

Approved: Feb. 23, 1995
Date

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson Bill Bryant at 3:30 p.m. on February 20, 1995 in Room 527S of the Capitol.

All members were present except: Representative Sawyer, Excused
Representative Merritt, Excused

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

Conferees appearing before the committee: Alan Steppat, Community Bankers Association
Clark Young, Community Bankers Association
Jim Warren, Community Bankers Association
Walt Scott, Associated Credit Bureaus of Kansas
Phil Wilkes, KS Department of Revenue
Kyle Smith, KBI
Eric Stonecipher, Dept. of Revenue
Jeff Sonnich, KS-NEB-OK Savings League

Others attending: See attached list

Hearing on HB 2482--Kansas right of financial privacy act

Alan Steppat, lobbyist for McGill Associates, introduced Clark Young, president of the Citizens State Bank, Hugoton, Kansas, and member of the Community Bankers Association of Kansas. Ninety-eight percent of the membership of the Community Bankers are members of the Kansas Bankers Association.

Mr. Young, said the bill sets out the necessary duties and safeguards to assure that financial records are properly accessed by state governmental authorities only when the proper disclosures have been given (Attachment 1). The federal government and surrounding states have adopted a policy which maintains the confidentiality of the consumer's bank records while allowing governmental agencies access to these records by following specific guidelines. He reviewed the bill section by section.

Jim Warren, Chairman of the Board of Farmers State Bank in McPherson, related the difficulty of carrying on a normal relationship with a preferred customer and knowing that a trusted employee is in the back room making copies of certain of their transactions to comply with a subpoena, all unknown to the friend and customer (Attachment 2).

Danielle Noe, Kansas Credit Union Association, presented written testimony only (Attachment 3).

Walt Scott, Associated Credit Bureaus of Kansas, said they operate under the Federal and State Fair Debt Collection Practices Act and were unsure if the proposed bill would cover the operations of Credit Bureaus concerning any financial records that might be furnished to them for further reporting to other parties (Attachment 4). He expressed concern that if the Credit Bureaus should be determined to be an "an agent" of any financial institution, they could be placed under inconsistent provisions between the two acts. Mr. Scott stated he was not in opposition to the proposed legislation, he just needed clarification.

Phil Wilkes, Attorney in the Revenue Criminal Fraud Unit of the Division of Alcoholic Beverage Control, asked for clarification on their exemption from the notice requirements of the bill since they are acting under the statutory authority of the Director of Taxation when they carry out the tax fraud investigation and drug tax collection functions (Attachment 5). Most district judges are not available on short notice to sign subpoenas in investigations. It was noted that many local judges are sympathetic to their constituents and disclosure would be a big problem. The element of surprise in locating and seizing bank accounts and other assets revealed by financial records of drug dealers is paramount in investigations. Should these suspects have to be notified prior to investigation of banking records, it is most likely the accounts would disappear before an investigation could begin.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,
Room 527S-Statehouse, at 9:00 a.m. on February 20, 1995.

Kyle Smith, KBI, asked that clarification be made that the proposed act does not apply to law enforcement investigations. He requested that all references to law enforcement be struck from the bill or include the KBI as being untouched by the bill.

Eric Stonecipher, Department of Revenue, said that in civil enforcement they deal with the worst tax debtors (those who hold tax money in trust such as employee's withholding and sales tax, liquor excise taxes, etc.). The need to find out if any assets are available is a precursor to execution. The issuance of a subpoena is the last resort because the suspect can and usually does skip, owing the state the money. If this Act requires prior notification, it would have a big impact on the state's revenue collection. He asked that the bill include all activities or requests issued by the Director of Taxation.

This bill would affect state and national banks. It is not the intent to inhibit the Department of Revenue from proceeding with their investigations or daily activities. The problem appears to be with the notice of inquiry and who it applies to in governmental agencies and in what circumstances. The Kansas Securities Commission is not listed as one excepted from needing to notify prospective investigees. This could interfere with their ability to collect unpaid taxes.

