

Approved 3/26/92
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

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

9:15 a.m./~~p.m.~~ on Wednesday, March 25, 1992 in room 529-S of the Capitol.

All members were present ~~except~~

Committee staff present:

Fred Carman, Revisor
Bill Wolff, Research
June Kossover, Committee Secretary

Conferees appearing before the committee:

William Caton, Consumer Credit Commissioner
Kathy Taylor, Kansas Bankers Association
Jeffrey Sonnich, Kansas-Nebraska League of Savings Institutions
Mel Battin, Consumer Credit Commission
Stan Lind, Kansas Association of Financial Services
George Barbee, Kansas Association of Financial Services

The meeting was called to order by Chairman Bond at 9:15 a.m.

The Chairman opened the hearing on HB 2746, which would amend the UCCC, K.S.A. 1991 Supp. 16a-2-501 to allow a supervised financial organization to charge, in addition to a finance charge, a participation fee on a monthly, annual, or other periodic basis in connection with an overdraft protection open-end credit line. William Caton, Consumer Credit Commissioner, appeared in support of HB 2746. (Attachment #1.)

Kathy Taylor, Kansas Bankers Association, also appeared as a proponent of the bill, explaining that the bill will update the Kansas code to conform with federal Truth In Lending, Regulation Z. (Attachment #2.)

Jeffrey Sonnich, Kansas-Nebraska League of Savings Institutions, appeared in support of HB 2746. (Attachment #3.)

In response to Senator Francisco's question, it was clarified that the fee can be annual, monthly or other periodic fee but it cannot be tied to the number of checks or the amount of the checks, and that the fee will be set by the market. It was also clarified that use of the open-end credit overdraft protection is entirely voluntary for both the financial institution and the consumer.

There being no further conferees, the Chairman declared the hearing closed. Senator Salisbury made a motion to move the bill favorably. Senator Yost seconded the motion. The motion carried.

Chairman Bond opened the hearing on HB 2838. Mel Battin of the Consumer Credit Commission, appeared before the committee to explain that this is a clean up bill that makes no substantive changes. (Attachment #4.) The bill would amend K.S.A. 16A-2-5-2 to clarify that late charges may be charged on consumer loans that have been converted upon default to interest bearing loans; K.S.A. 16a-3-201 to delete the eight current areas of disclosure concerning leases and replace them with the requirement that the Consumer Credit Commissioner adopt rules and regulations no less restrictive than contained in the federal Consumer Protection Act; and K.S.A. 16a-6-105 to correct an erroneous reference to a statutory subsection. There being no further conferees on HB 2838, the Chairman declared the hearing closed.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,
room 529-S, Statehouse, at 9:15 a.m./~~p.m.~~ on Wednesday, March 25, 1992

The hearing was opened on HB 2751, which amends the uniform consumer credit code to define written administrative interpretation and limit punitive action against those who properly conduct themselves consistent with the interpretation. William Caton, Consumer Credit Commissioner, appeared to explain the bill. (Attachment #5.) Senator Ward made a motion to move HB 2751 favorably and to place it on the Consent Calendar. The motion was seconded by Senator Moran. The motion carried.

The Chairman opened the hearing on SB 701, which would amend K.S.A. 1991 Supp. 16a-2-501 to allow creditors to charge a service fee on open-end lines of credit. Stan Lind, Kansas Association of Financial Institutions, introduced his colleague George Barbee, who testified in support of SB 701, requesting that it be amended into HB 2838. (Attachment #6.)

There being no further conferees, the hearing was closed. Senator Strick made a motion to insert the language of SB 701 into HB 2838. The motion was seconded by Senator Moran. Senator Ward requested that the difference between HB 2746 (discussed earlier) and SB 701 be clarified, and stated that he felt it would be more appropriate to amend SB 701 into HB 2746 since they amend the same statute. Mr. Caton explained that SB 701 would allow a periodic fee on open-end lines of credit and HB 2746 would allow a fee for overdraft protection. The hearing on SB 701 was closed.

