Approved 1-30-92
Date

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL & COMMERCIAL INSTITUTIONS.

The meeting was called to order by Representative Delbert L. Gross at
Chairperson

3:30 a.m./p.m. on January 28, 1992 in room 527-S of the Capitol.

All members were present except: Representative Adam and Teagarden

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

Conferees appearing before the committee: Kathy Taylor, Kansas Bankers Association
Bill Caton, Consumer Credit Commissioner
Jeffrey D. Sonnich, Vice President, Kansas-Nebraska League of Savings Institutions
Jim Maag, Executive Vice President, Kansas Bankers Association
Ron Thornburgh, Assistant Secretary of State

The Chairperson call the meeting to order at 3:30 P.M. and opened the hearing on HB 2746, an Act amending the uniform consumer credit code; concerning additional charges; amending K.S.A. 1991 Supp. 16a-2-501 and repealing the existing section.

Kathy Taylor, Kansas Bankers Association, stated that KBA supports HB 2746. This proposal would allow financial institutions to recoup costs associated with offering overdraft protection credit to qualified customers.

Many financial institutions offer to their qualified demand deposit customers, an open-end type of credit known as "overdraft protection". Institutions and customers enter into an agreement that when the customer overdraws his checking account, the financial institution will automatically deposit enough funds to cover the check. This agreement is voluntary and is a choice made by the customer in lieu of having checks returned for insufficient funds and being charged overdraft fees.

In effect, what has occurred is that the financial institution has made an unsecured loan to the customer. Once the account is overdrawn and the funds have been transferred to cover the checks written, the customer is notified by his or her financial institution of the transaction. The customer then pays the loaned amount at the end of the month.

Currently, these types of consumer loans are covered by the Uniform Consumer Credit Code (UCCC).

It is not a mandatory fee for bank customers but would allow a financial institution to recover the costs associated with offering this plan to its customers who choose to have it. In addition, it would clarify the availability of such fees for this type of open-end credit. (See Attachment 1)

William F. Caton, Consumer Credit Commissioner, stated the location of this amendment within the Kansas Uniform Consumer Credit Code is consistent with other non-interest charges specified in the Code. This office approves of the placement, wording and content of the amendment.

Removing administrative charges from being lumped into finance charges enables lenders to more accurately determine finance charges that are fair and adequate to insure the availability of credit to Kansas consumers.

This type of credit could possibly save eligible consumers considerable overdraft of insufficient check charges ($7.50 - $12.50 per check), collection charges by the payee (as high as $30.00 per check) and third party collection charges (as high as $20.00 per check). (See Attachment 2).

Jeffrey D. Sonnich, Vice President, Kansas-Nebraska League of Savings Institutions, stated HB 2746 would allow financial institutions to charge certain fees in connection with an overdraft protection open-end credit line. (See Attachment 3).

After discussion, the Chairperson closed the hearing on HB 2746.

The Chairperson opened the hearing on HB 2747, an Act amending the uniform commercial code; concerning financing statements; amending K.S.A. 184-9-402 and repealing the existing section.

Jim Maag, Executive Vice President, Kansas Bankers Association, testified that HB 2747 addresses two problems which arise frequently in the UCC-1 filing process. The first has to do with the confusion created over similar names or variations of the same name on a filing. If a creditor wants to know if there are any existing security interest on the collateral of a "Robert Smith" the creditor will request a UCC-1 "search. That search will most likely turn up a number of "Robert Smiths". Which one is the one this is seeking?

The other information on the UCC-1 may not reveal any additional positive proof. What if "Robert Smith" had previously signed a UCC-1 as "Bob Smith"? By allowing the use of the SSN or FEIN on the UCC-1 financing statements there will be positive proof.

The use of these numbers on UCC-1 statements, as is provided in HB 2747, would save time for everyone involved in a loan transaction and would certainly be a safer and less costly approach for creditors. (See Attachment 4).

