

MINUTES OF THE HOUSE COMMITTEE ON Commercial and Financial Institutions.

The meeting was called to order by Representative Dick Eckert at
 Vice Chairperson

3:30 ~~am~~/p.m. on February 14, 1989 in room 527-S of the Capitol.

All members were present except: Representative Clyde D. Graeber, Chairperson,
 Representative Mary Jane Johnson
 Representative Kenneth King

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

Conferees appearing before the committee: James Maag, Kansas Bankers Association
 Jim Turner, President, Kansas League of
 Savings Institutions
 Jerel Wright, Governmental Affairs Director,
 Kansas Credit Union League

The meeting was called to order by Representative Dick Eckert, Vice
 Chairperson at 3:30 P.M.

Representative Green moved and Representative Wilbert seconded that
 the minutes of the February 9, 1989, meeting be approved. The motion
 carried.

The Chairperson stated that there would be two hearings: one on Senate
 Bill 46 and one on H.B. 2147. There will not be any action taken on
 either of the bills today.

The first conferee was James Maag, Kansas Bankers Association, testifying
 in favor of S.B. 46, stating that this bill was requested by the Kansas
 Bankers Association and amends Senate Bill 535 which was passed during
 the 1988 legislative session. The act became effective on January 1,
 1989, and under its provisions a creditor or a debtor cannot sue for
 failure to carry out an alleged promise unless that promise was specifically
 in writing and signed by both parties.

The passage of S.B. 535 has attracted national attention as the Kansas
 Legislature became one of the leaders in the nation in addressing this
 problem and a number of states are now pursuing legislation based on
 this Kansas law.

There has been some confusion as to what documents used by a bank are
 considered "credit agreements". The amendments in Section 1 of S.B.
 46 are designed to accomplish that clarification.

The term "credit agreement" does not include the following agreements:
 promissory notes, real estate mortgages, security agreements, guaranty
 agreements, letters of credit, agreements in connection with student
 loans insured or guaranteed pursuant to the federal higher education
 act of 1965 and acts amendatory thereof and supplementary thereto, and
 agreements in connection with "lender credit cards" as defined in the
 uniform consumer credit code. (See Attachment #1).

James R. Turner, Kansas League of Savings Institutions, was the next
 conferee testifying in favor of S.B. 46 stating that the Kansas League
 did not believe S.B. 535 pertained to written credit agreements; however,
 it is felt this has created concern among mortgage lenders. The primary
 concern related to potential problems of legally enforcing the provisions
 of mortgage instruments and the need to defend the lenders right to
 foreclosure if an improper disclosure was made or the inadvertent failure
 to sign all of the mortgage documents. (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 February 14, 19 .

Jerel Wright, Kansas Credit Union League, stated they supported S.B. 46 as there needs to be clarification of whether credit agreement language is necessary on forms.

The hearing was closed on S.B. 46.

The Chairman opened the hearing on H.B. 2147.

The first conferee was Jerel Wright, Kansas Credit Union League, stating that Section 1 of H.B. 2147 proposes to amend the method of certification of member accounts by the supervisory committee. The proposed change in the law would give the supervisory committee an option regarding the method for completing the certification and how often to perform the certification. The change would allow either a 100% certification at least once every two years or a controlled random statistical sampling certification at least once each year. The change is requested to assist credit unions which use or may want to use an independent audit firm to complete the supervisory committee certification of member accounts. The change is similar to the method of certification of accounts for federally-chartered credit unions.

The other change requested is in Section 2 which gives a credit union the option to establish a policy regarding expulsion and once the policy is established then the Board of Directors may expel a member based on the policy. (See Attachment #3).

After discussion, the Vice Chairperson closed the hearing on H.B. 2147.

The Vice Chairperson suggested that Representative Roper could prepare an amendment on S.B. 46 before the next meeting and final action will be taken at the next meeting on both of these bills.

The meeting was adjourned at 4:20 P.M.

Richard E. Expert
REPR. 60TH DIST

Date: 2/14/89

GUEST REGISTER

COMMERCIAL AND FINANCIAL INSTITUTIONS

NAME	ORGANIZATION	ADDRESS
Ken Baker	Fourth Financial Corp	Topeka
David Spain	Intertec / Sen Bond	LAWRENCE
Charles Benson	Kansas Builders A	Topeka
Jim M	" " "	"
JEFF SONNICH	KLSI	TOPEKA
Joni Turner	KLSI	Topeka
Gerald Goodey	KLSI-attorney	Topeka
Chuck Stones	KBA	"
Kathy Taylor	"	"
Lee Schmucker	KCUK	Wichita
Sue Piskner	KCUK	Topeka
Pat ROSELL	KCUK	Wichita
Janel Wright	K.C.U.L.	Topeka
Greg Winkler	K.C.U.L.	Topeka
Alan Steppat	Pete Mcbill & Associates	Topeka



The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

February 14, 1989

TO: House Committee on Commercial and Financial Institutions
FROM: Jim Maag, Kansas Bankers Association
RE: SB 46 - Credit Agreements of Financial Institutions

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to present testimony on SB 46. This bill was requested by the Kansas Bankers Association and amends SB 535 which was passed during the 1988 legislative session. The act became effective on January 1, 1989, and under its provisions a creditor or a debtor cannot sue for failure to carry out an alleged promise unless that promise was specifically in writing and signed by both parties.