Senator Strick's motion to amend the language of SB 701 into HB 2838 failed.

Senator Francisco made a motion to move HB 2838 favorably and to place it on the Consent Calendar. The motion was seconded by Senator Strick. The motion carried.

Senator Yost made a motion to reconsider the action on HB 2446. The motion was seconded by Senator Francisco. The motion carried.

Senator Yost made a motion to amend SB 701 into HB 2746. The motion was seconded by Senator Moran. The motion carried.

Senator Strick made a motion to move HB 2746 favorably as amended. The motion was seconded by Senator Salisbury. The motion carried. The bill will be carried by Senator Yost.

Senator Strick made a motion, seconded by Senator Yost, to approve the minutes of the meeting of March 24, 1992 as submitted. The motion carried.

The committee adjourned at 9:58 a.m.

THE STATE OF KANSAS



JOAN FINNEY
Governor

OFFICE OF *Consumer Credit Commissioner*

WM. F. CATON
Commissioner

March 25, 1992

SENATE FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE

TESTIMONY BY BILL CATON - HOUSE BILL #2746

OBSERVATIONS:

1. The Uniform Consumer Credit Code was written when the only form of open end credit was a lender credit card. Since then banks, savings and loans and credit unions have begun to offer overdraft protection lines of credit as another form of open end line of credit.

For a lender to competitively offer this kind of open end credit line, it must periodically update credit reports and re-evaluate the credit risk of the borrower. This fee allows the creditor to recapture the expenses incurred, just as the code presently allows the credit card issuer to recapture the same expenses.

2. 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.

3. 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.

4. 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.

5. 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).

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 residential mortgage transactions (which may include, for example, the purchase of a mobile home) and to other transactions secured by real estate. Fees are excluded from the finance charge if the services for which the fees are performed by the creditor's employees rather than by a third party. In addition, report fees include not only the cost of the report itself, but also the cost of verification in the report. If a lump sum charge for several services and included in the finance charge, a portion of that service charge, such as a lawyer's attendance at the closing or a title company) is excluded from the finance charge if the charge is primarily for services related to items listed in section 226.4(c)(7) (for example, reviewing or completing documents), even if other incidental services as explaining various documents or disbursing funds for the parties, are performed. In such cases, charges excluded under section 226.4(c)(7) must be bona fide and reasonable.

4(d) Insurance

1. *General.* Section 226.4(d) permits mortgage insurance premiums and charges to be excluded from the finance charge. The required disclosures must be made in writing. The rule regarding the location of insurance disclosures for closed-end transactions are in section 226.17(a).

2. *Timing of disclosures.* If disclosures are given early, for example under section 226.17(f) or section 226.19(a), the creditor need not redisclose if the actual premium is different at the time of consummation. If insurance disclosures are not given at the time of early disclosure and insurance is included in the finance charge, the creditor must disclose in connection with the transaction. Disclosures under section 226.4(d) must be made in order to exclude the premiums from the finance charge.

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

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.

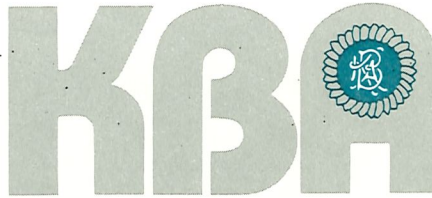
(b) *Examples of finance charges.* The finance charge includes the following types of charges, except for charges specifically excluded by paragraphs (c) through (e) of this section:

- (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



The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

March 25, 1992

TO: Members of the Senate Committee on Financial Institutions and Insurance

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.

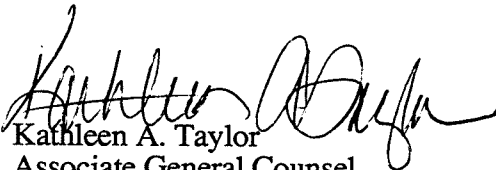
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F141 3/25/92 Attachment # 2



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.