Chairman Bryant appointed a subcommittee on HB 2482 comprised of Representative Cox, Representative Wilson, and Representative Smith to review the bill and report to the Committee on Wednesday.

Action on HB 2126--Entry of satisfaction of mortgage on real estate

Jeffrey Sonnich, KNOLSI, presented the Committee with copies of amendments which would allow the lender or closing agent who is paying off the indebtedness to cause entry of satisfaction, by signing a mortgage release document if the mortgagee fails to release the mortgage within 20 days of written demand (Attachment 6). If the lender or closing agent falsely releases the mortgage they would be liable for the full amount of the indebtedness together with interest, attorneys fees, and any other damages that the mortgagee or mortgagee's assignee has incurred.

Representative Welshimer moved to amend the balloon amendment into the bill. The motion was seconded by Representative Gilbert. Motion carried.

Representative Welshimer moved to report the bill favorably as amended. The motion was seconded by Representative Wilson. Motion carried. Representative Correll asked to be recorded as a "No" vote.

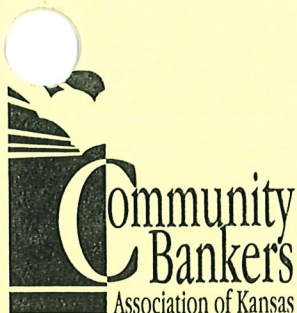
Representative Smith moved that the minutes of February 9 and 13 be approved. The motion was seconded by Representative Landwehr. Motion carried.

The meeting adjourned at 4:45 p.m. The next meeting is scheduled for February 21, 1995.

HOUSE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE GUEST LIST

DATE: 2/20/95

| NAME | REPRESENTING |
|--------------------|---|
| Danielle Noe | K CWA |
| David Roul | KsSec Com. |
| Sue Anderson | Community Bankers Assn. |
| Dean Reynolds | KS Dept of Revenue |
| Phil Wilkes | Ks. Dept. of Revenue |
| Kyle Smith | K B. I. |
| Bridget | Financial State Bank, Wk & Leavenworth |
| Matt Scott | Assoc Credit BUREAUS-Ks |
| Bill Shaw | Credit Bureau of Topeka |
| Alan Steppat | PETE MCGILL & ASSOC. |
| George Barber | Barber & associates |
| Chuck Stoner | K BA |
| Robert Franz | FFC |
| Russ FREY | KVMA |
| Merna Schell | Rev |
| Eric Stonecipher | Revenue |
| | |
| | |
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Kansas Right to Financial Privacy Act House Bill No. 2482 Bill Overview

- Section 1: Citation of Law (will be cited as Kansas Financial Privacy Act)
- Section 2: Definition of terms used in the bill (financial institution refers to banks, savings and loan associations, trust companies, credit unions and other entities).
- Section 3: Access to records financial by state government authorities must be proceeded with notification to the customer. Exceptions are noted in section 11.
- Section 4: Financial institution may not disclose financial records except in accordance with the provisions of Section 1 - 18, which require proper notice by the government authority to the customer.
- Section 5: Customer may authorize access in written form. Customer may revoke authorization at any time.
- Section 6: State government authorities may obtain records with a subpoena. Outlines procedure and type of notice to customer required, plus opportunity for customer to object.
- Section 7: Delay of notice, when allowed, post-disclosure notice form. Notice of disclosure may be delayed by an order of the court if court finds the investigation is within the lawful jurisdiction of the government authority seeking disclosure, when there is reason to believe notice will result in destruction or tampering of evidence, intimidation of potential witnesses, or otherwise seriously jeopardize an investigation or unduly delay a trial or ongoing official proceeding.
- Upon expiration of the delay of notice, customer must receive notification that their records were reviewed by which government authority.
- Section 8: Procedures for customer challenge of subpoena, listing procedure and appeals process.
- Section 9: Responsibility of financial institution to assemble records upon subpoena and the delivery of said records.