Ron Thornburgh, Assistant Secretary of State, testified in favor of HB 2747, stating by using a unique number for each and every debtor, it can be guaranteed that an interested party will get the information about the right debtor.

The Secretary of State requests an amendment of HB 2747 that would make two changes:

(1) Limit the implementation of this bill to those filings made with the office of the Secretary of State and not the consumer loan filings with the Register of Deeds offices. Only business loan information is available in the Secretary of State's office. Only in the case of a sole proprietorship would a Social Security Number ever be a possibility. And, in the case of a sole proprietorship, a Federal Employee Identification Number would be available if desired by the proprietorship.

(2) Require the use of the number on continuations and other types of amendments. Otherwise, the system would never be completely reliable using a numerical search. Many entities file continuations every five years. Without requiring a number on those continuations, we would never be able to update the information. (See Attachment 5).

Following discussion, the hearing was closed on HB 2747.

Melvin A. Battin, Consumer Credit Commission, requested amendments to the Uniform Consumer Credit Code; concerning consumer leases; relating to delinquency charges; amending K.S.A. 16a-2-502, 16a-3-201, 16a-6-105 and 16a-6-117 and repealing the existing sections; also repealing K.S.A. 16a-2-511.

Representative Long moved and Representative Graeber seconded to accept requested amendments by the Consumer Credit Commission and introduce as committee bills. The motion carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON COMMERCIAL & FINANCIAL INSTITUTIONS,

room 527-S, Statehouse, at 3:30 ~~a~~m./p.m. on January 28, 1992

Representative Long moved and Representative Minor seconded the minutes of January 16, 1992 be approved. The moltion carried.

The meeting adjourned at 4:15 P.M. and the next meeting will be Janury 30, 1992.

Date: 1/28/92

GUEST REGISTER

HOUSE

COMMERCIAL & FINANCIAL INSTITUTIONS COMMITTEE

NAME	ORGANIZATION	ADDRESS
Carol Beard	Sec of State	Capitol Bldg.
Jerel Wright	Ks Credit Union Assn	Topeka
Ken Bahr	4/M Financial Corp	Topeka
JEFF DELP	INTERN - MINOR	MANHATTAN
Kathy Taylor	Ks Bankers Assn	Topeka
Jim Maag	"	"
Chuck Stones	"	"
JEFF SOANICH	KNLSI	TOPEKA
Mel Bat[illegible]	Consumer Credit Com	"
Bill Caton	Cons. Cr. Comm	Topeka
Ron Thornburgh	SOS	"

The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

January 28, 1992

TO: Members of the House Committee on Commercial and Financial Institutions

RE: HB 2746

The Kansas Bankers Association appreciates the opportunity to appear in support of HB 2746. This legislative proposal will allow financial institutions to recoup costs associated with offering overdraft protection credit to qualified customers.

Many financial institutions offer to their qualified demand deposit customers, an open-end type of credit known as "overdraft protection". Essentially what occurs, is that the institution and the customer enter into an agreement that when the customer overdraws his checking account, the financial institution will automatically deposit enough funds to cover the check. This agreement is voluntary and is a choice made by the customer in lieu of having checks returned for insufficient funds and being charged overdraft fees.

In effect, what has occurred is that the financial institution has made an unsecured loan to the customer. Once the account is overdrawn and the funds have been transferred to cover the checks written, the customer is notified by his or her financial institution of the transaction. Typically the customer then pays the loaned amount at the end of the month.

This is just one type of credit called "open-end" credit. Another example would be a credit card agreement. This type of credit is different than "closed-end" credit in that the amount of the loan is not pre-determined in the loan agreement. The amount of the loan depends on the spending whims of the credit customer.

Currently, these types of consumer loans are covered by the Uniform Consumer Credit Code (UCCC). Under the protections of the UCCC, a financial institution is allowed to charge its customer interest for the use of the money, and in the case of credit cards, additional charges may be collected for cash advances, going over the credit limit and an annual or monthly fee may be charged.