Kathleen A. Taylor
Associate General Counsel

**Kansas-Nebraska
League of
Savings
Institutions**

Jeffrey D. Sonnich, Vice-President

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

March 25, 1992

TO: SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE
FROM: JEFF SONNICH
RE: HOUSE BILL NO. 2746

Mr. Chairman. Members of the Committee. The Kansas-Nebraska League of Savings Institutions appreciates the opportunity to appear before the Senate Committee on Financial Institutions and Insurance 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 Senate Committee on Financial Institutions and Insurance recommend H.B. 2746 favorably for passage.

Jeffrey D. Sonnich, Vice President
Kansas-Nebraska League of Savings Institutions

JRT:bw

F 101 3/25/92
Attachment #3

March 25, 1992

STATEMENT FOR HOUSE BILL 2838 BY MEL BATTIN

Thank you Mr. Chairman and members of the committee. My name is Mel Battin, Assistant Consumer Credit Commissioner.

We consider HB 2838 to be a "clean up" bill as it contains no substantive changes in the Uniform Consumer Credit Code. This bill amends four sections of the code.

The first amendment pertains to the delinquency charge section 16a-5-502. I believe the best way to explain this proposed amendment is to ask you to look at page 3 of the handout.

The left side of page 3 is the delinquency charge provision as it was when the code was adopted in 1974. The right side of page 3 is the delinquency charge provision as amended in 1988.

The first phrase in the original section 16a-2-502 states "with respect to a precomputed consumer credit transaction". Therefore, delinquency charges were not permitted to be charged on interest bearing loans or one in which the finance charge is based upon the unpaid balance. That phrase was removed in 1988. Thus, permitting delinquency charges to be charged on both precomputed and interest bearing credit transactions.

At the same time subsection (4) of the original section 16a-2-502 was moved to a new section, 16a-2-511. Not one word was changed when it was moved to the new section.

The original subsection (4) of 16a-2-502 and the new section 16a-2-511 permits a lender to convert a precomputed loan to an interest bearing loan if two installments are in default for 10 days or more.

We believe it was an oversight the last sentence in 16a-2-511 was not stricken in 1988. That sentence being "If the creditor proceeds under this subsection, any delinquency or deferral charge made with respect to installments due at or after the maturity date of the first delinquent installment shall be rebated and no further delinquency or deferral charges can be made." After the amendment in 1988, delinquency charges were permitted on interest bearing loans. We now have a conflict, one section permits delinquency charges on interest bearing loans and another section prohibits delinquency charges on interest bearing loans.

To summarize, HB 2838 repeals 16a-2-511 and amends 16a-2-502 subsection (4) with the same language that was in the original code and in K.S.A. 16a-2-511 less the words that prohibits delinquency charges on loans that have been converted to interest bearing loans.

Section 2 of HB 2838 removes the eight disclosures in section 16a-3-201 the lessor must disclose to the lessee. This amendment would require the lessor to disclose to the lessee the information required by the more complete and comprehensive disclosures of the Federal-Truth-in-Lending Act and Regulation M. This amendment will eliminate any conflict between the state and federal statutes.

Section 34 of this bill merely corrects an error in the site of another section of the code. There is no section K.S.A. 16a-2-203 in the code. The section to which it refers is the licensing section K.S.A. 16a-2-302.

Section 4 of this bill amends K.S.A. 16a-6-117 to require the commissioner to include in the rules and regulations to carry out the provisions of Truth-in-Lending Act the lease section K.S.A. 16a-3-201.