That act (which is now K.S.A. 16-117) was a major step forward in resolving lender liability problems for financial institutions in this state. It eliminates the problem of frivolous and unjustified counter claims being filed by debtors claiming that oral credit commitments existed beyond those stated in the written agreement. This had become a common practice for debtor attorneys in foreclosure and bankruptcy situations and it only delayed the legal process and created sizeable legal expenses. This had the bottom line effect of protecting the bad customer at the expense of the good customer since the bank's operating costs were ultimately increased no matter what the outcome of the lawsuit. Such lawsuits were also making it more difficult for banks, particularly in rural areas, to find people willing to serve as bank directors. The passage of SB 535 has attracted national attention as the Kansas Legislature became one of the leaders in the nation in addressing this problem and a number of states are now pursuing legislation based on this Kansas law.

The act does require that all "credit agreements" must contain a "clear, conspicuous and printed notice" stating that all of the terms of the agreement between the bank and the debtor are reflected in the written document. This has raised the question among bank legal counsels as to which documents used by the bank are considered "credit agreements" and which ones are not. While there is now a general understanding as to what is not a "credit agreement", it was the consensus of the various bank counsels that it would be best to clarify the definition of "credit agreement" in the act rather than waiting for the courts to make such a determination. The amendments in Section 1 of SB 46 are designed to accomplish that clarification.

New Section 3 has been added to emphasize that the clarifying amendment in Section 1 reflects the original legislative intent of the meaning of "credit agreement". We are also asking that the effective date of the act be from and after its publication in the State Register. Since the act is now in effect it is important that banks, S&Ls, and credit unions be assured as soon as possible which documents must be changed and which ones may be retained to comply with the provisions of the act.

We appreciate the committee's prompt attention to this important issue and we urge you to recommend SB 46 favorably.

KLSI Kansas League of Savings Institutions

JAMES R. TURNER, President • Suite 512 • 700 Kansas Ave. • Topeka, KS 66603 • 913/232-8215

February 14, 1989

TO: HOUSE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS
FROM: JIM TURNER, KANSAS LEAGUE OF SAVINGS INSTITUTIONS
RE: S.B. 46 (CREDIT AGREEMENTS)

The Kansas League of Savings Institutions appreciates the opportunity to appear before the House Committee on Commercial and Financial Institutions in support of the passage of Senate Bill No. 46 pertaining to written credit agreements.

The Kansas League did not participate in the deliberation of 1988 S.B. 535 (Chapter 55: 1988 Session Laws) pertaining to written credit agreements as we received assurance that it was not the intent, nor did it apply, to mortgage instruments. However, the members of the legal profession differ as to application and this has created concern among mortgage lenders.

Further, the Federal National Mortgage Association (Fannie Mae), desiring to protect their foreclosure option, has now issued a required change in the Kansas Mortgages and Notes incorporating disclosures and Freddie Mac is expected to follow suit.

The application of the provisions of S.B. 535 represent a basic departure from normal mortgage procedures whereby the lender does not regularly sign such documents and will also require an investment by lender to replace their existing stock of mortgage forms. In addition, we are concerned that the statute applies only to insured financial institutions in the State and not to mortgage bankers or others that are involved in mortgage originations.

However, our primary concern relates to potential problems of legally enforcing the provisions of mortgage instruments and the need to defend the lenders right to foreclosure if an improper disclosure was made or the inadvertent failure to sign all of the mortgage documents.

Accordingly, we support the passage of S.B. 46 and would request that the bill be reported favorably for passage.

James R. Turner
President

JRT:bw

Atch #2



Date : December 22, 1988

To : All Fannie Mae Lenders

Subject : Required Changes to Kansas Mortgages and Notes

Effective January 1, 1989, all loans originated in Kansas must comply with a new Kansas statute (Chapter 55 of the 1988 Kansas Session Laws) concerning credit agreements by including certain notices meeting the statute's requirements in both the Multistate Note and the Kansas Mortgage.

Text Required for Note

For the Multistate Fixed Rate Note (Form 3200), and all ARM notes, the following text must be inserted below the signature line:

Notice to Borrower and Affirmation Against Unwritten Agreements.

I understand and agree that this Note and the Security Instrument to which it refers for rights as to prepayment and acceleration are a complete and final expression of the credit agreement between Lender and me and may not be contradicted by evidence of any prior or contemporaneous oral agreement between us. If there are any additional terms or oral agreements, they are reduced to writing in the following space, which I agree is sufficient for this purpose:

By my signature on this Note and by the Lender's signature acknowledging delivery of this Note, we both affirm that no unwritten oral agreement between us exists.

