

Approved March 22, 1988  
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 21, 1988 in room 529-S of the Capitol.

All members were present except:

Sen. Harder - Excused

Committee staff present:

Bill Wolff, Legislative Research  
Bill Edds, Revisor of Statutes

Conferees appearing before the committee:

Ron Todd, Kansas Insurance Department  
Pat Barnes, Kansas Motor Car Dealers Association  
Rep. Clyde Graeber  
Rep. Ken Francisco  
Jim Maag, Kansas Bankers Association  
Charles Wiggins, Bank IV Wichita  
Jim Turner, Kansas League of Savings Institutions

The minutes of March 18 were approved.

The hearing began on HB 2933 dealing with the collision damage waiver act with regard to rental vehicles. Ron Todd of the Kansas Insurance Department appeared to give information on the bill. He said it originated a year ago with an individual bill introduced by Rep. Turnquist who is also an insurance agent. The question was if the collision waiver made by car rental agencies is really insurance and if it should be regulated by insurance laws. Before this session, Rep. Turnquist contacted the Department and gave them a model bill by the National Association of Insurance Commissioners which gives the Insurance Commissioner some control and requires leasing to be licensed. The House amendments to this bill constitute those from an Iowa bill. Page 2 retains that no car leasing agency shall issue rental agreements unless it issues the notice found on page 3. The new section on page 4 will make the commission of deception in advertising or sale of this prohibitive. Also, the bill amends the consumer protection act which is administered by the Attorney General. As the bill now reads, the Insurance Department is not involved at all.

The Chairman asked what the terminology "collision damage waiver" means. Mr. Todd said it means that the rental car agreement states that whoever rents the car is responsible for damages, but if that person pays a certain amount per day, the agency will waiver this. Sen. Werts said that he feels there is a problem in syntax in the bill with regard to the waiver. With regard to line 96, he questioned why a person would be required to pay for the right to waive coverage. Mr. Todd explained that if a person accepts the waiver, he is waiving the right to buy what they charge for it. Sen. Werts clarified that waiving the right to buy the insurance is obligating yourself for the liability for damages.

Pat Barnes, Kansas Motor Car Dealers Association, testified in opposition to HB 2933. (See Attachment I.) With this, the hearing was concluded, and the bill was taken under advisement.

The hearing began on HB 2800 dealing with additonal charges allowed for consumer sales and consumer loans. Representatives Graeber and Francisco appeared in support of the bill. Sen. Francisco had an amendment to offer. (See Attachment II.) Rep. Graeber said the reason for the attempt to amend the bill is to make it comply with federal regulations that are to come.

Jim Maag, Kansas Bankers Association, followed with brief testimony in support

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,  
room 529-S, Statehouse, at 9:00 a.m./~~a.m.~~<sup>p.m.</sup> on March 21, 1988.

of HB 2800. The Chairman asked his opinion of the amendment which had been offered. Mr. Maag said the American Bankers Association and all state bankers have endorsed the federal legislation. His only concern about this amendment is that if it is passed as effective on July 1, and the federal legislation goes into effect later, state banks will be hindered. Mr. Maag introduced Charles Wiggins of Bank IV Wichita to give further testimony. (See Attachment III.) As to the amendment, he said he agrees philosophically with what it is trying to do. He agrees that a better job should be done in credit card disclosure. However, HB 2800 is to create a level playing field for Kansas based credit, and the amendment puts Kansas at a disadvantage to out-of-state card issuers who are not subject to it. Mr. Wiggins concluded that he wonders if there is a need to prematurely pass this type legislation with the federal legislation pending.

The Chairman asked Mr. Wiggins if the amount of the fee is left up to each individual bank card center. Mr. Wiggins said this would be true. It would be left to their judgement and that competition would keep the issuers honest and govern what the annual fee would be. Sen. Werts then asked for an explanation of the language of the bill as it was originally introduced, and staff explained.