16a-2-502. (UCCC) Delinquency charges. (1)

With respect to a precomputed consumer credit transaction, the parties may contract for a delinquency charge on any installment not paid in full within ten (10) days after its scheduled or deferred due date in an amount not exceeding the greater of

(a) an amount, not exceeding five percent (5%) of the unpaid amount of the installment, or two dollars and fifty cents (\$2.50), whichever is less, or

(b) the deferral charge (section 16a-2-503) that would be permitted to defer the unpaid amount of the installment for the period that it is delinquent.

(2) A delinquency charge under paragraph (a) of subsection (1) may be collected only once on an installment however long it remains in default. No delinquency charge may be collected with respect to a deferred installment unless the installment is not paid in full within ten (10) days after its deferred due date. A delinquency charge may be collected at the time it accrues or at any time thereafter.

(3) No delinquency charge may be collected on an installment which is paid in full within ten (10) days after its scheduled or deferred installment due date even though an earlier maturing installment or a delinquency charge on an earlier installment may not have been paid in full.

(4) If two installments or parts thereof of a precomputed consumer loan are in default for ten (10) days or more, the lender may elect to convert the loan from a precomputed loan to one in which the finance charge is based on unpaid balances. In this event he shall make a rebate pursuant to the provisions on rebate upon prepayment (section 16a-2-510) as of the maturity date of the first delinquent installment, and thereafter may make a finance charge as authorized by the provisions on loan finance charge for consumer loans (subsection (1) of section 16a-2-401) or the provisions on finance charge for supervised loans (subsection (2) of section 16a-2-401), whichever is appropriate. In any case, the terms of the converted loan shall be no less favorable to the debtor than the terms of the original loan. The amount of the rebate shall not be reduced by the amount of any permitted minimum charge (section 16a-2-510). If the creditor proceeds under this subsection, any delinquency or deferral charges made with respect to installments due at or after the maturity date of the first delinquent installment shall be rebated, and no further delinquency or deferral charges shall be made.

History: L. 1973, ch. 85, § 30; L. 1975, ch. 127, § 3; July 1.

16a-2-502. (UCCC) Delinquency charges. (1) The parties to a consumer credit transaction may contract for a delinquency charge on any installment not paid in full within 10 days after its scheduled or deferred due date in an amount not exceeding the greater of

(a) an amount, not exceeding 5% of the unpaid amount of the installment or \$25, whichever is less, or

(b) the deferral charge (section 16a-2-503) that would be permitted to defer the unpaid amount of the installment for the period that it is delinquent.

(2) A delinquency charge under paragraph (a) of subsection (1) may be collected only once on an installment however long it remains in default. No delinquency charge may be collected with respect to a deferred installment unless the installment is not paid

in full within 10 days after its deferred due date. A delinquency charge may be collected at the time it accrues or at any time thereafter.

(3) No delinquency charge may be collected on an installment which is paid in full within 10 days after its scheduled or deferred installment due date even though an earlier maturing installment or a delinquency charge on an earlier installment may not have been paid in full.

History: L. 1973, ch. 85, § 30; L. 1975, ch. 127, § 3; L. 1988, ch. 85, § 7; L. 1988, ch. 86, § 4; L. 1988, ch. 87, § 4; July 1.

16a-2-511. Conversion of precomputed loan upon default, when; rebate. (1) If two installments or parts thereof of a precomputed consumer loan are in default for 10 days or more, the lender may elect to convert the loan from a precomputed loan to one in which the finance charge is based on unpaid balances. In this event the lender shall make a rebate pursuant to the provisions on rebate upon prepayment (section 16a-2-510) as of the maturity date of the first delinquent installment, and thereafter may make a finance charge as authorized by the provisions on loan finance charge for consumer loans (subsection (1) of section 16a-2-401) or the provisions on finance charge for supervised loans (subsection (2) of section 16a-2-401), whichever is appropriate. In any case, the terms of the converted loan shall be no less favorable to the debtor than the terms of the original loan. The amount of the rebate shall not be reduced by the amount of any permitted minimum charge (section 16a-2-510). If the creditor proceeds under this subsection, any delinquency or deferral charges made with respect to installments due at or after the maturity date of the first delinquent installment shall be rebated, and no further delinquency or deferral charges shall be made.

