

Approved

*Clyde D. Graeber* 3/18/87  
Date

MINUTES OF THE HOUSE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS

The meeting was called to order by Clyde D. Graeber at  
Chairperson

3:30 ~~am~~/p.m. on March 5, 1987 in room 527-S of the Capitol.

All members were present except: Dorothy Flottman, Excused

Committee staff present: Bill Wolff, Legislative Research Department  
Bruce Kinzie, Revisor of Statutes  
June Evans, committee secretary

Conferees appearing before the committee: Bill Kastings, Credit Union Administrator, State  
of Kansas  
Gene Swan, Chief Executive Officer, Wichita  
Boeing Employees Credit Union  
Raymond Fuller, General Manager, Cessna Employees  
Credit Union, Wichita

Chairman Clyde Graeber opened the meeting.

H. B. 2256. Representative Green moved and Representative Campbell seconded that H. B. 2256 be amended on line 26 to read: "within one month following receipt of written demand by the debtor after there is no outstanding secured obligation". (Attachment I).

Representative Campbell moved and Representative Ott seconded that H.B. 2256 be passed out favorably as amended. The motion carried.

Hearing on H. B. 2407. Bill Kastings, Credit Union Administrator, testified for the bill stating there have been problems with credit union managers and there needs to be more control. This bill parallels the federal bill. (Attachment II).

Gene Swan testified against the bill feeling the bill gives the administrator too much authority (Attachment III).

Raymond Fuller, General Manager, Cessna Employees Credit Union, Wichita, testified against the bill objecting that it gave the administrator dictatorial powers over credit unions and that K.S.A. 17-2206 (g) and K.S.A. 2206 (a) regulates these areas and therefore H.B. 2407 is not needed (Attachment IV).

Representative Long moved that H.B. 2407 be moved out of committee favorably. Representative Campbell seconded the motion. The motion carried.

The minutes of March 3, 1987 were approved.

The meeting adjourned at 4:55 P.M.



HOUSE BILL No. 2256

By Representative Beauchamp

2-10

0017 AN ACT concerning the uniform commercial code; concerning
0018 termination of a security interest; amending K.S.A. 84-9-404
0019 and repealing the existing section.

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

0021 Section 1. K.S.A. 84-9-404 is hereby amended to read as
0022 follows: 84-9-404. (1) If a financing statement covering consumer
0023 goods is filed on or after January 1, 1976, then within one (1)
0024 month or within ten (10) days following written demand by the
0025 debtor Within one month after the effective date of this act or
0026 within one month after there is no outstanding secured obliga-
0027 tion and no commitment to make advances, incur obligations or
0028 otherwise give value, whichever is later, the secured party must
0029 file with each filing officer with whom the financing statement
0030 was filed, a termination statement to the effect that the secured
0031 party no longer claims a security interest under the financing
0032 statement, which shall be identified by the filing officer's file
0033 number. In other cases whenever there is no outstanding se-
0034 cured obligation and no commitment to make advances, incur
0035 obligations or otherwise give value, the secured party must on
0036 written demand by the debtor send the debtor, for each filing
0037 officer with whom the financing statement was filed, a termina-
0038 tion statement to the effect that the secured party no longer
0039 claims a security interest under the financing statement, which
0040 shall be identified by the filing officer's file number. A termina-
0041 tion statement signed by a person other than the secured party of
0042 record must be accompanied by a separate written statement of
0043 assignment signed by the secured party of record complying
0044 with subsection (2) of section K.S.A. 84-9-405 and amendments
0045 thereto, including payment of the required fee. If the affected

following re-
ceipt of written
demand by the
debtor

0046 secured party fails to file such a termination statement as re-
0047 quired by this subsection, or to send such a termination state-
0048 ment within ten (10) days after proper demand therefor the
0049 affected secured party shall be liable to the debtor for one
0050 hundred dollars (\$100) \$1,000, and in addition for any loss
0051 caused to the debtor by such failure.

0052 (2) On presentation of such a termination statement, the
0053 filing officer must note it in the index. If the filing officer has
0054 received the termination statement in duplicate, the filing officer
0055 shall return one (1) copy of the termination statement to the
0056 secured party stamped to show the time of receipt thereof. If the
0057 filing officer has a microfilm or other photographic record of the
0058 financing statement, and of any related continuation statement,
0059 statement of assignment and statement of release, the filing
0060 officer may remove the originals from the files at any time after
0061 receipt of the termination statement, or if the filing officer has no
0062 such record, the filing officer may remove them from the files at
0063 any time after one (1) year after receipt of the termination
0064 statement.

