Approved _____
Date

MINUTES OF THE HOUSE COMMITTEE ON COMMERCIAL & FINANCIAL INSTITUTIONS.

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

3:30 ~~a~~/p.m. on February 25, 1992 in room 527-S of the Capitol.

All members were present except:

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

Conferees appearing before the committee: Representative Eugene L. Shore
Bill Caton, Consumer Credit Commissioner

The Chairperson called the meeting to order at 3:30 P.M. and asked for approval of minutes of February 18. Representative Graeber requested that "stock" be deleted from the third sentence of the third paragraph.

Representative Shallenburger moved and Representative Graeber seconded the minutes be approved as corrected. The motion carried.

Representative Eugene L. Shore testified in support of HB 3095, stating that a problem had developed in his district and possibly it has been in other districts.

Vehicles were financed thru a credit union and several of the borrowers had become delinquent and received a note of a right to cure. The credit union became insolvent and was closed, then reopened by an out-of-state insurer. The office was kept open for several months and borrowers continued to make payments owed to the credit union. The door was locked, unannounced and the credit union left unattended. Borrowers not knowing where to make their payments were unable to continue making their payments. Due to payments not being made, the vehicles were taken out of the county and impounded. To get their cars back the borrowers had to pay the account in full. (See Attachment #1).

Bill Caton, Consumer Credit Commissioner, testified in opposition of HB 3095, stating this is an attempt to amend HB 2751 on the Floor of the House. It is felt this legislation in its present form does not serve the consumer or the lender. (See Attachment #2).

After discussion, the Chairperson asked that Representative Shore, Bill Caton, Consumer Credit Commissioner and staff amend HB 3095 making it satisfactory to everyone and bring the amended bill back to the meeting on Tuesday, March 3, for final action.

The Chairperson asked for final action on HB 2747.

The Revisor offered a technical amendment changing the date.

After discussion, Representative King moved and Representative Graeber seconded to move HB 2747 out of Committee as amended. The motion carried.

The Chairperson asked for final action on HB 2906.

Representative Shallenburger moved to amend HB 2906 to remove "corruptly" from lines 26, 32, and 33 and remove "be" from line 34.

The motion failed.

MINUTES OF THE HOUSE COMMITTEE ON COMMERCIAL & FINANCIAL INSTITUTIONS,

room 527-S Statehouse, at 3:30 xxx./p.m. on February 25, 1992

Representative Kline moved to amend HB 2906 by removing "be" from line 34. The motion carried.

Representative Long moved and Representative King seconded that HB 2906 be moved out of committee as amended. The motion carried.

The Chairperson asked for final action on HB 3033.

Representative Minor moved and Representative Graeber seconded to move HB 3033 out of committee onto the Consent Calendar. The motion carried.

The Chairperson requested the Banking Department meet with Representative Jennison and staff to discuss HB 2969 and final action would be taken on March 3.

The meeting adjourned at 4:30 P.M.

Date: 2/25/92

GUEST REGISTER

NAME	ORGANIZATION	ADDRESS
Judi Stork	Kansas Banking Dept.	Topeka
Joyce Cranker	"	"
Chuck Storm	KBA	"
Bill Caton	Cons. Cred: +	
George Barbee	KAFS	Topeka
Ron Thornburgh	Ks Sec. of State	"
Roger Traude	Ks Govt Consulting	"
Stan Lind	Ks. Assn. of Financial Services	K.C., Ks.
Greg Winkler	KS Credit Union Assn.	Topeka

bross 115 S

STATE OF KANSAS

EUGENE L. SHORE
REPRESENTATIVE, 124TH DISTRICT
GRANT, W. HASKELL, MORTON,
STANTON AND STEVENS COUNTY
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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: ENERGY AND NATURAL RESOURCES
LEGISLATIVE, JUDICIAL AND
CONGRESSIONAL APPORTIONMENT
TAXATION
TRANSPORTATION

February 25, 1992
Testimony on House Bill 3095 Before the
COMMERCIAL AND FINANCIAL INSTITUTIONS COMMITTEE
by REP. EUGENE L. SHORE

House Bill 3095 addresses a problem which happened in my district and undoubtedly has happened in other districts across Kansas.

A credit union had a large number of vehicles financed. Several of the borrowers had become delinquent at one time or another and received a notice of a right to cure. The credit union became insolvent and was closed, then reopened by the out of state insurer. The insurance company kept the doors open for several months and borrowers continued to make payments owed to the credit union. At an unannounced time the door was locked and the credit union left unattended. A number of people didn't know where to make their payments so just didn't make the payments. A short time later, while these borrowers were at work, a crew showed up during the day and took a number of vehicles out of county and had them impounded. Payment in full was demanded.