(continued on back of page)

*House Filed
Attachment 1*

Directed By The Members We Serve

2-20-95

- Section 10: Financial records originally obtained pursuant to sections 1 - 18 shall not be transferred to another agency or department unless there is reason to believe the records are relevant to a legitimate law enforcement inquiry within the jurisdiction of the receiving agency.
- Section 11: Non-prohibited Exposure. Access to customers financial records and exchange of examination records between supervisory agencies is authorized. Other clarifications of when notice is not required.
- Section 12: Nothing in the Kansas Financial Privacy Act shall apply when financial records are sought in 1) connection with a lawful proceeding, investigation, examination, etc. of the financial institution in possession of the financial records. 2) In consideration or administration or assistance to the customer in the form of a government loan, loan guarantee, etc. Financial institutions must keep a notation of each disclosure made.
- Section 13: Financial institutions may access a fee for record search and reproduction, transporting records, etc.
- Section 14: Statute of limitations. An action to enforce any provisions of section 1 through 18 may be brought in the circuit court within three years from the date on which the violation occurs or on the date of discovery of such violation, whichever is later.
- Section 15: Financial Institutions or government authorities if found in violation of obtaining or disclosing financial records or information contained in violation of Section 1 - 18 are liable to the customer to whom such records relate. (Fines are set by law).
- Section 16: Injunctive relief allowed.
- Section 17: If individual files a motion or application to delay access of a government authority to financial records, any applicable statute of limitations shall be deemed to be tolled for the periods extending from the date such motion or application was filed until the date upon which the motion or application is decided.
- Section 18: Sets out handling procedure for financial records relating to a customer obtained from a financial institution pursuant to a subpoena issued under the authority of a grand jury.



**Testimony before the House
Committee on Financial Institutions & Insurance
Monday, February 20, 1995
Subject: HB 2482**

Chairman Bryant and members of the committee, thank you for giving me the opportunity to speak in behalf of HB 2482. My name is Clark P. Young and I am president of Citizens State Bank, Hugoton, Kansas.

Today, I am testifying on behalf of the Community Bankers Association of Kansas in favor of HB 2482.

I will begin my testimony by relaying to you the current status of Federal and State laws in our surrounding states and then show you how this bill is pro-consumer, pro-banking, and pro-governmental agency. I will conclude my testimony by walking you through each section of HB 2482 and will answer any questions that you might have regarding the Kansas Right to Financial Privacy Act.

This bill, like its federal counterpart, is a win-win-win scenario because it sets out the necessary duties and safeguards to assure that financial records are properly accessed by state governmental authorities only when the proper disclosures have been given.

First and foremost, there is a great trust that develops between a bank and its customers. Individual bank at a certain financial institution because they trust the institution and believe there is a high degree of confidentiality of their individual financial records. If a customer believes that this trust has been breached, the very foundation of the banking relationship has been weakened.

This is why the federal government and surrounding states have seen fit to enact laws that maintain the confidentiality of the consumer's bank records while allowing governmental agencies access to these records by following specific guidelines.

On the federal level, there exists the Right to Financial Privacy Act of 1978. It was enacted because customers of financial institutions have a right to expect that their financial activities have a reasonable amount of privacy from federal government scrutiny. The act establishes specific procedures for governmental authorities that seek information about a customer's financial records from a financial institution. It also imposes limitations and duties on financial institutions prior to the release of information sought by federal agencies.

Finally, the Federal law generally requires that the customer receive a written notice that includes an explanation of the purpose for which the records are sought.

Thus, the proposed Kansas Right to Financial Privacy Act is pro-banking because banks, savings and loans and credit unions have a law that clarifies what steps a state government agency must take in order to comply. Also, banks are reimbursed for their reasonable costs incurred for complying with the request for records. The bank can also be assured that, unless an exception applies, the customer has been properly notified of this action.