0065 (3) Termination statements may be destroyed after such
0066 statements have been on file for five (5) years.

0067 Sec. 2. K.S.A. 84-9-404 is hereby repealed.

0068 Sec. 3. This act shall take effect and be in force from and
0069 after its publication in the statute book.

NC

§ 54-109.19. Removal of officers. — (a) The Administrator of Credit Unions shall have the right and is hereby empowered to serve a written notice of his intention to remove from office any officer, director, committeeman or employee of any credit union doing business under Articles 14A through 15 of this Chapter who shall be found to be dishonest, incompetent, or reckless in the management of the affairs of the credit union, or who persistently violates the laws of this State or the lawful orders, instructions and regulations issued by the Administrator and/or the State Credit Union Commission.

(b) A notice of intention to remove a director, officer, committee member or employee from office shall contain a statement of the alleged facts constituting the grounds therefor and shall fix a time and place at which a hearing before the Credit Union Commission will be held thereon. Such hearing shall be fixed for a date not earlier than 30 days nor later than 60 days after the date of service of such notice unless an earlier or a later date is set by the Commission at the request of such director, officer, committee member or employee and for good cause shown. Pending this hearing, the Administrator may remove the alleged violator if he finds that it is essential to the continued well-being of the credit union or

the public to do so. Unless, of course, such director, officer, committee member or employee shall appear at the hearing in person or by a duly authorized representative, he shall be deemed to have consented to the issuance of an order of such removal. In the event of such consent, or if upon the record made at any such hearing the Credit Union Commission shall find that any of the grounds specified in such notice has been determined by the greater weight of the evidence, the Commission may issue such orders of removal from office as it may deem appropriate. Any such order shall become effective at the expiration of 30 days after service upon such credit union and the director, officer, committee member or employee concerned (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated or set aside by action of the Credit Union Commission or a reviewing court. (1979, c. 197, s. 1.)

§ 54-109.20: Reserved for future codification purposes.

ATCH II

2

RATING CODES FOR CREDIT UNIONS  
(Revised 10-82)

<u>CODE</u>	<u>NO.</u>	<u>EXPLANATION</u>
0		All credit unions that do not meet any of the criteria shown below.  <u>WATCH</u>
1	a. f.	a. Delinquency 7% to 10% of loans. b. Delinquency over 100% of reserves. c. Losses and one-half of doubtful are 30% to 50% of reserves. d. Technical deficiencies are 25% to 40% of loans reviewed. e. Borrowed money 10% to 20% of shares and undivided earnings. f. Generous rewrite program on delinquent accounts.  <u>INDICATES POSSIBLE PROBLEMS</u>
2	a. f.	a. Delinquency 10% to 15% of loans. b. Delinquency over 150% of reserves. c. Losses and one-half of doubtful are 50% to 75% of reserves. d. Technical deficiencies are 40% to 75% of loans reviewed. e. Borrowed money 20% to 30% of shares and undivided earnings. f. Rewriting of loans and adding interest due to the loans.  <u>INDICATES SERIOUS PROBLEMS</u>
3	a. f.	a. Delinquency 15% to 20% of loans. b. Delinquency over 200% of reserves. c. Losses and one-half of doubtful are 75% to 100% of reserves. d. Technical deficiencies are 75% to 100% of loans reviewed. e. Borrowed money over 30% of shares and undivided earnings. f. Blanket renewal of notes to keep them current and adding interest due.  <u>INDICATES SOLVENCY PROBLEMS</u>
4	a. e.	a. Delinquency over 20% of loans. b. Delinquency over 250% of reserves. c. Losses on loans and other losses exceed reserves & undivided earnings. d. Notecase uncollectible due to technical deficiencies. e. Blanket renewal of loans that are in fact uncollectible.  <u>MANAGEMENT PROBLEMS</u>
5.	a. n.	a. Sizable change in shares, certificates, or assets. b. Less than a 4% dividend paid. c. Official family borrowing over 20% of shares and undivided earnings or unacceptable practices. d. Salaries of employees over 30% of gross income. e. Expense ratio over 50%. f. Lack of meetings by directors, supervisory committee, or credit committee. g. No account verification in the prescribed time. h. Violation of State or Federal Law. i. Books and records behind two or more months in posting. j. Two or more accounts found out of balance. k. Weak management, directors, or employees. l. Loans not charged off in a timely manner. m. Failure to work on previous examination recommendations. n. Operating with a negative spread.