Jim Turner, Kansas League of Savings Insitutions, gave final testimony in support of the bill. He said it supports it even with the amendment. He reminded the committee that the main purpose of the bill is to allow the five issuers in Kansas to be able to compete with the out-of-state issuers.

Sen. Karr asked staff if any changes in SB 507 impact this bill. Staff could not recall, but the Chairman said there would be no connection.

Sen. Werts made a motion to recommend HB 2800 favorably as amended by the House, Sen. Gannon seconded, and the motion carried.

Attention was returned to HB 2933. Staff informed the committee that the issue of waivers applying to national rental agencies is the subject of hearings being held now in Overland Park by the Attorney General. The Chairman asked the committee if they see any urgency in running the bill. There was no response.

The meeting was adjourned.

SENATE COMMITTEE

ON

FINANCIAL INSTITUTIONS AND INSURANCE

OBSERVERS  
(Please print)

DATE	NAME	ADDRESS	REPRESENTING
3-21-88	Ken Franer		House
3-21-88	Glyde Grauel		House
	Jim Sumner	Topeka	KCSI
	Lucie Hartman	Topeka	KBA
	Jeanne Kutzky	Topeka	AG
	Ken Todd	"	Bus Dept
	Walt Darling	Topeka	DIVISION OF BUDGET
	Jim Oleson	"	Prof Bus Agts
	J K Stinger	"	C C C
	Jill Wright	"	Ks Credit Union League
	Don Goodenon	"	House Intern
	Jim Mear	"	KBA
	Paul F. Jensen	"	Commercial Bank & Trust
3/21/88	Charles Maggins	Wichita	Bank IV, Wichita
	Stan Lind	KCKs,	Ks. Assn. of Financial Servs.
	FAT BARNES	TOPEKA	Ks. Motor Car Dealers Assn.

Statement Before The  
SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

By The  
KANSAS MOTOR CAR DEALERS ASSOCIATION

Monday, March 21, 1988.

Re: HB2933 - Collision Damage Waivers on  
Contracts to Rent Vehicles

Mr. Chairman and Members of the Committee, I am Pat Barnes, legislative counsel for the Kansas Motor Car Dealers Association, the trade association representing franchised new car and truck dealers in Kansas. We oppose HB2933 which imposes certain requirements for collision damage waiver provisions for rental vehicle contracts and incorporates these requirements as part of our Consumer Protection Act.

Many of our members operate leasing and rental companies in conjunction with their regular automobile retailing activities either as a general business or as a service to customers whose cars are being repaired or who otherwise need temporary transportation. Before I go on, I should point out the difference the industry recognizes between leasing and renting vehicles. Leasing a vehicle generally refers to a long-term arrangement whereby one purchases the right to use a vehicle much the same as

Attachment I

if the vehicle were owned by the person. it is commonly used today as a financing arrangement. Vehicle rentals are short-term, i.e., daily, weekly or monthly, and many people use the same vehicle. HB2933 seems to recognize this distinction, although the terms are mixed in places. For example, line 36 of the bill makes reference to the term "leased vehicle".

Even though there may be several questions about semantics, this is not where our primary concern lies. This bill represents new vistas of entanglement and liability for the common business man. It requires the addition of language to rental agreements warning individuals of information which most Kansas adults should be aware of anyway, i.e., their own mandatory auto insurance may or may not cover damage they cause to the vehicle, but they may pay the lessor a fee and he will waive the lessee's responsibility for damage the lessee causes.

What could be fairer than that? I will let you use my vehicle, but if you wreck it you must pay me for the damage you cause. However, if you want me to assume this risk for your negligence, or other things which may happen, then for a fair charge I will agree to waive any claims for certain types of damage you cause to my vehicle under defined circumstances.

People tend to think of large corporations when the business of renting vehicles is mentioned. We have members who

have large leasing/rental operations. However, medium and small scale operations also abound. None of these need such extreme regulation. Can you imagine trying to comply with this law on a daily basis?

