

Approved _____

Date

2/25/91

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

The meeting was called to order by SENATOR RICHARD L. BOND at _____
Chairperson

9:00 a.m./~~pm~~ on WEDNESDAY, FEBRUARY 20, 1991 in room 529-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~:

Senators Anderson, Francisco, Kerr, Moran, Parrish, Reilly, Salisbury, Strick and Yost.

Committee staff present:

Bill Wolff, Research Department
Fred Carman, Revisors Office
Louise Bobo, Secretary

Conferees appearing before the committee:

Stan Lind, Kansas Association of Financial Services

Chairman Bond called the meeting to order at 9:15 a.m.

SB 100 - Balloon payments under the UCCC.

Stan Lind, Kansas Association of Financial Services, addressed the committee in support of this bill. Mr. Lind explained that this legislation was needed in order to reconcile inconsistencies between the federal and state laws governing the refinancing of a balloon note. Mr. Lind further explained the amendment, proposed by the Consumer Credit Commissioner, which would make it clear that this bill only refers to real estate transactions. Attachment 1)

During a brief discussion, the Chairman asked Jim Maag, Kansas Bankers Association, his opinion of this bill. Mr. Maag replied that they certainly endorsed the bill as amended as they felt like the conflict between federal and state law should be cleared up. Neil Arasmith, Consumer Credit Commissioner, also assured the committee that he had no objection to the bill as amended.

There being no further conferees, the hearing on SB 100 was closed.

Senator Anderson made a motion to approve the amendment inserting new section (1) and also a conceptual amendment to change the title of the bill. Senator Reilly seconded the motion. The motion carried.

Senator Strick made a motion to pass the bill out favorably as amended. Senator Salisbury seconded the motion. The motion carried.

SB 140 - Additional charges and penalties on certain real estate transactions.

Stan Lind addressed the committee as a proponent of this bill. He explained to the committee that, since 1978, the general usury statute had permitted a lender to charge a prepayment fee if the borrower prepays a real estate loan within the first six months of the loan contract. Under the Uniform Consumer Credit Code, lenders are presently prohibited from making a similar charge on real estate loans. Mr. Lind explained that, since one-third of their loans are secured by real estate, licensed lenders need a similar provision under the UCCC but would limit the prepayment fee to 1% of the loan. (Attachment 2)

Considerable discussion followed. A committee member inquired why charge only 1%--Mr. Lind replied that they estimated that to be the cost of the bookkeeping involved. Another member was curious about the present general usury prepayment charge. Mr. Lind said that the fee varied from 1% to 2% and sometimes more--that it was determined by the contract involved. In answer to a question about origination fees, he stated that the limit was 3% and that was what his company charged. Staff inquired how often borrowers refinance and if they are charged the 3% origination fee each time they refinance. Mr. Lind responded that they could be charged each time but often are not.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,

room 529-S, Statehouse, at 9:00 a.m./~~p.m.~~ on WEDNESDAY, FEBRUARY 20, 1991.

Chairman Bond explained that this bill would change the present statute in four places. He questioned if we were for sure limiting the bill to real estate mortgages. A committee member questioned why take out the phrase, "without penalty", p. 4, line 24, when a penalty is going to be charged. He said that he would prefer to see the Notice to Consumer section on page 4 rewritten to express full disclosure. Staff stated that failing to strike "without penalty" on page 4, line 28, was a drafting error and would be corrected.

Senator Reilly made a motion to amend SB 140 to read that the consumer is subject to penalty if prepayment is made when secured by real estate and also to amend the language in the Notice to Consumers section. Senator Salisbury seconded the motion. The motion carried.

Senator Salisbury made a conceptual motion to check other statute references to make certain they are consistent with page 3, section 2, of SB 140 and applies only to real estate mortgage situations. Senator Parrish seconded the motion. The motion carried.

Senator Salibury made a motion to limit the prepayment fee up to 1%. Senator Reilly seconded the motion. The motion carried.

