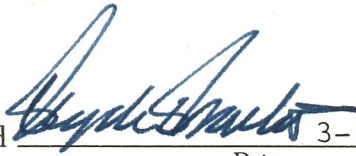


Approved



3-24-88

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 ~~xxx~~ p.m. on March 22, 1988 in room 527-S of the Capitol.

All members were present except: Representatives Norman Justic, Mary Jane Johnson, Kenneth King and Bob Ott, Excused.

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

Conferees appearing before the committee: W. Robert Alderson, Jr., Attorney for Consumer Credit Corporation
M. Douglas Mays, Securities Commissioner
Alice Devine, Research Analyst, Kansas State Board of Agriculture
Clark V. Owens, District Attorney, Sedgwick County District Attorney's Office
Stanley Lind, Kansas Association of Financial Services

The Chairman called the meeting to order.

The hearing was opened on Senate Bill 552, an act amending and supplementing the uniform consumer credit code.

W. Robert Alderson, Jr., Attorney for the Consumer Credit Corporation testified that this is a clean-up bill to clarify the law regarding usury and bring the UCCC powers and statutes under one current and up-to-date piece of legislation. There is no policy change, it is the existing law and has just been rewritten to make the language clearer. (See Attachment #1).

The hearing was closed on Senate Bill 552. The Chairman stated since this was a clean-up bill, would the committee want to entertain a motion.

Representative Shallenburger moved and Representative Wilbert seconded that Senate Bill 552 be moved out favorably. The motion carried.

The hearing was opened on Senate Bill 675. M. Douglas Mays, Securities Commissioner, was the first person to testify for S.B. 675 urging passage of the bill. Commissioner Mays stated there has been a problem with fraudulent loan brokers who state to innocent people that they can arrange a loan for up-front fees ranging from 5% to 50%. These brokers claim to have contacts with foreigners and will price money at a lower interest rate than available locally. After receiving the up-front money they leave town and the person is out these funds and receives no money which they have had difficulty scraping together. These loan brokers prey on the agricultural community. Commissioner Mays recommends the amendment as there is a technical problem with the bill as drafted in relation to the definition under K.A.R. 74-5-2 (g) which is referenced in Section 16 (a) (2). in regards public accountants. Our certified public accountants and firms as defined in K.A.R. 75-5-2(b) and (e) and does not cover public accountants. Therefore, we suggest the following paragraph to replace subsection (2) of Section 16 (a) in the bill. (See Attachment #2).

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS

room 527-S Statehouse, at 3:30 ~~am~~/p.m. on March 22, 1988

"any independent public accountant whose service in relation to procurement of a loan is incidental to their practice in providing accounting services."

The next person to testify was Alice Devine, Research Analyst with the Kansas State Board of Agriculture, stating that in 1985 many financially stressed farmers became the victims of unscrupulous loan brokers and this bill would provide the means to stop these scams. (See Attachment #3).

Clark Owens, District Attorney of the Sedgwick County District Attorney's Office was the next person to testify for the bill. Mr. Owens stated this is very wide spread. Right now there is no means to convict these loan brokers and this bill gives a vehicle to enforce. There have been approximately 72 individuals in the state, primarily distressed farmers, in 1985 that signed up for a loan program offered by these loan brokers. Each paid up-front money and did not receive any loan at all. This bill addresses the need for regulation of loan brokers and would prevent unscrupulous loan brokers from taking advantage of Kansans, both rural and urban, who are already burdened by financial difficulties. (See Attachment #4).

Stanley Lind, Kansas Association of Financial Services, was the next conferee, requesting an amendment for clarification. It appears there is some deleted language on page 1, lines 38 thru 41. He further stated the subject warrants study and warrants time and the advice of the Consumer Credit Corporation office. The Consumer Credit Corporation does a good job in investigations of banks and savings and loans. Mr. Lind further stated that he urges the amendment of the consumer licenses.

Doug Mays, Securities Commissioner further stated that his office was interested in this problem as in other states this is handled through the Securities Commission and they have the powers and have law enforcement officers to enforce. He states this is talking about felons. These brokers are criminals and they go where there is opportunity for their unscrupulous schemes and right now that is with the agricultural community. It is a serious problem in Kansas and urge passage of this bill. These people can not be prosecuted now and there needs to be a means to prosecute.