There is no clear provision to allow a financial institution to recoup the costs associated with overdraft protection open-end credit. For example, there are costs involved in setting up such an account, plus the costs involved when the customer accesses the funds. When the check is written that overdraws the account, the funds must then be transferred, documentation evidencing the transfer must be made and the customer must be then notified.

The proposed legislation would allow a financial institution to charge a "participation fee", which would be an annual, monthly or other periodic fee for access to the overdraft protection plan. This fee is in line with the federal Truth In Lending, Regulation Z regulations and is authorized by that regulation.

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FAX (913) 232-3484

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1-28-92
Atch #1

There are many attorneys who represent banks across the state, who believe that the existing language in the UCCC is broad enough to allow a financial institution to charge such a fee. We believe this legislation is needed to clarify the matter.

We urge you to vote favorably on the passage of HB 2746. It is **not** a mandatory fee for bank customers. It would simply allow a financial institution to recover the costs associated with offering this plan to its customers who choose to have it. In addition, it would clarify the availability of such fees for this type of open-end credit.

THE STATE OF KANSAS

OFFICE OF **Consumer Credit Commissioner**

JOAN FINNEY
Governor

WM. F. CATON
Commissioner

January 28, 1992

HOUSE COMMITTEE COMMERCIAL & FINANCIAL INSTITUTIONS

TESTIMONY BY BILL CATON - HOUSE BILL #2746

OBSERVATIONS:

1. Federal Truth in Lending Regulation Z has addressed the additional charge requested in this bill in Section 226.4(c)(4). A copy of the regulation and commentary are attached.
Note - this fee is a set fee and not calculated on amount of credit or usage of credit.

2. The location of this amendment within the Kansas Uniform Consumer Credit Code is consistent with other non-interest charges specified in the Code. This office approves of the placement, wording and content of the amendment.

3. Removing administrative charges from being lumped into finance charges enables lenders to more accurately determine finance charges that are fair and adequate to insure the availability of credit to Kansas consumers.

4. The availability of this type of credit could possibly save eligible consumers considerable overdraft or insufficient check charges (generally $7.50 to $12.50 per check), collection charges by the payee (as high as $30.00 per check) and third party collection charges (as high as $20.00 per check)

LANDON STATE OFFICE BUILDING, 900 JACKSON, ROOM 352 • TOPEKA, KANSAS 66612 • (913) 296-3151

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Att. #2

Transactions

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this section.

SECTION 226.4—Finance Charge

(a) *Definition.* The finance charge is the cost of consumer credit as a dollar amount. It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction.

(b) *Examples of finance charges.* The finance charge includes the following types of charges, except for charges specifically excluded by paragraphs (c) through (e) of this section:

(1) Interest, time price differential, and any amount payable under an add-on or discount system of additional charges.

(2) Service, transaction, activity, and carrying charges, including any charge imposed on a checking or other transaction account to the extent that the charge exceeds the charge for a similar account without a credit feature.

(3) Points, loan fees, assumption fees, finder's fees, and similar charges.

(4) Appraisal, investigation, and credit report fees.

(5) Premiums or other charges for any guarantee or insurance protecting the creditor against the consumer's default or other credit loss.

(6) Charges imposed on a creditor by another person for purchasing or accepting a consumer's obligation, if the consumer is required to pay the charges in cash, as an addition to the obligation, or as a deduction from the proceeds of the obligation.

(7) Premiums or other charges for credit life, accident, health, or loss-of-income insurance, written in connection with a credit transaction.

(8) Premiums or other charges for insurance against loss of or damage to property, or against liability arising out of the ownership or use of property, written in connection with a credit transaction.

(9) Discounts for the purpose of inducing payment by a means other than the use of credit.

(c) *Charges excluded from the finance charge.* The following charges are not finance charges:

(1) Application fees charged to all applicants for credit, whether or not credit is actually extended.