Committee members expressed to the Chairman their uncertainty about this bill and requested that it be reviewed. The Chairman agreed and requested Staff to rework the language of the bill and the committee will take it up for discussion at a later date.

Minutes of Monday, February 18, 1991, were approved on a motion by Senator Reilly with Senator Strick seconding the motion. The motion carried.

The meeting adjourned at 10:05 a.m.

The Kansas Association of Financial Services

Stanley L. Lind, Counsel & Secretary
813 N. 9th St., Box 171193 Kansas City, KS 66117-0193
913/342-1808 Fax: 913/371-6979

Sen. Richard Bond
State House
Topeka, KS 66612

Re: Explanation of S.B. 100 (In Senate Financial Institutions Committee)

Dear Senator:

S.B. 100 in its present would repeal K.S.A. 16a-3-308 which requires a lender to refinance a balloon note on the same terms as the original note. In explanation, a balloon note is by definition any note where the last payment is twice as large as the average of the other instalments.

Because the Garn.-St. Germain Depository Institution Act of 1982 (and the regulations thereunder) pre-empted state laws pertaining to adjustable rate mortgages -and- by definition made a balloon note an adjustable rate note, insofar as real estate loans are concerned, 16a-3-308 has not been the law in Kansas since 1982.

Secondly, since K.S.A. 16a-2-401 (8 and 9) permit adjustable rate real estate loans, 16a-3-308, insofar as real estate loans are concerned is inconsistent with the provisions of 16a-2-401.

Because of the foregoing, S.B. 100 was asked to be introduced to remove the foregoing inconsistencies.

The Consumer Credit Commissioner advised this writer that the provisions of 16a-3-308 were still needed as it pertained to non-real estate loan transactions. Because the purpose of S.B. 100 is as stated above, the attached amendment to S.B. 100 is requested so that only real estate loans will be affected. With this amendment, the Consumer Credit Commissioner advised that he has no objection to the bill and that it should be passed to remove the above stated inconsistencies.

Sincerely yours,



Stanley L. Lind

SLL:np

SENATE BILL No. 100

By Committee on Financial Institutions and Insurance

1-31

8 AN ACT repealing K.S.A. 16a-3-308; concerning balloon payments
9 under the uniform consumer credit code.

10
11 *Be it enacted by the Legislature of the State of Kansas:*

12 ~~Section 1.~~ 2 K.S.A. 16a-3-308 is hereby repealed.

13 ~~Sec. 2.~~ 3 This act shall take effect and be in force from and after
14 its publication in the statute book.

amending and

Section 1. K.S.A. 16a-3-308 is hereby amended to read as follows:
With respect to a consumer credit transaction, other than one pursuant to open end credit if any scheduled payment is more than twice as large as the average of earlier scheduled payments, the consumer has the right to refinance the amount of that payment at the time it is due without penalty. The terms of the refinancing shall be no less favorable to the consumer that the terms of the original transaction. These provisions do not apply to the extent that the payment schedule is adjusted to the seasonal or irregular income of the consumer or to a note secured by a real estate mortgage.

1-2

The Kansas Association of Financial Services

Stanley L. Lind, Counsel & Secretary
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913/342-1808 Fax: 913/371-6979

Sen. Richard Bond
State House
Topeka, KS 66612

Re: S.B. 140

Dear Senator:

Since 1978, the general usury statute [16-207(c)] has had a provision which permits a lender to charge a prepayment fee if the borrower prepays a real estate loan within the first six months of the loan contract. There is no maximum charge provided by statute. K.S.A. 16-207(c) is as follows:

(c) No penalty shall be assessed against any party for prepayment of any home loan evidenced by a note secured by a real estate mortgage where such prepayment is made more than six months after execution of such note.

Present law prohibits lenders under the Uniform Consumer Credit Code from making a similar charge on real estate loans. Since approximately a third of our loans by dollar amount are now secured by real estate, licensed lenders now feel the need for a comparable provision under the UCCC.

Rather than an unlimited prepayment fee, S.B. 140 would provide for a prepayment fee of 1%.

Respectfully submitted,



Stanley L. Lind

SLL:np