The Chairman stated there would not be any action taken on Senate Bill 675. Representative Sprague is meeting with the public accountants and staff will draft the amendment in regard public accountants and action will be taken on the bill on Thursday, March 24.

The Chairman stated there was a hearing on Senate Bill 676 on March 15 and would like to know the wishes of the committee. After much discussion on the bill, it was stated this bill was needed so the local tax district would get paid first, ahead of unsecured creditors. Otherwise, they would have to wait in line and this can go on for a long period of time which hurts the community.

Representative Sand moved that Senate Bill 676 be passed out of committee favorably and Representative Eckert seconded the motion.

After more discussion there was a vote by show of hands which was counted as 7 Ayes and 7 Nays.

The Chairman voted to pass the bill out favorably.

The Chairman then stated the committee should consider possible final action on Senate Bill 665. The Chairman had staff introduce a prepared amendment which reads: Sec. . (a) As used in this section, "bankers' bank" means a state bank which is owned exclusively, except to the extent directors' qualifying shares are required by law, by other state banks or a one bank holding company and is organized to engage exclusively in providing services for other state banks and their officers, directors and employees.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS
room 527-S Statehouse, at 3:30 a.m./p.m. on March 22 _____, 1988

(b) The state banking board may approve the application for the organization of a state bankers' bank under the provisions of K.S.A. 9-1801 et seq., and amendments thereto. (Attachment #5).

Representative Roper moved and Representative Francisco seconded to pass the amendment. It passed unanimously.

Representative Francisco moved and Representative Russell seconded that Senate Bill 665 as amended be moved out favorably. It passed unanimously.

Representative Roper moved and Representative Long seconded approval of the minutes of the March 15 and March 17 meeting.

The meeting adjourned at 5:05 P.M.

ALDERSON, ALDERSON & MONTGOMERY

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MEMORANDUM

TO: The Honorable Clyde D. Graeber, Chairman, and Members of
House Committee on Commercial and Financial Institutions

FROM: W. Robert Alderson

RE: 1988 Senate Bill No. 552 (As Amended by Senate Committee of the
Whole)

DATE: March 22, 1988

This memorandum is intended to provide concise explanations of the amendments that would be effected in the Uniform Consumer Credit Code (UCCC) by the provisions of 1988 Senate Bill No. 552 (As Amended by Senate Committee of the Whole), hereinafter referred to as SB 552.

By way of background, I was retained last summer by the Consumer Credit Commissioner to work with the financial institutions licensed by that office in reviewing the UCCC and preparing legislation for introduction in the 1988 Session to effect technical, non-policy changes in the UCCC. SB 552 is a product of that review, which was accomplished through my meetings with the Consumer Credit Commissioner and her staff and Stanley Lind. In addition to the changes agreed to by these persons, the bill contains the normal, technical drafting changes provided by the Revisor of Statutes Office.

At the request of the Consumer Credit Commissioner, the bill was introduced by and referred to the Senate Committee on Financial Institutions and Insurance, and a hearing was held on the bill on February 18. Only one amendment, which will be noted subsequently, was made by that Committee, and with that amendment, the bill was recommended for passage.

Also, prior to passage by the Senate, one floor amendment was made to the bill by the Senate Committee of the Whole. That amendment was recommended jointly by legislative staff and me, and will be discussed below.

With that background, the following paragraphs will consider sequentially the amendments proposed in the UCCC by SB 552.

Atch 1

Section 1—K.S.A. 16a-1-102

Page 1, lines 33-34. Section 1 of the bill amends the provisions of the UCCC which contain a legislative declaration of its purposes. One of the initial purposes was to "simplify, clarify and modernize" the laws regarding usury. However, in light of the fact that K.S.A. 1987 Supp. 16-207 now serves as the general usury statute, and the UCCC operates as an exception to the usury law, it is believed that removing the language stricken in line 34 would be appropriate.

