Approved March 19, 1987
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

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

9:00 a.m./~~p.m.~~ on March 18, 1987 in room 529-S of the Capitol.

All members were present except:

Committee staff present:

Bill Wolff, Legislative Research
Myrta Anderson, Legislative Research
Bill Edds, Revisor of Statutes

Conferees appearing before the committee:

Jim Maag, Kansas Bankers Association
Lynn Van Aalst, Kansas League of Savings Institutions
Jerrel Wright, Kansas Credit Union League
Pam Sjoholm, Kansas Insurance Department

The minutes of March 17 were approved.

The hearing began on HB 2093 dealing with debit card liability with the testimony of Jim Maag, Kansas Bankers Association. (See Attachment I.) Mr. Maag introduced Onis Lemon and Hugh Hannagan of the Commerce Bank and Trust who had come to answer any questions the committee may have for them.

The chairman asked if the losses occur immediately after the loss of the card. Mr. Maag said it's usually within five or six days. The chairman asked how many cards disappeared in the last year. Mr. Hannagan said they had an average of ten cards a week reported lost or stolen with an annual loss of $5000 to $6000.

Lynn Van Aalst, Kansas League of Savings Institutions, followed with testimony in support of HB 2093. (See Attachment II.)

The chairman said he felt the House may not accept a repealer since they did not accept a similar Senate bill. He asked if it would help if rather than repealing, the four business days were reduced to two days, and Ms. Van Aault was in agreement with this. She was also in agreement of increasing the total liability from $300 to $500.

Sen. Warren asked what the largest loss has been, and Mr. Hannagan answered that the largest they have had was $3000. A short discussion followed, and Mr. Maag clarified that if a state has a more restrictive law, it overrules federal law.

Jerrel Wright, Kansas Credit Union League, offered brief testimony in support of HB 2093 stating that credit unions are affected in the same manner as banks and savings and loans. With this, the hearing on HB 2093 was concluded.

The hearing began on HB 2112 dealing with HMOs, requiring that they come under the fair trade practices act. The chairman informed the committee that he had a call from Walt Rogers, President of the Kansas HMO Association, in full support of the bill.

Pam Sjoholm, Kansas Insurance Department, testified in support of the bill. She said it applies the unfair trade practices act to combined mutual hospital and service organizations. It defines certain practices as unfair competition or acts or practices. It allows the commissioner to determine unfair acts or practices and to make cease and desist orders. The bill is not meant to indict HMOs, but the department has received some complaints concerning advertising of HMOs. The HMOs have cooperated and withdrawn the advertising, but the department has no law to require cease and desist of advertisement if there is a refusal to cooperate. She concluded that passage of this bill would permit the commissioner to act and would be a deterent to unfair practices.

Sen. Werts made a motion to report HB 2112 favorable for passage and that it be put on the consent calendar, Sen. Gannon seconded, and the motion carried.

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.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,

room 529-S, Statehouse, at 9:00 a.m./p.m. on March 18, 1987

Attention was returned to HB 2093. Sen. Strick made a motion to amend HB 2093 by reducing the days from four to two business days and to increase the maximum liability from $300 to $500. Sen. Kerr seconded the motion for the prupose of discussion. He asked if that would include the exception of extenuating circumstances such as travel of illness as in the federal law. Sen. Strick was in agreement to this inclusion. However, committee discussion followed as to if the federal law would apply. The federal law was included in Mr. Maag's testimony (first page of federal language, subsection 4). The committee had questions as to what is "reasonable" and who makes the determination. Mr. Maag said that if push came to pull, a law suit would have to be filed to determine liability. The court would determine what is reasonable, but he did not think this action would be taken by the banks. Sen. Strick said he wished to amend the inclusion of the federal definition of extenuating circumstances into his motion.

Sen. Gannon opposed the motion, stating that two days is cutting it short.

Sen. Werts asked how the amended bill will differ from federal law. If it does not differ, then the repealer could be used. The chairman said it differs in that the federal law has no limitation ofter sixty days, but this would limit the total amount to $300. Mr. Maag clarified the federal law with reference to his testimony, page six, B (2). He said that under federal regulations, if a bank can prove misuse by the cardholder, it could recover the full amount from the cardholder.

Sen. Gannon said he feels the language of the bill is a decent compromise with the House and that he thinks the cardholder may have trouble pleading his case. Also, four days is a good middle ground. Sen. Werts said he is in agreement with Sen. Gannon.

Sen. Werts made a substitute motion to report HB 2093 favorably, Sen. Karr seconded.

