumer and "reasonable" in relation to the benefits. [See K.S.A. 16a-2-501(d).] We additionally note that the sale of insurance is further restricted by K.A.R.

75-6-9. In light of this existing statute, the bill could be viewed as redundant.

In addition to answering your specific questions regarding 1986 Senate Bill No. 454, we feel constrained to comment on the potential effect of this legislation on the Kansas consumer. The stated purpose of the bill is to allow a borrower to purchase credit property insurance on all of his household goods. (See minutes of the Senate Committee on Financial Institutions and Insurance, February 5, 1986). Passage of this legislation could easily result in the consumer becoming a victim of "packing", a lucrative practice in which a lender adds payments for "optional insurance" and other products to the amount of the loan without the customer's requesting them. Legislation like the Federal Truth-in-Lending statute and the Kansas Consumer Credit Code, K.S.A. 16a-1-101 et seq., were established to insure the consumer a real choice in his decision to purchase credit insurance. However, according to John M. Sheffey, 8 Fl. St. Univ. L. Rev., 463, 490 (1980):

> "It would be naive to assume that most or even many customers make a conscious decision concerning the desirability and price of the insurance, and, on the basis of their conclusions, inform the creditor whether to include or exclude the insurance from the transaction. This possibility is even more remote when consumers must make their decisions quickly and in the presence of lenders."

Sheffey goes on to note that such transactions are inherently coercive in nature because many consumers erroneously view the insurance purchase as a condition for obtaining credit. From the standpoint of the consumer, it is an "implied consent" method of closing a loan. The coercive nature of the transaction is compounded by the fact that, by the time the consumer receives the insurance disclosures, it is likely that the consumer has already decided to make the purchase and is unlikely to forego the credit merely because they do not like the credit terms disclosed. (Sheffey, supra at 489.)

On many occasions, the creditor neglects to make the consumer's choice obvious because the creditor will make a substantial profit from the sale of credit insurance. According to Sheffey:

> " . . . the creditor stands to make a significant profit from the sale of credit insurance. The creditor has none of the usual acquisition costs associated with insurance, because potential insureds need not be sought out. They are already attracted to the creditor by the prospect of borrowing money or financing a purchase." (Id. at 466.)

Finally, it is the opinion of this office that the potential effect of 1986 Senate Bill No. 454 on consumers is contrary to the purpose for which the UCCC was established. As noted above, K.S.A. 16a-1-102 sets forth the intent and purpose of the code, and provides:

> "(1) K.S.A. 16a-1-101 through 16a-9-102, and amendments thereto, shall be liberally construed and applied to promote its underlying purposes and policies.
>
> "(2) The underlying purposes and policies of this act are:
>
> . . . .
>
> "(c) to further consumer understanding of the terms of credit transactions and to foster competition among suppliers of consumer credit so that consumers may obtain credit at reasonable cost;
>
> "(d) to protect consumer buyers, lessees, and borrowers against unfair practices by some suppliers of consumer credit, having due regard for the interests of legitimate and scrupulous creditors;
>
> "(e) to permit and encourage the development of fair and economically sound consumer credit practices; (Emphasis added.)

This offices believes that the amendment to K.S.A. 16a-4-301 contained in 1986 Senate Bill No. 454 contains the potential to conflict with the stated purpose of the Kansas Consumer Credit Code, i.e. further consumer understanding of credit transactions, protect consumers against unfair practices by suppliers of consumer credit, and encourage sound credit practices. For example, if a consumer borrowed money to

purchase a stereo, he could also obtain property insurance on the stereo and a previously purchased television on which he owed no money, with the lender named as loss payee. If the television was destroyed, the insurance proceeds could be applied to the stereo, thus protecting the lender but leaving the consumer without something he already had.

In conclusion, 1986 Senate Bill No. 454 would amend K.S.A. 16a-4-301(a) to permit a lender to contract for and receive a separate charge for insurance against loss or damage to property "all or part of which" is related to the credit transaction. If a loss occurred on goods insured pursuant to K.S.A. 16a-4-301(a) which are not listed on the security agreement, the insured might or might not receive the proceeds from the insurance claim, depending on whether the lender was named as loss payee. Further, a lender may already sell credit property insurance under the provisions of K.S.A. 16a-2-501, subject to the restrictions of K.A.R. 75-6-9. Finally, the bill contains the potential to conflict with the stated purposes of the Kansas Uniform Consumer Credit Code, as set forth in K.S.A. 16a-1-102(2).

Very truly yours,

ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS

Jeffrey S. Southard
Deputy Attorney General

RTS:JSS:crw

Testimony of Paul B. Rasor

on behalf of

Kansas Consumer Credit Commissioner

on

Senate Bill No. 454

before the

House Committee on Insurance
March 19, 1986

The position of the Consumer Credit Commissioner's office, which, I might add, is also my personal position, is that this bill is very harmful to consumers and should not be passed.

The stated purpose of the bill is to allow finance companies to sell insurance to consumers to cover losses on their household goods (HHG), even though those HHG have no relation to any credit transaction. In fact, since present law allows creditors to require insurance [K.S.A. 16a-4-109], this bill will allow finance companies to force consumers to buy insurance they don't want and probably don't need. And if they did want it, they could almost certainly buy it cheaper somewhere else.

For example, under this bill, if I borrow $500 from Beneficial Finance, federal law [16 C.F.R. § 444.2(a)(4)] now restricts the security that Beneficial can take. It can no longer take all of my HHG as collateral for this loan. The lender can take a purchase money security interest, but if I don't use the $500 to buy something, this rule does not apply. An even if I did, the lender could take only the item I bought as collateral. It still could not take the rest of my HHG.

The federal law has some exceptions; it does allow the lender to take a few specific items as collateral. One of these is my stereo. Obviously, if Beneficial takes my stereo as security, it would have an interest in seeing that the stereo was insured. But under this bill, it can make me buy insurance on my refrigerator - and on my washer and the rest of my furniture.

This makes no sense at all. It is as though the lender took my car as collateral and then required me to buy insurance on my boat.

Attachment 3
House Insurance
3-19-86

Why should a lender, whose only property interest is in my stereo (or other property in which it is allowed to take a security interest), ever care whether my refrigerator is insured?

The finance companies say that they just want to get back to where they were in 1985 before the federal law restricting the use of HHG as collateral went into effect. I guess I can't blame them; I am sure they wish the law had not changed. But the law has changed. S.B. 454 looks like a subtle (or not so subtle) attempt to get around the effect of the federal law. They can no longer use HHG as collateral, but they can accomplish nearly the same thing under this bill since the insurance proceeds in effect become another form of security. This is certainly contrary to the spirit of the federal law, and the Kansas legislature should not be a party to this sort of end run.

In fact, as the Attorney General's opinion points out, this bill is contrary to the spirit and the general philosophy of the Kansas Uniform Consumer Credit Code, the very law the bill would amend. The bill represents a large step backwards in the Kansas law of consumer protection.

I urge the committee to recommend against passage of this bill.

Thank you.

Respectfully submitted,

Paul B. Rasor
Professor of Law
Washburn University School of Law