93% of members favor a privacy act like the National one.

It is pro-consumer because consumers generally must receive a notice that a federal agency is requesting their financial records and the records can only be used for their intended purpose.

Finally, it is pro-governmental agency because, among other reasons, agencies have specific steps that are clarified as to how to proceed in obtaining the financial records they are seeking. Agencies have the ability to delay the notice to the customer under certain conditions where early notice may result in the tampering of evidence, the intimidation of witnesses or otherwise seriously jeopardize the investigation. Agencies even can receive emergency access to the records in certain instances. The best interests of all parties concerned are served by HB 2482.

Currently, no statutory law exists in Kansas that is the state equivalent to the federal Right to Financial Privacy Act of 1978. However, surrounding states do have a state counterpart. Oklahoma has had a Financial Privacy Act since 1979 (Oklahoma Stat. tit. 6, section 2201-2206). Texas has had one since 1983 (Texas Bus. Corp. Act. Ann. art 342-705) and Nebraska since 1977 (Nebraska Rev. State. Section 8-1402).

Evidently, other states have deemed it appropriate to enact legislation similar to the Federal Right to Financial Act of 1978 to protect their citizens and allow their state agencies access to bank records under certain guidelines. The Community Bankers Association of Kansas is asking that you extend this same right for the citizens of Kansas. Now, let's take a closer look at HB 2482.

Good afternoon Chairman Bill Bryant
and Ladies and Gentlemen

I am Jim Warren, Chairman of the Board of Farmers State
Bank, McPherson.

A number of years ago a Federal Right to Financial Privacy
Act was passed. I falsely assumed that our customers were
sufficiently protected under the federal act. In the past
year, I discovered that each state needs a law such as HB 2482
for the protection of you and I and all financial institution
customers. Particularly to proper notification.

A few months ago, our bank received a subpoena by mail
from a state agency requesting certain information, within a
time period, on three or four of our customers. It
specifically forbid the bank to notify our customers. It is
extremely difficult to carry on a normal relationship with a
preferred customer and know that a trusted employee is in the
back room making copies of certain of their transactions to
comply with a subpoena, all unknown to our friend and
customer.

I just feel sure that you would want to be notified if
your personal financial records were subpoenaed by a state
agency or other entity. I know I would.

Your support of this bill is appreciated.

House F.D.S.
Attachment 2
2-20-95

Kansas Credit Union Association

Testimony presented to the
House Financial Institutions
and Insurance Committee

Regarding HB 2482

816 S.W. Tyler
Topeka, KS 66612
(913) 232-2446

David F. D.

Attachment 3

2-20-95

KANSAS CREDIT UNION ASSOCIATION
M E M O R A N D U M

To: Representative Bill Bryant,
Chairperson House Financial Institutions and Insurance

From: Danielle Noe,
Governmental Affairs Director
Kansas Credit Union Association

Subject: HB 2482

Date: February 20, 1995

The Kansas Credit Union Association would like to thank you for allowing us to present written testimony on House Bill 2482 enacting the Kansas Right to Financial Privacy Act.

The Kansas Credit Union Association has 166 credit union members who serve almost 600,000 members. Our association believes that HB 2482 would protect both the credit union and its members.

It is likely that every credit union will at one time or another have a state agency request the financial records of one of its members. Under the current law, there is no clear indication of what action a credit union should take when this occurs. We are sure that there are times when a credit union provides financial records to an agency without a subpoena. Credit union employees may feel unduly pressured to give a state agency financial records simply based on who makes the request.

Another problem credit unions face when confronted with this issue is that the agency is often not specific about which documents they want. A credit union may spend considerable time trying to locate a document that has little or no use to the agency. This is a tremendous burden for smaller credit unions that may only have one or two full time employees. HB 2482 requires the subpoena to be specific and allows the credit union to recover reasonable costs involved in retrieving the documents. It is important to note that this bill does not prevent supervisory agencies from examining the credit union during the normal business.