Section 2—K.S.A. 1987 Supp. 16a-1-301

Page 2, lines 63-66. Currently, the UCCC contains two definitions of "Administrator." One of them appears in subsection (2) of K.S.A. 1987 Supp. 16a-1-301, which is amended by Section 2 of SB 552. The other is contained in K.S.A. 16a-6-103. The former defines the term by reference to the latter, and there is no substantive difference between them. Accordingly, the amendment proposed in the bill would repeal K.S.A. 16a-6-103 and incorporate its substantive provisions into 16a-1-301(2), thereby leaving but one definition of this term in the UCCC.

Page 3, line 109. Subsection (7) of 16a-1-301 defines "closing costs," by enumerating various fees and costs included in the term. The amendment proposed to paragraph (f) of this subsection would merely add the words "fees for" prior to the existing language, "credit reports," so as to be consistent with the other enumerated elements of the defined term.

Page 4, lines 141-145. When SB 552 was originally drafted, the language in lines 141-143 was stricken in the belief that there was an apparent legislative intent to exclude a sale by contract for deed of real estate from the definition of "consumer credit sale." However, subsequent to SB 552 being reported out of Senate Committee, my discussions with the Committee's staff regarding the proposed amendment produced uncertainty in our minds regarding the original perception of legislative intent. Accordingly, we recommended to Senator Arasmith, Chairman of the Senate Committee, that the language be restored by floor amendment, until such time as the proposed amendment had received further study.

Page 4, line 149. The amendment to the definition of "consumer lease" deletes surplus language, so as to make the format of this definition consistent with other definitions in the section.

Page 6, lines 215-218. This amendment deletes a reference to persons who arrange credit, since other similar references to credit arrangers in the UCCC have been deleted over the last few years.

Page 10, lines 363-364. Agricultural loans are not subject to the UCCC, and this amendment proposes to delete reference in the definition of "supervised lender" to an agricultural credit corporation, which makes agricultural loans.

Section 3—K.S.A. 1987 Supp. 16a-2-201

Page 11, line 393. This section relates to interest rates on closed end or installment credit sales. Language which is currently in subsection (3) is separated from that subsection and made a part of a new subsection (4). Additional language is included in new subsection (4), to clarify the present intent regarding precomputed finance charges in a consumer credit sale.

Page 12, lines 424-428. Subsection (7) also is being deleted, because it has expired by its own terms. It provided for an alternative to the rates set forth in subsection (2) until July 1, 1987.

Section 4—K.S.A. 1987 Supp. 16a-2-202

Page 13, lines 469-473. This section concerns interest rates on open end credit sales. Subsection (5) is being deleted, because it has expired by its own terms. It provided an alternative to the rates set forth in subsection (3) until July 1, 1987.

Section 5—K.S.A. 1987 Supp. 16a-2-301

Page 13, lines 476-478. As noted previously, agricultural loans are no longer subject to the UCCC. Thus, this amendment deletes reference to agricultural credit corporations, which make agricultural loans.

Section 6—K.S.A. 1987 Supp. 16a-2-401

Page 14, line 522. The amendment made here with respect to the section governing finance charges in consumer loans is the same type of amendment made in section 3 of the bill (16a-2-201) on page 11, with respect to finance charges in consumer credit sales (other than open end credit sales). Language which is now in subsection (3) is separated and placed in a new subsection (4), and language is added to clarify the intent regarding calculation of precomputed finance charges in consumer loans.

Page 15, lines 561-565. Subsection (9) is being deleted, because it has expired by its own terms. Until July 1, 1987, it provided an alternative to the rates set forth elsewhere in that section.

Page 16, lines 566-575. Existing subsection (10) of this section is deleted and a new subsection (10) is added, for the purpose of clarifying the intent to permit a supervised lender to impose a nonrefundable origination fee of not to exceed 3% of the amount financed on any consumer loan secured by an interest in land. The only consumer loan secured by an interest in land is one which is secured by a second or subsequent mortgage given to a lender other than the lender which has been given the first mortgage on the land. Of course, by agreement, first mortgage loans may be made subject to this section. In addition, consistent with the requirements of Truth in Lending, which denominates fees imposed for obtaining a real estate loan as being included in the finance charge, this amendment declares the nonrefundable origination fee to be a prepaid

finance charge. Thus, if the origination fee is advanced by the lender, it must be disclosed as part of the amount financed, but it cannot be included in the amount to which the finance charges are applied, although it must be included in calculating the APR.