## Memorandum of Understanding between NASCUS and NCUA

Whereas both NASCUS and NCUA are interested in continuing the viability and integrity of the credit union movement including preserving the dual chartering system;

Whereas NASCUS through its Regulator Members and NCUA have overlapping responsibility and jurisdiction over the regulation of federally insured state chartered credit unions;

Whereas NCUA under the provisions of the National Credit Union Share Insurance Fund and the Federal Credit Union Act should make maximum use of state examination information in monitoring federally insured state chartered credit unions;

Whereas NCUA has a responsible interest in the insurance fund and therefore in the individual credit unions which it insures;

Whereas NASCUS represents state credit union supervisors in communicating the collective concerns of its members at both the National and Regional levels of NCUA;

Whereas NASCUS has established a Governmental Relations Committee as a method to interface with NCUA in all areas of joint concern and dual responsibility;

Whereas the Regulator Members of NASCUS have primary regulatory responsibility for federally insured state chartered credit unions and NCUA has responsibility for the integrity of the insurance fund;

Therefore the National Association of State Credit Union Supervisors and the National Credit Union Administration, in order to effect a program of uniform enforcement of various state credit union laws and the integrity of the insurance fund, do agree as follows:

(1) NASCUS and NCUA should continue their coordinated efforts on the following projects:

- (a) To effect an efficient early warning system for federally insured state chartered credit unions.
- (b) To provide special training funds and training programs for state credit union examiners.
- (c) To develop uniform standardized credit union accounting procedures.
- (d) To develop and/or coordinate uniform examination procedures.

(e) To develop a uniform continued insurability report form and procedures for disseminating financial data between NASCUS Regulator Members and NCUA.

(f) To develop a program and identify conditions for coordinated examinations.

(g) To establish an effective system of reporting financial data for federally insured state chartered credit unions.

To accomplish the above, NASCUS and NCUA will meet at least semi-annually at a mutually agreed time and location. NASCUS and NCUA will designate representatives to jointly prepare appropriate agenda for each meeting.

TO: Members of The Committee for Commercial and Financial  
Institutions  
State of Kansas, House of Representatives

FROM: Gene Swan, Chief Executive Officer  
Wichita Boeing Employees Credit Union  
3801 S. Oliver  
Wichita, Kansas 67210

RE: House Bill 2407

Dear Committee Members:

My name is Gene Swan and I am employed by the Wichita Boeing Employees Credit Union as its Chief Executive Officer. I am responsible for the overall management and operation of the Credit Union which currently has in excess of \$73 million in total assets and more than 17,000 members.

With permission of the Board of Directors of my Credit Union, I wish to express to you several points of opposition to House Bill 2407, a proposed Bill relating to Credit Unions.

First, I draw your attention to the proposed amendment to K.S.A. 17-2206(c). The existing law provides that the Credit Union Administrator may order the discontinuance of any violation of law on the part of a Credit Union after a hearing or an opportunity for a hearing has been given to the Credit Union.

The proposed amendment would provide that the Administrator may issue a "Cease and Desist" order summarily and without a hearing or an opportunity to be heard on the part of the Credit Union and without notice or knowledge of any action in this regard that the Administrator might take. The only requirement appears to be that the Administrator must form the opinion that he or she has "clear and convincing" evidence that a Credit Union is engaged, or is about to engage, in an unsafe or unsound practice, or is violating, has violated or is about to violate a law, rule, regulation or condition imposed by the Administrator.

Although I would not completely oppose the addition to this statute the power and authority of the Administrator, after an appropriate hearing, to order the discontinuance of an "unsafe or unsound practice", I must vehemently oppose the addition in this law of authority on the part of the Administrator to take such action without notice or opportunity to be heard.



The proposed amendment would place unrestrained authority on the part of the Administrator which would greatly enhance the potential for abuse of the power conferred on that office. It would clearly seem to violate our fundamental democratic principles if not actually violate our State and Federal Constitutions which guarantee the rights of due process and a fair hearing. Conversely, the proposed law would place an unfair burden on the part of the Administrator who may be pressed to make severe, unsafe and unsound decisions without having sufficient knowledge of the facts and information from which to form the basis of his or her decisions.