This activity apparently is within the law as only one notice of cure is required even if it is three years old. This bill would provide for the notice to expire after six months or when the lending agency changes ownership.

Atch #1

THE STATE OF KANSAS

OFFICE OF **Consumer Credit Commissioner**

JOAN FINNEY
Governor

WM. F. CATON
Commissioner

February 25, 1992

TESTIMONY ON HOUSE BILL 3095 BY BILL CATON, CONSUMER CREDIT COMMISSIONER

It is my understanding that this bill is the result of an attempt to amend HB 2751 on the floor of the House. It is also my understanding that events that precipitated this amendment was that a right to cure default notice issued by a defunct lender was used by a new lender to repossess property of an individual.

My interpretation of this legislation requires a lender to reissue right to cure notices every six months but still allows a new assignee the right to use the old lender's right to cure notice if it is less than 6 months old. With the number of failed financial institutions the past number of years, I would be afraid to guess at how many consumer loans have been transferred or assigned, and even more afraid to guess how many have been actually turned over to professional collection agencies or even collected by the Resolution Trust Corporation (RTC).

Present Kansas law REQUIRES notification of change of lender in KSA 16a-3-203 and KSA 84-9-318 (3). If a new lender has not identified himself until a repossession is in process, the lender has arguably failed to comply with these laws. First Mortgage Real Estate loans generally are not subject to UCCC laws, so the vast majority of home loans would NOT be affected by this legislation.

I have provided information taken from our Annual Report of 1989 and 1990 that shows the number of suits, garnishments, and foreclosures. Almost all money judgments and garnishments issued were on unsecured loans that had no collateral to repossess. Although voluntary forfeitures and repossessions that did not result in a deficiency balance are not included in these figures, I feel they are indicative of the actual small number of problem loans that end up in foreclosure.

All of our contiguous neighbor states have right to cure notice requirements in their laws similar to our present law. Missouri does require a second cure notice per loan if the first default has been cured.

CF&I
2-25-92
Atch #2

It is also my opinion that the original intent for the right to cure to be required is not being addressed by this legislation. The UCCC commentary enclosed states its intent clearly. The companies this office regulates certainly do not have the reputation of being unscrupulous collectors. That is left up to the RTC! Also, with the new wave of Legal Liability lawsuits against lenders, I believe that all legitimate lenders have practiced prudence and forbearance in their collection practices.

Please allow me to take off my regulator's hat and put on my lender's hat. With computerization of loan notices, it would be very easy to comply with this legislation operationally. I would suppose that most lenders will do the same as my bank will do: all late notices will become right to cure notices since it is our policy not to start adverse proceedings until a borrower is at least 30 days late, regardless of how many times the borrower has been delinquent. We will continue to give a 10 day notice (which will include right to cure wording), discontinue a 20 day notice which is being given now, and consider stronger action as we always have after 30 days and the cure time has expired. THE GRAVITY AND THE INTENT OF THE RIGHT TO CURE TO BRING STRONG NOTICE TO THE CONSUMER OF DEFAULT WILL BE LOST IN THE FACT THAT IT WILL BE ON EVERY NOTICE.

With my regulator's hat back on, I would be pleased to support a change in the right to cure procedure that would expire any effect of an old lender's notice and require a new right to cure notice be sent by a subsequent assignee. I do not believe this legislation addresses that concept if it happens within a six month period. I do NOT feel that this legislation in its present form serves the consumer or the lender for the reasons stated above.

Thank you for you time and attention.

16a-3-202. (UCCC) Notice to consumer. A written agreement which requires or provides for the signature of the consumer and which evidences a consumer credit transaction other than one pursuant to open end credit shall contain a clear, conspicuous, and printed notice to the consumer that he should not sign the agreement before reading it, and that he is entitled to a copy of the agreement and to prepay the unpaid balance at any time without penalty. The following notice if clearly and conspicuously printed complies with this section:

NOTICE TO CONSUMER: 1. Do not sign this agreement before you read it. 2. You are entitled to a copy of this agreement. 3. You may prepay the unpaid balance at any time without penalty.

History: L. 1973, ch. 85, § 42; Jan. 1, 1974.

KANSAS COMMENT, 1973

The disclosures required in this section are above and beyond truth-in-lending. They are intended to give the consumer some important additional information with respect to his closed-end installment agreement or consumer lease. They basically track with the old Kansas sales finance act (former K.S.A. 16-507 (a)).