For example, assume you're a small operation and soon after the effective date of this act you rent out 10 cars without complying with the disclosure provisions of this bill because you forget, or because you don't want to waste your old forms by throwing them out. Let's assume contractual language is clear and easy to understand. Collision damage waiver provisions are contained in the contracts, understood fully by those renting the vehicle, and requested by them. Five of the ten customers return the cars in a damaged condition, but nothing is charged them since the collision damage waivers are in effect. With this law, all 10 of these people could conceivably sue the lease company and recover a \$2,000.00 civil penalty, plus attorney fees. This would be a total of \$20,000.00. Taking this a step further, lets assume no damage with the return of the vehicles. The result is still the same, or the customer can get back the money paid for the rental upon threat of litigation.

While inquiring of our members about what stance to take on this bill, the comments we received across the board were that clear disclosure of collision damage waivers and readable

contracts are the norm. (After all, our members have to read and understand them, too.) All of those questioned were opposed to this bill. Why? It represents another liability for business and restricts freedom of contract where the consumer is already protected by the law.

These types of contracts provide the benefit of peace of mind to drivers who do not want to take the time to check their own insurance, do not know what their insurance provides, or want to make sure they have coverage. The average driver surely knows what he is doing when he approves the waiver provision and buys that piece of mind.

If there are fraudulent or oppressive practices taking place with these contracts, we do not condone those practices and suggest other laws may serve to address those practices, such as the Kansas Consumer Protection Act. The deceptive acts or practices portion of the Act is made part of this bill. Closely read Section 6 of this bill. Don't these broad provisions already cover any real problems which may exist? Similarly, K.S.A. 50-627 prohibits unconscionable acts or practices. Such an act can be found in many ways, including a transaction excessively one-sided in favor of the supplier or where misleading statements of opinion are made and the consumer relies to his detriment.

Many provisions of the proposed bill are acceptable. For example, requiring contracts to in simple and readable words

with common meanings and understandings. This is simply further defining by law that unconscionability concept the courts have applied for years as an equitable ground for avoiding extraordinarily onerous contractual provisions. What about other areas of this bill?

On Page 2, beginning at Section 4(b), beginning at Line 78, only three things may be excluded from a collision damage waiver contract. Why should only three things be excluded? Our dealers pointed to a number of things, which are perfectly legitimate, which should be excluded. One such item is damage to the car by someone to whom the car was loaned by the person who rented from the leasing company. It can be expected there are a host of perfectly legitimate exclusions. Nevertheless, legitimate exclusions from the collision damage waiver are not necessarily allowed under the language of this bill. At the very least, there is a question about that construction of the language of the bill.

Even though this bill is presently better than its original counterpart, we cannot willingly subject ourselves to additional regulation of this nature where there is no clear need for it. Every time a law of this nature is passed, it really does impact business. The impact can be real or imagined, but it is there and the message extends far beyond the sector of being effected.



Thank you for the opportunity to provide the views of our members. We urge you to vote against this measure. I would certainly try to answer any questions you may have.

PROPOSED AMENDMENTS TO H.B. NO. 2800

On page 2, following line 64, by inserting the following:

"(3) A creditor, in the solicitation of lender credit card applications, shall disclose clearly and conspicuously the following information:

(a) The annual percentage rate or rates applicable to the extension of credit, including an explanation of the method used to determine the annual percentage rate;

(b) any annual fee, other periodic fee or membership fee imposed for the issuance or availability of a lender credit card and any transaction charge imposed in connection with the use of such card;

(c) the date or the grace period when any credit extended under such lender credit card for the purchase of goods or services must be repaid to avoid incurring a finance charge, and, if no such grace period is offered, such fact shall be clearly stated.

TESTIMONY BY CHARLES WIGGINS  
EXECUTIVE VICE PRESIDENT, BANK IV WICHITA, N.A.