In brief, there must be preserved in the law a fair and impartial fact finding process which the current law provides. The proposed law will permit profound and important decisions and orders to be made on the part of the Administrator based only on hearsay, rumor, or false information.

Second, I am compelled to oppose the proposed addition to K.S.A. 17-2206 of subsection (g). This section purports to confer upon the Administrator the power to approve or disapprove a Credit Union's purchase or acquisition of data processing equipment. This section, if added to our existing law, could only lead to an interference with our fundamental right of freedom to contract. It could also interfere with the principles of fair competition and free enterprise in that the Administrator's office could dictate to a Credit Union from whom it could acquire such equipment and services.

The existing law empowers the Administrator to require certain minimum accounts and reports from all Credit Unions authorized to do business in the State of Kansas and this has been and is done in accordance with standard accounting principles. The Administrator possesses the power of audit and examination of the accounts and records of the institution and the addition of this proposed section to the law would only serve to interfere with the inherent rights of the Credit Union to seek the best service in data processing equipment for the most appropriate cost. The individual Credit Unions are most aware of these minimum requirements. Advances in data processing technology occur regularly and are very important to the progress and growth of the credit union industry. The proposed law can easily be seen to pose a real and actual threat to the progress and advance in this technology and the competition between institutions engaged in the financial and data processing industries.

Third, the addition to K.S.A. 17-2242 of subsection (b), proposes to empower the Administrator to indiscriminately and summarily remove from office any credit union official or employee and to deny them access and participation in the affairs of the Credit Union in the sole and absolute discretion of the Administrator without notice or hearing or an opportunity to be heard. The proposed provision would even prevent or deny the opportunity for an individual, as opposed to the Credit Union itself, of the right to appeal to the Council as provided by K.S.A. 17-2241.

This addition to the existing law allows the total circumvention of subsection (a) of the existing law which, of course, provides an orderly and legal process for the removal of officials and employees of a Credit Union. The constitutional guarantees of due process and freedom of contract (to work) appear to be adequately protected.

The power of an Administrator, acting unilaterally and without the safeguards of a fair hearing and an appropriate fact finding process, can only heighten the risk of serious mistakes and unjust actions which will in certain cases result in profound and serious injustices to individuals who may have otherwise performed their jobs responsibly and correctly.

I would further state the following:

1. The proposed amendment to the existing statute seems to center itself in removing the right of notice and a fair hearing with respect to all actions that may be taken by the Credit Union Administrator.

2. The right to notice and a fair hearing seem to be fundamental in all aspects of our democratic form of government.

3. These principles are just as important to institutions such as Credit Unions and other corporate entities as they are to individuals.

4. To concentrate unilateral and unrestrained authority in the Credit Union Administrator without the mere safeguards and requirement of notice and hearing can only lead to intimidation or the possibility of intimidation and result in fear and ineffectiveness in the administration and operation of the Credit Union industry.

5. Some autonomy in the operation of Credit Unions as well as all forms of business must be preserved. Otherwise, free enterprise and fair competition will be eroded or, in the extreme, prevented altogether.

6. The existing law embodies all the authority, control and safeguards against violations of law and unsound practices as are contemplated by the proposed amendments. The difference in the current law and the proposals, however, is simply the requirement of a fair and impartial fact finding process before the Administrator may issue an order which can have profound and perhaps deleterious effects upon the operation of a Credit Union and the rights of its members. The preservation of this simple fact finding process would seem to better protect the interest of the consuming public than the amendments and additions proposed in this Bill.

The relationship between the current State Credit Union Administrator, and Wichita Boeing Employees Credit Union and myself has always been excellent. My opposition to this bill is not intended as a reflection in any way on Mr. Kasting and the excellent job he is doing. However, I am concerned about giving such absolute power to one individual without the safeguards of a fair and impartial hearing.

I truly hope my views, which are spoken from the position of a Credit Union Manager, will be helpful in your consideration of this Bill. I would respectfully encourage you to vote against this bill for passage for the reasons and concerns expressed above.