Sen. Reilly asked if this would include federal law. Sen. Werts said it is not needed. Sen. Kerr asked staff if it would have the backup of extenuating circumstances in the federal law. Staff was uncertain but thought the greater protection would prevail. On a call for a vote on Sen. Werts' motion, the motion carried.

The meeting was adjourned.

SENATE COMMITTEE

ON

FINANCIAL INSTITUTIONS AND INSURANCE

OBSERVERS
(Please print)

DATE	NAME	ADDRESS	REPRESENTING
3-18-87	Lynn Van Aalst	Topeka	KCSI
3-18-87	JACK ROBERTS	"	BC-BS
	John Peterson	Topeka	Kaiser Permanente
	Pam Sjoholm	Topeka	Ks Ins. Dept
	[illegible]	"	COMMERCE BANK & TRUST
	[illegible]	"	" " "
	[illegible]	"	KBA
	W. Wayne Smith	Atchison	Visiting
	Bill Henry	Topeka	KOA

The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

March 18, 1987

TO: Senate Committee on Financial Institutions & Insurance

RE: HB 2093 - Debit-card liability

Mr. Chairman and members of the Committee:

The State Affairs Committee of the Kansas Bankers Association is requesting that HB 2093 which amends K.S.A. 9-1111(d) and 17-5569 be considered for passage. Currently those statutes provide that if a person loses or has an automated teller machine (ATM) access card stolen the liability cannot exceed $50 under any circumstance. There has been no adjustment in the amount of liability since 1975. This has resulted in significant losses to banks and S&Ls involved in ATM networks since there is no incentive for the cardholder to make a prompt reporting of the loss or theft.

We requested, therefore, that K.S.A. 9-1111(d) and 17-5569 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 House C&FI Committee rejected this approach and amended the bill to increase the liability from $50 to $300 if the cardholder does not report the loss on theft within a 4 business-day period. While this is a definite improvement over existing state law, it does not adequately address the problem of fraudulent use of debit cards. That is why we believe this committee should seriously consider returning the bill to its original form which would allow the state to conform with federal law and regulation.

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 card issuing institution 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 that two-day period. If proper notice is given within two business days, the cardholder's maximum exposure is $50. Paragraph (b)(4) of Section 205.6 of Regulation E allows the time for reporting to be extended if there are extenuating circumstances. However, paragraph (b) (5) of that same section states that if state law allows for a lesser liability the state provision must take precedent over federal regulation. Kansas law discourages prompt notification since the cardholder's liability is going to be the same ($50) whether notification is made within 2 days, 20 days, or 200 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

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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.

While we applaud the willingness of the House Committee to make a positive change in existing state law, we still believe it does not adequately cover the fraudulent use of access cards.

Therefore, we believe the repeal of K.S.A. 9-1111(d) and 17-5569 which would then allow Regulation E to govern access card liability is a more practical approach to the continuation of sound AMT systems in Kansas.

Thank you for the opportunity to appear before the committee on the provisions of HB 2093.

James S. Maag
Director of Research

JSM/ljs

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auxiliary banking services facilities under the provisions of this act may jointly establish and maintain a common detached auxiliary services facility. Each bank participating in the establishment and maintenance of a joint detached auxiliary services facility shall be deemed to have established a detached auxiliary services facility for the purposes of the limitation prescribed under the provisions of subsection (b) of K.S.A. 9-1111.

History: L. 1973, ch. 46, § 2; July 1.

9-1111b. Applications for detached services facilities; examination and investigation fee; disposition and use of fees. A bank making application to the state banking board for approval of a detached auxiliary services facility under the provisions of this act shall pay to the state bank commissioner a fee to be set by the commissioner, with approval of the board, in an amount not to exceed five hundred dollars ($500) to defray the expenses of the board, commissioner or other designees in the examination and investigation of the application. The commissioner shall remit all amounts received under this section to the state treasurer who shall deposit the same to a separate special account in the state treasury for each application. The moneys in each such account shall be used only to pay the expenses of the board, commissioner or other designees in the examination and investigation of the application to which it relates and any unused balance shall be refunded to the applicant bank.

History: L. 1973, ch. 46, § 3; L. 1975, ch. 44, § 17; July 1.