16a-3-203. (UCCC) Notice of assignment. The consumer is authorized to pay the original creditor until he receives notification of assignment of rights to payment pursuant to a consumer credit transaction and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the consumer, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the consumer may pay the original creditor.

History: L. 1973, ch. 85, § 43; Jan. 1, 1974.

KANSAS COMMENT, 1973

This section is derived from the UCC (K.S.A. 84-9-318 (3)) and is thus generally consistent with prior Kansas law.

16a-3-204. (UCCC) Change in terms of open end credit accounts. (1) If a creditor makes a change in the terms of an open end credit account without complying with this section any additional cost or charge to the consumer resulting from the change is an excess charge and subject to the remedies available to consumers (section 16a-5-201) and to the administrator (section 16a-6-113).

(2) A creditor may change the terms of an open end credit account whether or not the change is authorized by prior agreement. Except as provided in subsection (3), the lender shall give to the consumer written notice of any change at least three times, with the first notice at least six months before the effective date of the change.

(3) The notice specified in subsection (2) is not required if:

(a) The consumer after receiving notice of the change agrees in writing to the change;

(b) the consumer elects to pay an amount designated on a billing statement as including a new charge for a benefit offered to the consumer when the benefit and charge constitute the change in terms and when the billing statement also states the amount payable if the new charge is excluded;

(c) the change involves no significant cost to the consumer;

(d) the consumer has previously consented in writing to the kind of change made and notice of the change is given to the consumer in two billing cycles prior to the effective date of the change; or

(e) the change applies only to debts incurred after a date specified in a notice of the change given in two billing cycles prior to the effective date of the change.

(4) The notice provided for in this section is given to the consumer when mailed to the consumer at the address used by the creditor for sending periodic billing statements.

(5) Notwithstanding subsection (2), a creditor may change the finance charge in an open end credit account after 30 days' written notice is given to the consumer.

History: L. 1973, ch. 85, § 44; L. 1980, ch. 77, § 4; L. 1981, ch. 94, § 4; L. 1982, ch. 93, § 5; L. 1983, ch. 79, § 4; L. 1985, ch. 82, § 4; L. 1987, ch. 81, § 1; July 1.

KANSAS COMMENT, 1973

1. New developments in consumer credit practices may require changes in terms of revolving accounts. A national chain department store may have hundreds of thousands of customers with revolving charge accounts and a bank may have hundreds of thousands of credit card customers with revolving loan accounts. An insurmountable problem would confront the store or bank were it necessary to obtain from each customer his signed consent to a change in terms. Experience in retail sales credit indicates that only a minority of customers take the trouble to return an express approval or disapproval of a change in terms proposed as a condition of the future use of revolving charge accounts. Nevertheless, merchants and banks should not be able to take advantage of customers by a change which is unfair, unanticipated or inadequately communicated.

This section enables creditors to change the terms of revolving accounts in a manner which is feasible for creditors yet safeguards the interests of their revolving account customers.

2. Subsection (2) provides to the creditor a means of making a proposed change effective as to customer balances in a revolving account both before and after notice to the customer of the change. For a creditor to comply with subsection (2), he must give the customer written notice of at least six months before the change is to take effect and repeat the notice twice during the six month period.

If the customer disapproves the change he may avoid any liability predicated on it: (a) with respect to the future, by refraining from making further purchases or loans under the revolving account, and (b) with respect to the balance in the account at the time of the notice of change, by paying it in full within six months.

3. The six-month notice requirement of subsection (2) is made inapplicable by subsection (3) in 5 situations. Subsection (3) (c) covers changes which involve no substantial cost to the customer; the other four involve overt action by the customer manifesting agreement, and adequate notice of the change to him.

4. Subsection (4) prescribes that a notice provided for in the section is given to the customer when mailed to him at the address used by the creditor for sending periodic billing statements.