Respectfully,



Gene Swan, Chief Executive Officer  
Wichita Boeing Employees Credit Union  
3801 S. Oliver  
Wichita, Kansas 67210

March 5, 1987

Testimony to: Kansas House Committee On Commercial  
and Financial Institutions

Subject: House Bill #2407

My name is Raymond Fuller, General Manager of Cessna Employees Credit Union , 5800 East Pawnee, Wichita, Kansas . I have been associated with this credit union for almost 30 years and have served 22 of these years as a director, manager or company representative to the credit union. The Cessna Employees Credit Union has been a Kansas Chartered Credit Union for 45 years and is Federally insured by NCUA.

Phone inquiries to credit union managers revealed that a large number of the 168 Kansas Chartered credit unions were not aware of the amendments to **House Bill #2407** that are before you, but now many of them share my grave concern regarding the power and jurisdiction over credit unions requested by the Credit Union Administrator.

The amendments I'm objecting to give the ADMINISTRATOR dictatorial powers over credit unions. Reference line 0104 thru 0111 in House Bill #2407, **K.S.A 17-2206 (g)** - data processing services and equipment. This report requirement is covered under Credit Union Law **K.S.A 2206 (a)** regarding supervi-

**ATCH IV**

sion by administrator, reports, etc. The administrator, under present law, can require any reports necessary in the performance of his supervision. The purchase of services, data programs and equipment must remain under the control of each individual credit union. (This section is an addition to current law.)

In reference to line 0063 thru 0077 in House Bill #2407, K.S.A. 17-2206 (C), the law now reads, "If it appears to the administrator that a credit union is violating any of the provisions of law, the administrator, by an order made over the administrator's official signature, after a hearing or an opportunity for a hearing has been given the credit union, may direct such credit union to discontinue its illegal methods and practices." The administrator wants this amended to read "the administrator may issue cease and desist orders made over the administrator's official signature, having determined from clear and convincing evidence that a credit union is engaged, has engaged, or is about to engage, in an unsafe or unsound practice, or is violating, has violated, or is about to violate, a material provision of any law, rules and regulations or any condition imposed in writing by the administrator or any written agreement made with the administrator. A credit union may appeal such order pursuant to K.S.A. 17-2241, and amendments thereto." The administrator wants to expand his authority in determining "unsafe and unsound practices" and be able to act on his personal opinion BEFORE A HEARING OR AN OPPORTUNITY FOR A HEARING CAN BE HELD.

In reference to line #0255 thru #0275 in House Bill #2407, K.S.A. 17-2242 , the administrator wants to add (b) to read "as an alternative to and notwithstanding subsection (a), the administrator may suspend from office and prohibit from further participation in any manner in the conduct of the affairs of a credit union any director, officer, committee member or employee who has committed any violation of law, rules and regulations or of a cease and desist order or who has engaged or participated in any unsafe or unsound practice in connection with the credit union or who has committed or engaged in any act, omission or practice which constitutes a breach of that person's fiduciary duty as such director, officer, committee member or employee, when the administrator has determined from clear and convincing evidence that such action or actions have resulted or will result in substantial financial loss or other damage that seriously prejudices the interests of the members. The credit union may appeal the order pursuant to K.S.A. 17-2241, and amendments thereto."

Here again, the administrator wants to expand his authority and act on his personal opinions BEFORE A HEARING OR AN OPPORTUNITY FOR A HEARING CAN BE HELD. The credit union directors, officers, or employees would no longer have access to records, equipment, or funds to compile information necessary to refute the charges.

The job requirements for the position of Credit Union Administrator are minimal (see K.S.A. 17-2233). No educational requirements are specified. Some of the Kansas Credit Unions

are quite large and complex in their operations. An administrator lacking in sufficient knowledge, experience, or education could cause great harm to a credit union if the administrator had the power of these amendments to act without a hearing. Personal bias alone could be a basis for action.

Credit Union Law K.S.A. 17-2242 makes provisions for the administrator to take action against a credit union, its employees and officers. The present law has served our Kansas Credit Unions well, and changes should be made to the current law only after careful consideration and study. We have the procedures to work with within our present law, but these procedures are not being used properly. The proposed changes place credit union managers, officers and directors at great risk and will create legal problems.

We recommend that House Bill #2407 be "killed" in committee.

Mr. Chairman, I want to thank you and your committee, on behalf of the Cessna Employees Credit Union, for the opportunity to voice our objections to these amendments to House Bill #2407.

If there are any questions regarding this testimony or subject, I will try to answer them at this time.