Delivery Acknowledged:

Witness our hand(s):

Lender

Borrower

By _____

Borrower

Title

Borrower



Atch 2'

You should consult with your attorneys concerning your compliance with this law. Lenders are responsible for compliance with all applicable laws and will be responsible for assuring that Fannie Mae complies with this statute. The suggested form paragraphs are for information purposes only.

Under no circumstances should this letter be construed as legal advice. Its publication does not imply any assumption by Fannie Mae of your responsibility to comply with state laws.

Sincerely,

Robert J. Engelstad

Robert J. Engelstad
Vice President for Mortgage Standards

Atch 22

TESTIMONY ON H.B. 2147

AN ACT relating to credit unions

Presented to the

HOUSE COMMITTEE ON COMMERCIAL
AND FINANCIAL INSTITUTIONS

February 14, 1989
by the
KANSAS CREDIT UNION LEAGUE

Mr. Chairman, members of the Committee:

I am Jerel Wright, Governmental Affairs Director for the Kansas Credit Union League (KCUL). Our association represents 98% of the 155 state-chartered and 42 federally-chartered credit unions located in Kansas. KCUL member credit unions serve the personal financial needs of over 500,000 individual credit union members and have over \$1.5 billion in combined assets. Kansas credit unions range in asset size from \$29,000 to \$113 million and range in membership size from 59 to 41,000 members.

I appreciate having this opportunity to appear before the Committee to ask for approval of House Bill 2147 which amends K.S.A. 17-2211 concerning the duties of the supervisory committee and amends K.S.A. 17-2219 which concerns a member's expulsion from a credit union.

Atch 3

SECTION 1. Supervisory Committee Audit

Every credit union has a supervisory committee which consists of individual credit union members elected by the membership to serve on the committee. Each supervisory committee member serves as a volunteer to the committee as do the members of the credit union board of directors and credit committee. The supervisory committee supervises the acts of the board of directors, credit committee and credit union officers.

Among the many duties, the supervisory committee is directed by state law to make, or cause to be made, a certification of all members' accounts at least once each two years. This certification of member accounts is independent of and in addition to the examination completed by the Kansas State Department of Credit Unions.

Section 1 of H.B. 2147 proposes to amend the method of certification of member accounts by the supervisory committee. The proposed change in the law would give the supervisory committee an option regarding the method for completing the certification and how often to perform the certification. The change would allow either a 100% certification at least once every two years or a controlled random statistical sampling certification at least once each year.

Atari 3'

The change is requested to assist credit unions which use or may want to use an independent audit firm to complete the supervisory committee certification of member accounts. Many audit firms are currently completing a certification of member accounts for credit unions. The change is similar to the method of certification of accounts for federally-chartered credit unions.

SECTION 2. Member Expulsion

The purchase of a share in a credit union establishes a member account for any individual who wishes to join a particular credit union. Whether a person may join a credit union depends on whether the person qualifies under the credit union's field of membership which defines who is eligible to join. With the purchase of a share comes the privilege of using the member accounts and services of the credit union.

The privilege of membership carries with it access to loans and share accounts (savings) and in some credit unions checking accounts and credit cards. Many credit unions offer accounts and services such as IRA's, money orders, travelers checks, financial planning, financial counseling, or bill paying at little or no additional cost to the member. Because these accounts and services are considered privileges for the member, credit unions wish to establish a law which would allow a credit union to adopt a policy to allow the credit union board of directors to expel a member because of the member's abuse of account privileges or the member's

causing a financial loss to the credit union.

Current law allows for a member to be expelled by a vote of the membership only. The proposal in section 2 of H.B. 2147, would also give the board of directors the ability to expel a member but only if the board of directors has established a policy with respect to expulsion and only if the member has violated the policy.

Credit unions feel the board of directors needs the ability to expel a member. Although credit unions find most of their members to be very honest and trustworthy, they find that some members are not. At times, members abuse their account privileges by overdrafting checking accounts, going over the limit on overdraft protection, going over the limit on a credit card account or kiting checks on the checking account. Other members cause the credit union financial loss by failing to file a security interest on collateral, failing to insure collateral or filing bankruptcy. The change in the law would give the credit union board of directors authority to stop the member from using the privileges of membership almost immediately and without waiting until the next members' meeting.

The new law would require the board of directors to provide the member with 30 days notice prior to expulsion and provides the member the ability to appeal the board of director's decision to the membership. The member may also wish to request the Kansas State Department of Credit Unions to review the decision of the

credit union board of directors to determine whether the board is abiding by established policy.

The changes in Section 2 give a credit union the option to establish a policy regarding expulsion and once the policy is established then the board of directors may expel a member based on the policy.

Mr. Chairman, thank you for the opportunity to appear before the Committee. I will respond to questions at your direction.