ON

KANSAS HOUSE BILL NO. 2800

BEFORE THE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

OF THE KANSAS SENATE

MONDAY, MARCH 21, 1988

First, thank you for allowing us to appear today to testify on behalf of House Bill No. 2800. We recognize that your job is to balance the public interest and the interest of individual organizations and industries like ours.

House Bill No. 2800, as it currently stands, would specifically allow bank card centers issuing credit cards under Kansas law to collect four additional kinds of charges: Late charges, over line charges, bad check charges, and cash advance charges. This legislation if passed would place us on nearly equal footing with out-of-state issuers of credit cards who issue cards to residents of the state of Kansas under laws of states other than Kansas.

To summarize the status of the current law, we are allowed to charge interest on credit cards up to a maximum of 18% and in addition we are allowed an annual fee which is currently \$18.00. This bill would do no more than allow us to charge additional fees as described above. Although it is not required by law, all centers located in the state of Kansas allow a grace period of up to 25 days in which no interest is charged if the credit card bill is paid in full.

*Attachment III*

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The credit card business began in the state of Kansas in the late 1960's, as it did in other parts of the country. We were the first organization to develop our own credit card issuing business and we were soon followed by other Kansas banks. The Kansas BankCard Center, which is owned by BANK IV Wichita, N.A., is one of five credit card issuing centers in the state of Kansas owned by banks. As of December 31, 1986, we had issued 152,361 accounts and had outstandings of over \$60MM. We had 134 employees working in our operation and had total operating expense of \$7.6MM. Our total payroll is over \$2MM and we purchased just under \$2MM in supplies and other services locally.

The First National Bank in Wichita and the Union National Bank in Wichita own operations of comparable size and scope to ours.

Additionally, Commerce Bank and Trust in Topeka and Commercial National Bank in Kansas City own smaller operations. These centers employ a total of over 300 employees and are responsible for merchant sales of general goods and services exceeding \$1 billion.

For a few years in the early 1970's, the odds were very good that a resident of the state of Kansas would hold a credit card issued by one of the five credit card issuing banks in the state of Kansas. That is no longer true as we have seen our market position steadily erode to a point where the chances are two out of three that a card held by a Kansas resident is issued by an out of state bank. Why? Simply stated, the centers owned by large money center banks have

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utilized more liberal laws and intensive automation to extract a competitive advantage over centers like ours. We are sure that many of you do not have a week go by that you do not receive a solicitation from some out of state card center offering you a credit card under what appears to be very favorable terms. Some are actually more favorable and some are not and all require careful examination before you sign on the dotted line.

Today about 33 states have very liberal credit card laws that allow the charging of interest with no limit; the collection of annual fees with no limit; and assessment of delinquency fees for which we are asking. This ability to operate under more liberal laws is very attractive to large credit card issuers and has resulted in a steady migration of credit card issuing centers from states with restrictive laws to states with more liberal laws. Earlier we mentioned that there are 33 states that have more liberal laws but the laws are particularly attractive in the states of Delaware, South Dakota and Georgia. Rather than operate under the restrictive laws of a given state, many banks have transferred their operations to one of these three states. For example, at first glance, you might think that the state of Missouri has a good credit card law (from the bank's point of view) because they are allowed to charge 22% interest. But upon closer examination, you will find that at the \$1,000 outstandings level the interest rate drops to 10%; and in addition, they are allowed no fees of any kind, including an annual fee. Consider the marketing challenge that a Missouri bank faces when trying to market a

22% card, even though there are no fees, against an 18% card with fees. It is a difficult marketing challenge. It might not surprise you to know that the card issuing centers of Missouri have migrated to other states and now issue cards to citizens of the state of Missouri from other states.

A word about interest rates. We have seen a lot of publicity recently about banks and other issuers of credit cards being greedy by not lowering credit card rates as their cost of funds came down. Seems like a reasonable question for one to ask. However, upon further examination, you will find that there are three primary ingredients to bank card income ... interest, merchant discount and annual fees. In our case, more than half of our customers take advantage of our free 25-day grace period to pay their balances in full each month; therefore, we do not earn the 18% you think we do on our average outstanding and in fact only earn about 12% on our average outstanding balances. Saying it another way, enough of our customers pay in full each month to take advantage of the 25-day grace period thereby paying no interest and that drives our average yield down to about 12%.