5. Under the CCPA only 30 days prior notice is required. See 12 CFR § 226. 7 (e).

16a-3-205. (UCCC) Receipts; statements of ac-

ANALYSIS OF CONSUMER LOANS BY SIZE
December 31, 1990

	Number	Percent of total number	Amount	Percent total
Loans made during the year:				
Loans of $690 or less	36,549	31.04%	$ 10,462,675	3.47%
Loans of $691 to $2,300	42,233	35.87	58,858,403	19.49
Loans of $2,301 to $5,000	28,852	24.50	92,635,488	30.68
Loans of $5,001 to $10,000	5,656	4.81	41,426,537	13.72
Loans above $10,000	4,452	3.78	98,557,203	32.64
Total loans made during the year	117,742	100.00%	$301,940,306	100.00%
Loan balances charged off during the year	7,207	6.12%	$ 14,826,163	4.91%

ANALYSIS OF TYPES OF SECURITY

	Number	Percent of total number	Amount	Percent total
Loans made during the year secured by:				
Household goods	18,589	15.79%	$ 41,323,819	13.69%
Automobiles	8,278	7.04	43,436,876	14.39
Household goods and automobiles	5,496	4.65	17,362,294	5.75
Signature	49,123	41.73	54,845,487	18.17
Real Estate	7,929	6.73	97,928,465	32.44
Other	28,327	24.06	47,043,365	15.56
Total	117,742	100.00%	$301,940,306	100.00%

ANALYSIS OF SUITS AND FORECLOSURES
CONSUMER LOAN BUSINESS ONLY

	Number of Accounts	Amount Due
Suits instituted for money judgment only	1,355	$2,821,817
Garnishments issued	1,127	1,426,911
Foreclosures by suit (Personal Property)	52	136,545
Foreclosures by suit (Real Estate)	113	2,716,506
Foreclosures involving both real estate and personal property	2	78,000
Suits in replevin	21	117,695

ANALYSIS OF CONSUMER LOANS BY SIZE
December 31, 1989

	Number	Percent of total number	Amount	Percent total
Loans made during the year:				
Loans of $600 or less	30,328	26.97%	$ 7,956,589	2.88%
Loans of $601 to $2,000	39,362	35.01	49,595,357	17.94
Loans of $2,001 to $5,000	34,010	30.25	102,612,418	37.11
Loans of $5,001 to $10,000	5,276	4.69	38,692,361	13.99
Loans above $10,000	3,465	3.08	77,635,926	28.08
Total loans made during the year	112,441	100.00%	$276,492,651	100.00%
Loan balances charged off during the year	18,893	16.80%	$ 47,334,499	17.12%

ANALYSIS OF TYPES OF SECURITY

	Number	Percent of total number	Amount	Percent total
Loans made during the year secured by:				
Household goods	20,482	18.22%	$ 43,547,722	15.75%
Automobiles	7,213	6.41	30,005,119	10.85
Household goods and automobiles	6,366	5.66	18,480,175	6.68
Signature	41,275	36.71	44,200,654	15.99
Real Estate	7,958	7.08	86,478,389	31.28
Other	29,147	25.92	53,780,592	19.45
Total	112,441	100.00%	$276,492,651	100.00%

ANALYSIS OF SUITS AND FORECLOSURES
CONSUMER LOAN BUSINESS ONLY

	Number of Accounts	Amount Due
Suits instituted for money judgment only	984	$1,889,799
Garnishments issued	1,045	684,101
Foreclosures by suit (Personal Property)	38	103,879
Foreclosures by suit (Real Estate)	115	3,600,503
Foreclosures involving both real estate and personal property	8	143,951
Suits in replevin	31	69,846

circumstances present which significantly impair the relationship. Useful discussions of the types of factors and circumstances which constitute "significant impairment" can be found in Prairie State Bank v. Hoefgen, 245 Kan. 236, 777 P.2d 811 (1989); and Medling v. Wecoe Credit Union, 234 Kan. 852, 678 P.2d 1115 (1984). The burden of proof is on the creditor to justify his action on a claim of default of this type. This reverses the rule of UCC K.S.A. 84-1-208.

3. The "significant impairment" rule of subsection (2) prohibits so-called "insecurity clauses" under which default and acceleration can be called whenever the creditor in good faith deems himself "insecure." This also reverses the rule of UCC K.S.A. 84-1-208.

CASE ANNOTATIONS

2. Circumstances justifying determination of significant impairment examined. Prairie State Bank v. Hoefgen, 245 K. 236, 245, 777 P.2d 811 (1989).

16a-5-110.

KANSAS COMMENT, 1990

1. This section must be read in conjunction with the preceding section (K.S.A. 16a-5-109 default) and the following section (K.S.A. 16a-5-111 cure of default). K.S.A. 16a-5-109 delineates the legal criteria for default and recognizes that a default consisting of the failure to make a payment as required by the agreement is susceptible of being cured by the consumer without impairing a continuing relationship. This section then provides for a notice which may be sent to the consumer in the case of a failure in payment. The notice may be given at any time after the payment is more than ten days late. This is the same point at which the creditor may be entitled to assess a delinquency charge under K.S.A. 16a-2-502. The notice is calculated to give the consumer enough information to understand his predicament and to encourage him to take appropriate steps to alleviate it. For example, if a consumer misses an installment payment due on April 10, the creditor must wait until April 20, at which point he may send to the consumer a written notice indicating the default and the amount due. The "last day for payment" would be shown as May 10, the end of the cure period as provided in K.S.A. 16a-5-111.