Section 7—K.S.A. 16a-2-502

Pages 16-17, lines 600-618. Subsection (4) of this section is deleted, but it is restated in New Section 11, beginning on page 21, line 776. No substantive change is made in its provisions, and the only purpose for this proposed amendment is to recognize that this subsection deals with a subject different from the other provisions of the statute. Subsections (1), (2) and (3) are primarily concerned with delinquency charges. But, subsection (4) relates to the conversion of a precomputed loan to a loan where the finance charge is based on the unpaid balance. Thus, it is believed that the provisions of this subsection would be more appropriate as a separate section under the UCCC.

Section 8—K.S.A. 1987 Supp. 16a-2-510

Page 17-18, lines 638-651. The last sentence of this subsection is being deleted, and changes also are being made at the beginning of this subsection to reflect deletion of this sentence. The sentence being deleted erroneously provides for deducting customary closing costs from the finance charge applicable to a consumer credit sale of an interest in land or a consumer credit transaction secured by an interest in land. By definition of "finance charge" in K.S.A. 1987 Supp. 16a-1-301 (18) (page 6, lines 203-228 of SB 552) closing costs are not included in the finance charge. Thus the deleted language is meaningless.

Page 18, lines 653-654. Subsection (3) of this section applies the Rule of 78ths to consumer credit transactions. Subsection (4) excludes this rule from application to certain consumer credit transactions, and the proposed amendment clarifies the current language as to the effective date of such exclusion, which is July 1, 1982.

Section 9—K.S.A. 16a-4-202

Page 20, lines 720-724. The deleted language references debts or commitments made primarily for an agricultural purpose, and such debts and commitments are no longer subject to the UCCC.

Section 10—K.S.A. 16a-5-203

Page 21, lines 769-770. The deleted language references arrangers of credit, and as previously noted, references to credit arrangers in the UCCC have been deleted over the last few years.

New Section 11

Pages 21-22, lines 776-796. This section was previously discussed in connection with section 7, which amends K.S.A. 16a-2-502. The new section merely restates the provisions of 16a-2-502 (4), with the addition of a new provision which makes new section 11 a part of and supplemental to the UCCC.

Section 12—K.S.A. 16a-6-202

Page 22, line 815. Upon the joint recommendation of the Consumer Credit Commissioner and the legislative staff, the parenthetical reference to 16a-1-203 is being deleted, because there is no such section. This erroneous reference has been in the UCCC since its enactment.

STATE OF KANSAS



OFFICE OF THE SECURITIES COMMISSIONER

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Topeka, Ks 66612-1220
(913) 296-3307

Mike Hayden,
Governor

M. Douglas Mays
Securities Commissioner

M E M O

TO: Committee Members

FROM: M. Douglas Mays
Securities Commissioner

DATE: March 22, 1988

RE: Senate Bill No. 675

We concur with the intent of the Senate amendment which makes non-certified public accountants exempt from registration and other requirements under the Act. However, as amended, there remains a technical problem in relation to the definition under K.A.R. 74-5-2(g) which is referenced in Sec. 16(a)(2). Our interpretation of that regulation is that it pertains only to certified public accountants and firms as defined in K.A.R. 75-5-2(b) & (e) and not to public accountants. Therefore, we suggest the following paragraph to replace subsection (2) of Sec. 16(a) in the bill.

"any independent public accountant whose service in relation to procurement of a loan is incidental to their practice in providing accounting services."

This language is very similar to the section of the Kansas Securities Act K.S.A. 17-1252(1)(2), which excludes accountants from the definition of investment adviser when investment advice is incidental to practice as an accountant. The suggested language also would have the advantage of avoiding future technical problems resulting from references to other statutes and regulations.

MDM:dec

Atch 2

Alice Devine
Research Analyst
Kansas State Board of Agriculture

I am Alice Devine, Research Analyst with the Kansas State Board of Agriculture. I thank you for the opportunity to appear and testify in support of Senate Bill 675. The agency supports the bill.