(2) Charges for actual unanticipated late payment, for exceeding a credit limit, or for delinquency, default, or a similar occurrence.

(3) Charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing.

(4) Fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis.

(5) Seller's points.

(6) Interest forfeited as a result of an interest reduction required by law on a time deposit used as security for an extension of credit.

(7) The following fees in a transaction secured by real property or in a residential mortgage transaction, if the fees are bona fide and reasonable in amount:

(i) Fees for title examination, abstract of title, title insurance, property survey, and similar purposes.

(ii) Fees for preparing deeds, mortgages, and reconveyance, settlement, and similar documents.

(iii) Notary, appraisal, and credit report fees.

(iv) Amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the finance charge.

(8) Discounts offered to induce payment for a purchase by cash, check, or other means, as provided in section 167(b) of the act.

(d) *Insurance.* (1) Premiums for credit life, accident, health, or loss-of-income insurance may be excluded from the finance charge if the following conditions are met:

(i) The insurance coverage is not required by the creditor, and this fact is disclosed.

(ii) The premium for the initial term of insurance coverage is disclosed. If the

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2. *Other excluded charges.* Charges for "delinquency, default, or a similar occurrence" include, for example, charges for reinstatement of credit privileges or for submitting as payment a check that is later returned unpaid.

Paragraph 4(c)(3)

1. *Assessing interest on an overdraft balance.* A charge on an overdraft balance computed by applying a rate of interest to the amount of the overdraft is not a finance charge, even though the consumer agrees to the charge in the account agreement, unless the financial institution agrees in writing that it will pay such items.

Paragraph 4(c)(4)

1. *Participation fees—periodic basis.* The participation fees mentioned in section 226.4(c)(4) do not necessarily have to be formal membership fees, nor are they limited to credit card plans. The provision applies to any credit plan in which payment of a fee is a condition of access to the plan itself, but it does not apply to fees imposed separately on individual closed-end transactions. The fee may be charged on a monthly, annual, or other periodic basis; a one-time, non-recurring fee imposed at the time an account is opened is not a fee that is charged on a periodic basis, and may not be treated as a participation fee.

2. *Participation fees—exclusions.* Minimum monthly charges, charges for non-use of a credit card, and other charges based on either account activity or the amount of credit available under the plan are not excluded from the finance charge by section 226.4(c)(4). Thus, for example, a fee that is charged and then refunded to the consumer based on the extent to which the consumer uses the credit available would be a finance charge. (See the commentary to section 226.4(b)(2). Also, see comment 14(c)-7 for treatment of certain types of fees excluded in determining the annual percentage rate for the periodic statement.)

Paragraph 4(c)(5)

1. *Seller's points.* The seller's points mentioned in section 226.4(c)(5) include any charges imposed by the creditor upon the non-creditor seller of property for providing credit to the buyer or for providing credit on certain terms. These charges are excluded from the finance charge even if they are passed on to the buyer, for example, in the form of a higher sales price. Seller's points are frequently involved in real estate transactions guaranteed or insured by governmental agencies. A "commitment fee" paid by a noncreditor seller (such as a real estate developer) to the creditor should be treated as seller's points. Buyer's points (that is, points charged to the buyer by the creditor), however, are finance charges.

2. *Other seller-paid amounts.* Mortgage insurance premiums and other charges are sometimes paid at or before consummation or settlement on the borrower's behalf by a noncreditor seller. In such cases, the creditor should treat the payment made by the seller as seller's points and exclude it from the finance charge. A creditor who gives disclosures before the payment has been made should base them on the best information reasonably available, as called for by the estimate provisions of the regulation.