2. The form of notice specified in this section is not mandatory; a notice in substantially the same form as that provided in this section will suffice. However, the notice must be correct. In Farmers State Bank v. Haflich, 10 Kan. App. 2d 333, 699 P.2d 553 (1985), the creditor violated this section by giving notice for the entire amount of the indebtedness rather than merely for past due installments. Note that K.S.A. 16a-5-111 provides that a default consisting of a failure to make a required payment may be cured by the consumer if he makes that payment before the expiration of the minimum period prescribed after written notice of his default, and that prior to this time the creditor may not proceed against goods that are collateral or accelerate the maturity of the unpaid debt. Repossession in the face of an improper notice, or before the cure period expires, entitles the consumer to damages for wrongful repossession and possibly for conversion. See Farmers State Bank v. Haflich, supra. This provision prevents the practice of some unscrupulous creditors who repossess collateral when a payment is only a day or two late. It also gives the average consumer the opportunity to rehabilitate his account, bring a billing error to the attention of or present a breach of warranty claim to the creditor, or negotiate a refinancing or deferral arrangement that may be required by a change in his fina circumstances.

3. The notice and right to cure provisions of this and the following sections apply only if the default is in the failure to make a required installment payment, and not to a default arising from significant impairment of the relationship under the previous section. This is because, unlike a late payment, a breakdown in the relationship which constitutes "significant impairment" cannot be cured. See Prairie State Bank v. Hoefgen, 245 Kan. 236, 777 P.2d 811 (1989); Medling v. Wecoe Credit Union, 234 Kan. 852, 678 P.2d 1115 (1984). In addition, the cure provisions do not apply to a lump sum loan, i.e., a loan not "payable in installments." See First National Bank of Shawnee Mission v. Hundley, 12 Kan. App. 2d 487, 748 P.2d 903 (1988). In addition, it has been held that the debtor waives his right to cure default by filing a voluntary petition in bankruptcy. See in re Schwarting, 671 F.2d 1192 (8th Cir. 1982), construing the Iowa U3C.

16a-5-111.

KANSAS COMMENT, 1990

1. As noted in the Kansas comment to the preceding section, the creditor must wait 20 days after sending the notice provided for in K.S.A. 16a-5-110; no acceleration of the unpaid balance or repossession of the collateral may take place until the 20-day grace period expires. If before that time the consumer pays the missing installment, plus any unpaid delinquency or deferral charge, he has "cured" his default and is restored to his prior status.

2. This section imposes no limitation on the creditor's right to proceed against a consumer or goods that are collateral with respect to successive defaults on the same obligation. If the consumer misses another installment after once curing a default, subsection (3) makes it clear that the creditor can accelerate and repossess as under the UCC. In addition, as noted in the Kansas comment to K.S.A. 16a-5-110, the right to cure applies only to defaults consisting of missed installment payments; there is no right to cure a default arising from an act constituting a significant impairment of the relationship.

16a-5-112.

KANSAS COMMENT, 1990

1. Under UCC K.S.A. 84-9-503, a secured creditor has the right to take possession of collateral without resorting to legal process if he can do so without a breach of the peace. This term is generally left to case law definition, but it raises delicate problems when it comes to repossessing furniture or other property that is within a home or apartment. The disputes that result from such a situation are rarely the type that get to the appellate courts for resolution. It is necessary, therefore, to make it clear that dwellings cannot be entered absent the consent of the occupants except under the supervision of the court. This section is subject to the limitations imposed by the preceding sections. That is, the creditor may not take possession of the collateral until after there has been a default (K.S.A. 16a-5-109) and the consumer has been given the notice and right to cure provided by K.S.A. 16a-5-110 and 16a-5-111.

2. If, instead of self-help, the creditor opts to bring a replevin action under K.S.A. 60-1005 or 61-2401 and 61-2402, the notice and hearing safeguards now found in those provisions will of course come into play. Here, too, however, the creditor may proceed in replevin only after default under K.S.A. 16a-5-109 and only after the notice and right to cure requirements to K.S.A. 16a-5-110 and 16a-5-111 have been satisfied.

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