The bill would address the situation which arose in 1985. At that time, many financially stressed Kansas farmers became the victims of unscrupulous "loan brokers." These "loan brokers" would promise to find loans for the farmers in exchange for a substantial up-front fee. After payment of the fee, the broker would not deliver.

Such scams as this are sporadic with the agricultural economy. This bill would provide the means to stop the scam when it arises next time.

Thank you.

Atch3

SEDGWICK COUNTY DISTRICT ATTORNEY
18th Judicial District

Sedgwick County Courthouse
Annex — First Floor
535 North Main
Wichita, Kansas 67203

CLARK V. OWENS
District Attorney

Henry H. Blase
Chief Deputy

Consumer Fraud and
Economic Crime Division
(316) 268-7921

TESTIMONY

TO: HOUSE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS

FR: CLARK V. OWENS, DISTRICT ATTORNEY OF THE SEDGWICK COUNTY DISTRICT ATTORNEY'S OFFICE

RE: SENATE BILL 675 - AN ACT CONCERNING THE REGULATION OF LOAN BROKERS

DA: MARCH 22, 1988

I am Clark Owens, the Sedgwick County District Attorney, and I would like to thank you for the opportunity to speak on Senate Bill 675. This bill addresses the need for regulation of loan brokers, and today I would like to present some evidence of this problem from the files of the Sedgwick County Consumer Fraud Division. We have had multiple complaints about several loan brokers, one representative example being Financial Business Brokers and their client-finder Bobby Ryder.

By 1985, seventy-two (72) individuals, most of them Kansas farmers, had signed up for a new loan program offered by FBB. These people each paid either \$5,000 to FBB or \$2,500 to Mr. Ryder as an advance fee in the hopes of getting a low-interest loan based on zero-coupon bonds.

A Wall Street Journal article appeared on August 13, 1985, calling such farmers "hapless victims" who, in trying to save their farm, were falling prey to wily con men and hucksters who roam the Midwest. The next day the Kansas Securities Commission issued a cease-and-desist order against Ryder and FBB. Unfortunately, \$205,000 had already been paid by seventy-nine (79) Kansas residents to KBB and Ryder before the Securities Commission stopped the program, and as of April 1986, no participants had received any loans.

As the attached map shows, residents of nineteen (19) Kansas counties were affected by the FBB scheme and over forty (40) different towns were involved.

Atch 4

TESTIMONY
Clark Owens
Senate Bill 609
Page Two

This problem is obviously a statewide concern. The provisions of Senate Bill 675, such as registration with the Securities Commissioner, bonding, and accurate record-keeping will alleviate serious deficiencies in the present Kansas law concerning loan brokers. Present law makes it very difficult to prosecute this type of activity. It is a unique type of crime that does not fit well under theft statute and does not always meet the criteria for a violation under the Securities Laws. With Senate Bill 675, we have a means not only to regulate and monitor, but to effectively prosecute those like FBB.