9-1111c. Unlawful services or facilities; notice by commissioner; appeal to board; control of operations of bank; withholding of award of state bank account. Whenever the state bank commissioner shall determine that any bank domiciled in this state has established a detached service facility or facilities in violation of the laws governing the operation of such bank, or is offering services at any such facility or facilities not authorized under the law governing the operation of such bank, the commissioner shall give written notification to the bank of such determination. Within ten (10) days after receipt of such notification by the bank, the bank shall have the right to appeal in writing to the state banking board from the commissioner's determination, and thereupon the board shall fix a date for a hearing, which hearing shall be held within thirty (30) days from the date of such appeal. At such hearing the board shall hear all matters relevant to the commissioner's determination and shall thereafter within ten (10) days after the hearing approve or disapprove the commissioner's determination, and the decision of the board shall be final and conclusive.

If the bank does not appeal to the state banking board from the commissioner's determination as herein provided, or if an appeal is taken and the commissioner's determination is approved by the board, the commissioner shall notify the attorney general of such determination, and if the bank is a state bank incorporated under the laws of this state the commissioner shall proceed as provided in K.S.A. 9-1714, and amendments thereto, for the purpose of correcting such condition or operation, and all provisions of K.S.A. 9-1714, and amendments thereto, shall be applicable to such proceedings, and as to any bank domiciled in this state the commissioner also shall notify the pooled money investment board of such determination, and thereafter the pooled money investment board shall not award the bank a state bank account until the commissioner determines that the bank has established its detached services facility or facilities in the manner required under the laws governing the operation of such bank, or is offering at such facility or facilities only services authorized under the laws governing the operation of such bank, and the commissioner shall have so notified the pooled money investment board.

History: L. 1973, ch. 46, § 4; July 1.

9-1111d. Remote service unit activation instrument; liability of depositor upon loss or theft. Provided that any depositor who has lost or has had stolen his or her machine-readable instrument shall not be charged by any bank in excess of $50.00 by reason thereof.

History: L. 1975, ch. 43, § 2; July 1.

9-1112. Unlawful transactions. No bank shall use its moneys, directly or indirectly by buying and selling tangible property as a business. No bank shall invest any of its funds in the stock of any other bank or corporation, except as provided in this act.

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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.

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(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

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(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-

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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.

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(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.

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titution verifies the ne reasonable means 205.5(b)(4))

nce—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	$500

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 (for period from June 10 to July 9).
August 4	$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:	$600

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Situation 3—$50/Unlimited Liability Provisions Apply

Facts same as in situation 2, except that C does not learn of the card theft, but questions 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.

	C's liability:	
Amount of transfers appearing on the periodic statement or occurring during the 60-day period: $700	$ 50	(maximum liability for this period)
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	$100	
C's total liability:	$150	

Q6–6: *Knowledge of loss or theft of access device.* May a financial institution treat the consumer'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 number 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 institution. (§ 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 provide the financial institution with the pertinent information about the loss or theft of an access device. If a consumer is unable to furnish the institution with an account number or card number when reporting a lost or stolen access device, has the consumer given adequate notice?

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

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

A: Regulation Z applies. Since the unauthorized 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—checking account with overdraft feature.* If the unauthorized transfers in question 6–9 were instead withdrawals from a checking account and they resulted in cash advances from an overdraft line of credit, which liability provisions 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 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

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KLSI Kansas League of Savings Institutions

LYNN G. VAN AALST, Vice President • Suite 612 • 700 Kansas Ave. • Topeka, KS 66603 • 913/232-8215

March 18, 1987

TO: SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

FROM: LYNN VAN AALST, KANSAS LEAGUE OF SAVINGS INSTITUTIONS

RE: H.B. 2093 (Change in Liability - ATM Cards)

The Kansas League of Savings Institutions appreciates the opportunity to appear before the Senate Committee on Financial Institutions and Insurance to support passage of H.B. 2093.

Passage of H.B. 2093 would amend K.S.A. 17-5569, which limits the liability of a savings and loan customer in the event of unauthorized use of a debit card through an automated teller machine (ATM). Under K.S.A. 17-5569, liability is currently limited to $50 regardless of whether or not the customer notifies the savings and loan association that the card has been lost or stolen. Therefore, there is no incentive under current Kansas law for customers to carefully police the use of their cards, or to make timely notification to an institution of the loss of a card.

If H.B. 2093 is adopted, customer liability would remain at $50 if the customer notifies the financial institution of the loss or theft of the card within 4 business days of discovery of the loss or theft, and increase to a maximum of $300 if such notification is not made. We believe this change would encourage more responsible use of cards and greater attention of customers to notify financial institutions regarding lost or stolen cards, as well as adding some discipline to the use of debit cards by students.

Lynn Van Aalst, Vice President
Kansas League of Savings Institutions

LVA:bw

Attachment II
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