More important, credit union members should have a right to expect that their financial activities have a reasonable amount of privacy from government scrutiny. Credit union members under current law do not receive equal treatment. As credit unions change managers or boards of directors, there may be no consistency in determining when financial documents should be provided to agencies; or which agencies should receive information when it is requested. Additionally, there may be no consistency among credit unions faced with the same situation.

HB 2482 sets procedures for the credit union to follow before releasing the information being sought by the agency. Additionally, it provides procedures for the credit union member to prevent release of the information.

The Kansas Credit Union Association believes that HB 2482 is needed to protect both the credit unions of Kansas and their members.

REMARKS CONCERNING HOUSE BILL 2482
FINANCIAL INSTITUTIONS AND INSURANCE
FEBRUARY 20, 1995

I appreciate your giving me the opportunity to appear before your committee on behalf of the Associated Credit Bureaus of Kansas whose members collect and compile credit information for those having a right thereto under the Federal and State Fair Debt Collection Practices Act, as contained in Title 6, 15 USCS Sec. 1681 et seq, and K.S.A. 50-701 thru 50- 722 . Attached and marked "A" is a copy of the Kansas Act for your review and consideration.

The concern is whether under House Bill 2482, the Kansas right to Financial Privacy Act, would cover the operations of Credit Bureaus concerning any financial records as noted on page 1 line 22 that might be furnished to the Credit Bureaus for further reporting to other parties entitled thereto.

On page 2, line 5, section 4 prohibits a financial institution officer, employee or agent to provide to any governmental authority access to financial records of any customer. Herein lies the concern of our organization, in that, if the Credit Bureaus should be determined to be "an agent of any financial institution, they could be placed under inconsistent provisions between the two acts.

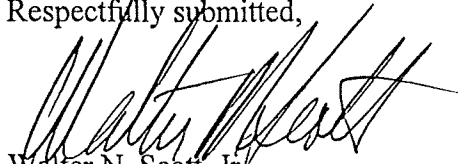
I am attaching the Syllabus of the Kansas Commission on Civil Rights vs. The Sears Roebuck & Co., Vol. 216, P.306, et seq. This case defines and limits under the Federal and State Fair Credit Reporting Act any potential liabilities and enforcement thereunder, Attachment "B." In accordance with this case in providing "in camera examination", this writer has prepared many

*House FD&D
Attachment 4
2-20-95*

Protective Orders outlining out interpretation of this case, I am attaching a copy thereof and marking it "C".

In addressing our concerns to this legislation, this organization is not in opposition thereto but merely wishing that consideration be given to the effect this possible legislation might have upon the operations of the Credit Bureaus of the State of Kansas.

Respectfully submitted,



Walter N. Scott, Jr.

Associated Credit Bureaus of Kansas

History: L. 1973, ch. 217, § 20; Jan. 1, 1974.

50-643. Severability. If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

History: L. 1973, ch. 217, § 21; Jan. 1, 1974.

50-644. Thermal insulation, flame spread standards. (a) No person shall manufacture, distribute, offer for sale, sell or install any thermal insulation in this state unless such insulation has been tested in accordance with the American Society for Testing and Materials Standard E 84, Standard Method of Test for Surface Burning Characteristics of Building Materials, and certified, by an independent testing laboratory approved by the state fire marshal, as having a flame spread rating of seventy-five (75) or less, or as having a classification representing a flame spread rating not in excess thereof, and is clearly labeled to that effect on the package or, if not contained in a package, is accompanied by a written statement to that effect.

(b) Nothing in this section shall be construed to prevent a city or county from requiring a lower maximum flame spread rating than required herein for thermal insulation which is manufactured, distributed, offered for sale, sold or installed within the jurisdiction of the city or county.