Paragraph 4(c)(6)

1. *Lost interest.* Certain federal and state laws mandate a percentage differential between the interest rate paid on a deposit and the rate charged on a loan secured by that deposit. In some situations because of usury limits the creditor must reduce the interest rate paid on the deposit and, as a result, the consumer loses some of the interest that would otherwise have been earned. Under section 226.4(c)-(6), such "lost interest" need not be included in the finance charge. This rule applies only to an interest reduction imposed because a rate differential is required by law and a usury limit precludes compliance by any other means. If the creditor imposes a differential that exceeds that required, only the lost interest attributable to the excess amount is a finance charge. (See the commentary to section 226.4(a).)

Paragraph 4(c)(7)

1. *Real estate or residential mortgage transac-*

tion charges. The list of charges in 226.4(c)(7) applies both to residenti gage transactions (which may include ample, the purchase of a mobile home other transactions secured by real est fees are excluded from the finance cha if the services for which the fees are are performed by the creditor's em rather than by a third party. In additio it report fees include not only the cos report itself, but also the cost of verif formation in the report. If a lump charged for several services and inc charge that is not excludable, a portio total should be allocated to that serv included in the finance charge. A charg lawyer's attendance at the closing or a for conducting the closing (for exampl title company) is excluded from the charge if the charge is primarily for s related to items listed in section 226.4 (for example, reviewing or completing ments), even if other incidental services as explaining various documents or disb funds for the parties, are performed. cases, charges excluded under s 226.4(c)(7) must be bona fide reasonable.

4(d) Insurance

1. *General.* Section 226.4(d) permits ance premiums and charges to be exc from the finance charge. The required d sures must be made in writing. The rul location of insurance disclosures for cl end transactions are in section 226.17(a)

2. *Timing of disclosures.* If disclosures given early, for example under se 226.17(f) or section 226.19(a), the cre need not redisclose if the actual premiu different at the time of consummation. I surance disclosures are not given at the of early disclosure and insurance is in written in connection with the transaction disclosures under section 226.4(d) mus made in order to exclude the premiums f the finance charge.

3. *Premium rate increases.* The cred should disclose the premium amount based the rates currently in effect and need not

Kansas-Nebraska League of Savings Institutions

Jeffrey D. Sonnich, Vice-President

Suite 512
700 Kansas Avenue
Topeka, Kansas 66603
(913) 232-8215

January 28, 1992

TO: HOUSE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS

FROM: JEFF SONNICH

RE: HOUSE BILL 2746

Mr. Chairman. Members of the Committee. The Kansas-Nebraska League of Savings Institutions appreciates the opportunity to appear before the House Committee on Commercial and Financial Institutions in support of H.B. 2746.

This bill would allow financial institutions to charge certain fees in connection with an overdraft protection open-end credit line.

K.S.A. 16a-2-501 sub (c) would allow financial institutions to assess overdraft fees where those fees are assessed for the privilege of using a lender credit card. Currently few, if any, savings institutions issue credit cards that would access an open-end line of credit. Sub-paragraph (d) of this bill would allow Kansas financial institutions who offer overdraft protection to charge a nominal monthly or annual fee. This would help offset the expense of maintaining these accounts. These expenses vary from institution to institution but in general they include: mailing and handling costs and annual interest statements.

We respectfully request that the House Committee on Commercial and Financial Institutions recommend H.B. 2746 favorably for passage.

Jeffrey D. Sonnich, Vice President
KNLSI

JDS: bw

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1-28-92
Atch #3

The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

January 28, 1992

TO: House Committee on Commercial and Financial Institutions
RE: **HB 2747** - Amendments to the Uniform Commercial Code (UCC)

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before the committee in support of **HB 2747**. This bill includes two amendments to the Uniform Commercial Code (UCC) which we believe will be beneficial to both creditors and debtors.

Under the provisions of the UCC, creditors may file "financing statements" with the appropriate local or state authorities for the purpose of notifying all other potential creditors that a security interest exists in relationship to certain collateral. By filing such a financing statement, which is commonly referred to as a "UCC-1" the creditor has "perfected" his or her security interest under the provisions of the UCC and, in most instances, no other creditor may acquire a preferential position on the collateral referenced in the financing statement. In Kansas most UCC-1 filings have been made with the Secretary of State since 1984 although certain filings - such as those relating to personal property - are still made with the Register of Deeds office in the appropriate county.