(2) This section shall be a part of and supplemental to the uniform consumer credit code (16a-1-101 through 16a-9-102).

History: L. 1988, ch. 85, § 11; July 1.

THE STATE OF KANSAS



JOAN FINNEY
Governor

OFFICE OF *Consumer Credit Commissioner*

WM. F. CATON
Commissioner

March 25, 1992

TESTIMONY FOR HOUSE BILL # 2751 BY BILL CATON

House bill # 2751 proposes changes to the uniform consumer credit code that would define an administrator's interpretation of the code and limit punitive action against those who properly conduct themselves consistent with the interpretation.

The need for this change is brought about by recent court action in other states that has possibly set precedence by assessment of penalties on a financial institution that correctly followed written administrative interpretations of an administrator that subsequently were reversed by the court. To date, Kansas has not had an incident that would be affected by this amendment.

The administrator does not and should not make law. However, the administrator is required to interpret the law when the public has questions that may or may not be clear in the law. If the public act in good faith on these interpretations, it should be deemed proper whether it is correct or not.

This change does not give the administrator any more authority than he has now. It merely disallows a civil penalty if the administrator's interpretation is overturned by a new administrator, the legislative process, or court action. Any and all proper refunds of overcharges would still be applicable. Nor does this change add weight to the interpretation.

An entity should not be penalized when acting in good faith upon rules or interpretations of an administrator charged with upholding a certain set of laws and regulations.

Again, the ONLY limitation this change creates is that PENALTIES will not be levied on someone who has acted properly at the direction of the administrator. With the current judicial climate this change is needed to avoid unjust penalties.

16a-6-104(b) charges the administrator to "counsel persons and groups on their rights and duties" under the code. This amendment allows the administrator to do so without undue penalties, but maintains responsibility to the consumer.

Thank you for your consideration on House Bill 2751.

STATEMENT

To: Senate Committee on Financial Institutions & Insurance

Re: Senate Bill 701

Mr. Chairman, members of the Committee, my name is George Barbee, speaking today on behalf of the Kansas Association of Financial Services.

I appear in support of Senate Bill 701 which would amend the "additional charges" section (K.S.A. 16a-2-501) of the Uniform Consumer Credit Code (UCCC). This amendment would authorize creditors making loans through the use of an open-end line of credit, accessed by the borrower writing checks, to make an annual charge on such loan contracts. The purpose of the charge is to compensate the lender for the expense of an annual check of the borrower's credit standing.

The UCCC was adopted in 1975 and at that time credit cards were the predominant method of open-ended contracts for loans. Credit card issuers were allowed by the UCCC to charge an annual fee in addition to the approved interest rates on balances of individual accounts. This fee is necessary so that the credit card issuers may update the cardholders current credit information.

Kansas consumer finance companies do not issue credit cards, but since 1975, they have found more and more of their loans to be open-ended lines of credit which are accessed by the borrower when a check is written. In fact, today about 75% of their loans are open-ended contracts.

A prudent business person is obligated to acquire current information about its debtors' financial status to determine if the line of credit is adequate or over-extended. These credit checks do cost money that presently is unrecoverable by our consumer finance companies when writing open-ended loan contracts.

We believe that the provisions of SB-701 would satisfy our needs. However, at this point in the legislative session, the bill could best obtain favorable action if it were amended into another bill. House Bill 2838 is on today's agenda. It is a bill which is technical in nature and has been requested by the Commissioner on Consumer Finance. The Commissioner has agreed that SB-701 could be amended in HB-2838 without causing problems. The Kansas Association of Financial Services respectfully request that the provisions of SB-701 be amended in the HB-2838 and that the committee act favorably on the measure.

Thank you for allowing us to present our request and I stand ready to answer questions.

F1 #1 3/25/92
Attachment # 6