Further, to fully understand the credit card business, you must understand that operating costs, as opposed to a normal lending operation, are quite high. In addition to the heavy expense of credit losses on unsecured credit, it is very expensive to maintain a credit card operation. We maintain personnel (134 at the end of 1986) to issue cards, service merchants, collect payments and the like. If we

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could compare this to the normal consumer loan business and take average outstandings of let's say \$10MM, it would cost \$200M in operating expense to run the consumer loan business and \$800M, or four times as much, to run the credit card business.

Now let's turn back to House Bill No. 2800. The change that we are requesting would allow us to transfer certain costs of doing business with delinquent customers to those directly responsible and would allow us to be more competitive with out of state issuers of credit cards. Saying it another way, all 152,000 customers that hold our credit cards pay in a general way for those who are late. Please allow us to transfer that cost to those negligent few. In a given month, 5% to 10% of our customers become overdue ranging from a few days late to seriously overdue and we eventually charge off 2% to 3% of our outstandings each year. Most of our customers are honest working people who believe in paying their bills on time. Don't continue to make them pay for the indiscretions of a few delinquent customers. One might consider that granting us the ability to charge late charges and similar charges related to the delinquency would be subject to abuse. We would remind you that when we were allowed by law to charge 21% we did not charge 21% and kept our rate at 18%. The law has allowed us for many years to charge an annual fee in Kansas with no limit. We did not take advantage of that law and our fee is currently \$18.00 even though it could be higher. The law we have in Kansas today does not require a grace period but we do have a 25-day, interest free, grace period. Why have we as an industry not charged higher interest when we could; higher annual fees; and not eliminated

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the grace period. The answer is easy and simple. Competition. We have three highly competitive bank card issuing centers in Kansas of equal size and scope that are very competitive. We do not see any reason why that healthy competition cannot continue and benefit the consumers of the state of Kansas.



BANK IV WICHITA, N.A.

December 31, 1986

	Consumer Loan Group	Kansas BankCard Center
Outstandings	\$137,218,517	\$ 60,332,533
Average Outstanding	120,937,374	55,313,033
# of Accounts	26,839	152,361
# of Employees	40	134
\$ Charge Off	135,129	1,905,520
% Charge Off of Average Outstandings	.11%	3.44%
Operating Expense	2,530,596	7,577,906
Cost of Funds	8,590,000	3,915,369

ECONOMIC IMPACT ON WICHITA WITH  
KANSAS BANKCARD'S RELOCATION

Salaries to KBC Employees	\$2,000,000+
Supplies	
Hardware/Software	
Equipment	
Maintenance	
Mail/Postage	
Advertising	<u>1,800,000+</u>
Total Impact	\$3,800,000

BANK IV WICHITA, N.A.

KANSAS BANKCARD CENTER  
CREDIT CARD STATISTICS  
12/31/86

Outstandings	\$ 60,332,533
Number of Accounts	152,361
Number of Active Accounts	112,235
Number of Merchants	7,829
Number of Financial Institutions	289
Cardholder Sales	\$162,527,354
Number of Cardholder Sales	3,810,362
Number of Cardholder Authorizations	392,850
Average Sale	\$ 42.65
Cardholders Paying Balance in Full (Pay-in-Full Cardholders generate 70-80% of all Sales)	48-55%
Merchant Sales	\$158,309,936
Number of Merchant Sales	4,120,911
Average Sale	\$ 38.42
Number of Merchant Authorizations (Voice)	537,750
Number of Merchant Authorizations (P.O.S.)	1,101,100
Number of Employees	134
Total Charge Off Expense 1986	\$ 1,905,520
Average Outstandings 1986	\$ 55,313,033
Charge Off as Percentage of Average Outstandings	3.44%