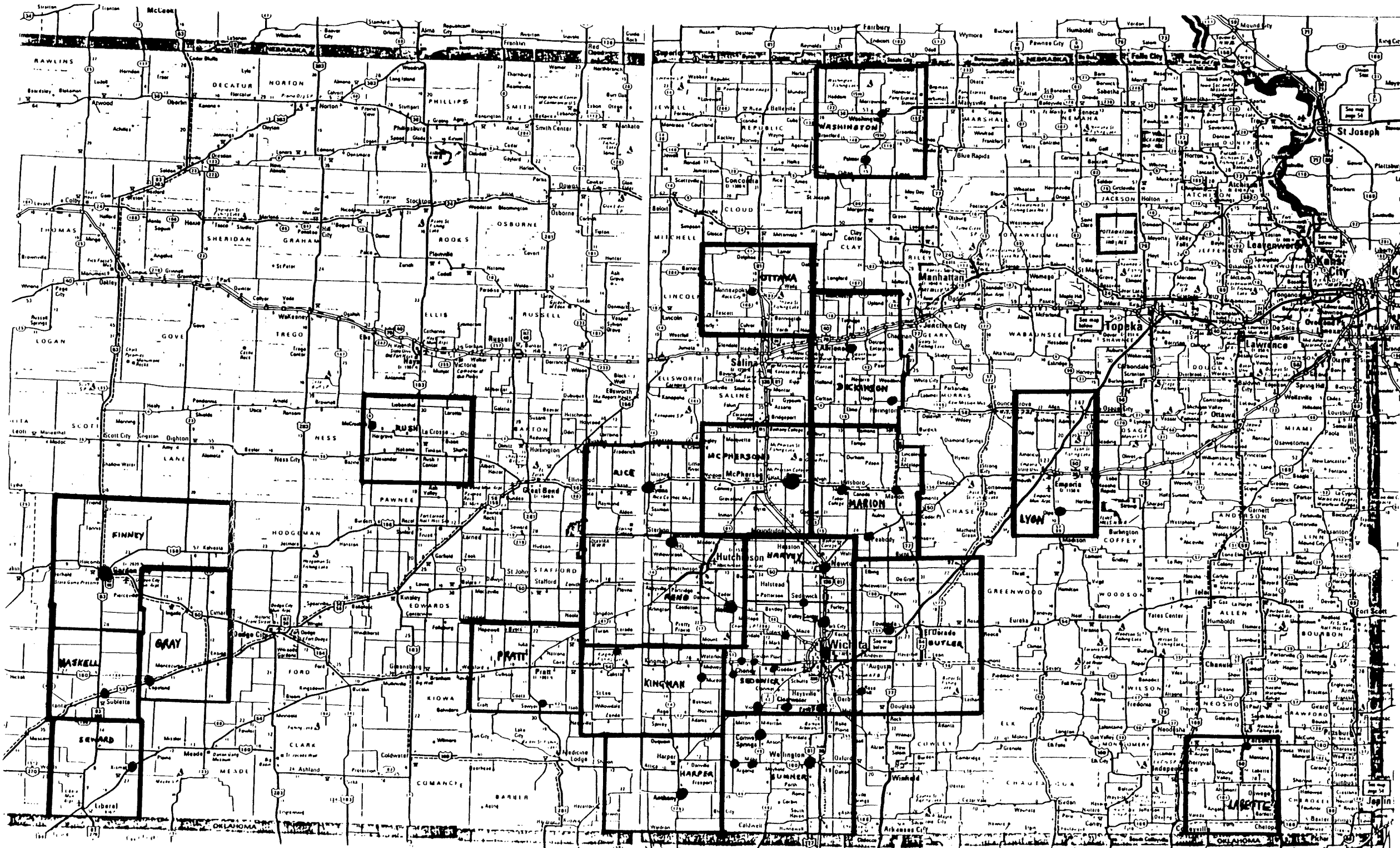
In conclusion, I would like to add the support of the Sedgwick County District Attorney's Office to the testimony made today by the Securities Commissioner. We need Senate Bill 675 to prevent unscrupulous loan brokers from taking advantage of Kansans, both rural and urban, who are already burdened by financial difficulties.



CLARK V. OWENS
DISTRICT ATTORNEY
SEDGWICK COUNTY DISTRICT ATTORNEY'S OFFICE

FBB and Bobby Ryder Kansas Clients - Towns Affected

Abilene	Newton
Anthony	Nickerson
Argonia	Olpe
Caldwell	Palmer
Cheney	Parsons
Clearwater	Peck
Colwich	Penalosa
Conway Springs	Rose Hill
Copeland	Sawyer
Garden City	Sedgwick
Garden Plain	Sublette
Goddard	Towanda
Haven	Valley Center
Herington	Viola
Hillsboro	Washington
Kismet	Wellington
Lyons	Wichita
Marion	
McCracken	
Milan	
Minneapolis	
Murdock	



PROPOSED AMENDMENT TO S.B. NO. 665

Sec. . (a) As used in this section, "bankers' bank" means a state bank which is owned exclusively, except to the extent directors' qualifying shares are required by law, by other state banks or a one bank holding company and is organized to engage exclusively in providing services for other state banks and their officers, directors and employees.

(b) The state banking board may approve the application for the organization of a state bankers' bank under the provisions of K.S.A. 9-1801 et seq., and amendments thereto.