HB 2747 addresses two problems which arise frequently in the UCC-1 filing process. The first has to do with the confusion created over similar names or variations of the same name on a filing. If a creditor wants to know if there are any existing security interests on the collateral of a "Robert Smith" the creditor will request a UCC-1 "search". That search will most likely turn up a number of "Robert Smiths". Which one is the one this creditor is seeking? The other information on the UCC-1 may not reveal any additional positive proof. What if "Robert Smith" had previously signed a UCC-1 as "Bob Smith"? As is readily apparent, many problems can develop in doing a lien search.

One way several states have dealt with this problem is by allowing the use of Social Security numbers (SSN) and Federal Employer Identification numbers (FEIN) on the UCC-1 financing statements. This allows for a quick and accurate check in situations where there could easily be confusion over a name. The use of the numbers has become increasingly commonplace to the point where they are often used for conference registrations, on drivers licenses, and their use is even mandated under certain federal laws. Thus it is not unprecedented that these numbers be required on documents. The use of these numbers on UCC-1 statements, as is provided in **HB 2747**, would save time for everyone involved in a loan transaction and would certainly be a safer and less costly approach for creditors.

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Atch #4

The other problem addressed in **HB 2747** relates to amendments to existing UCC-1 financing statements. Currently under the provisions of the UCC any amendments to an existing UCC-1 must contain the signatures of both the debtor and the creditor. This includes even such simple items as a change in address. Much time, money, and hassle could be saved for all parties involved if only creditors were required to sign financing statements in those situations which did not materially change or "prejudice" the position of the debtor.

The International Association of Corporation Administrators has adopted a resolution endorsing this change and requesting state legislatures to adopt such an amendment to the UCC. Section 1 (4) of **HB 2747** incorporates this change.

We appreciate your attention to this important matter and strongly urge the committee to recommend **HB 2747** favorably.

James S. Maag
Senior Vice President

Ron Thornburgh
Assistant Secretary of State

STATE OF KANSAS

Bill Graves
Secretary of State
2nd Floor, State Capitol
Topeka, KS 66612-1594
(913) 296-2236

TESTIMONY OF RON THORNBURGH
COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS
JANUARY 28, 1991

HB 2747

Thank you, Mr. Chairman and members of the committee for the opportunity to appear before you today on behalf of Secretary of State Graves.

The office of the Secretary of States supports House Bill 2747. This proposal goes to the very heart of our service to the customers of our Uniform Commercial Code Division. By using a unique number for each and every debtor, we can guarantee that an interested party will get the information about the right debtor. More importantly, it gives any interested party seeking information from our files the security of knowing they are asking the right questions to get the right answers.

Under the current system, a debtor might use a different name for each and every filing. For example, Eugene Doe may file a financing statement under the name Gene Doe. If the lender requests a search under the name Eugene Doe, it will not produce Gene's filing. Without consistent information going into the system, the secured party continues to have some doubt as the the validity of the search for the information unless they have searched absolutely every possible spelling of the name or nickname of the debtor.

In addition to the recommended legislation, we are asking for an amendment to HB 2747 that would make two changes:

1 - Limit the implementation of this bill to those filings made with the office of the Secretary of State and not the consumer loan filings with the Registers of Deeds offices. Only business loan information is available in our office. Only in the case of a sole proprietorship would a Social Security Number ever be a possibility. And, in the case of a sole proprietorship, a Federal Employer Identification Number would be available if desired by the proprietorship.

2 - Require the use of the number on continuations and other types of amendments. Otherwise, the system would never be completely reliable using a numerical search. Many entities file continuations every five years. Without requiring a number on those continuations, we would never be able to update the information.

Thank you for your time, and I will be happy to stand for any questions.

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1-28-92
Atch #5