(c) As used in this section, "thermal insulation" means any material designed for installation in the walls, floors or ceilings of a structure for the specific purpose of reducing loss or gain of energy by such structure but shall not include any backing or vapor barrier attached to such material.

(d) This section shall be a part of and supplemental to the Kansas consumer protection act.

History: L. 1978, ch. 209, § 1; July 1.

Article 7.—FAIR CREDIT REPORTING ACT

Law Review and Bar Journal References:

"The New Kansas Consumer Legislation," Barkley Clark, 42 J.B.A.K. 147, 200 (1973).

Consumer protection in Tenth Judicial District, William P. Coates, Jr., 44 J.B.A.K. 67, 70 (1975).

"Survey of Kansas Law: Consumer Law," John C. Maloney, 27 K.L.R. 197, 212, 213 (1979).

"Computers in the Private Sector: Right to Informational Privacy for the Consumer," John Barlow Spear, 22 W.L.J. 469, 486 (1983).

CASE ANNOTATIONS

1. Purpose of act and application to check guarantee and reporting service considered. *Peasley v. Tele-Check of Kansas, Inc.*, 6 K.A.2d 990, 637 P.2d 437 (1981).

50-701. Findings and purpose. (a) The legislature of the state of Kansas hereby finds and determines that:

(1) The banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the banking system.

(2) An elaborate mechanism has been developed for investigating and evaluating the credit worthiness, credit standing, credit capacity, character, and general reputation of consumers.

(3) Consumer reporting agencies have assumed a vital role in assembling and evaluating consumer credit and other information on consumers.

(4) There is a need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy.

(b) It is the purpose of K.S.A. 50-701 to 50-722, inclusive, and amendments thereto, to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of such sections of this act.

History: L. 1973, ch. 85, § 136; Jan. 1, 1974.

CASE ANNOTATIONS

1. Purpose of act and application to check guarantee and reporting service considered. *Peasley v. Tele-Check of Kansas, Inc.*, 6 K.A.2d 990, 637 P.2d 437 (1981).

50-702. Definitions and rules of con-

struction. The following words and phrases when used in K.S.A. 50-701 to 50-722, inclusive, and amendments thereto, shall have the meanings ascribed to them in this section.

(a) The term "person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(b) The term "consumer" means an individual.

(c) The term "consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for credit or insurance to be used primarily for personal, family, or household purposes, or employment purposes, or other purposes authorized under K.S.A. 50-703. The term does not include (1) any report containing information solely as to transactions or experiences between the consumer and the person making the report; (2) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device; or (3) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys that decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made and such person makes the disclosures to the consumer required under K.S.A. 50-714.

(d) The term "investigative consumer report" means a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom the consumer is acquainted or who may have knowledge concerning any such items of information. However, such information shall not include specific factual information on a consumer's credit record ob-

tained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

(e) The term "consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative non-profit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

(f) The term "file," when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

(g) The term "employment purposes" when used in connection with a consumer report means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.

(h) The term "medical information" means information or records obtained, with the consent of the individual to whom it relates, from licensed physicians or medical practitioners, hospitals, clinics, or other medical or medically related facilities.

History: L. 1973, ch. 85, § 137; Jan. 1, 1974.

CASE ANNOTATIONS

1. Check guarantee and reporting service held to be a "Consumer Report"; provider of such service is a "Consumer Reporting Agency." *Peasley v. TeleCheck of Kansas, Inc.*, 6 K.A.2d 990, 997, 998, 637 P.2d 437 (1981).

50-703. Permissible purposes of reports. A consumer reporting agency may furnish a consumer report under the following circumstances and no other:

(a) In response to the order of a court having jurisdiction to issue such an order;

(b) in accordance with the written instructions of the consumer to whom it relates; and

(c) to a person which it has reason to believe

(1) intends to use the information in connection with a credit transaction involv-

ing the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

(2) intends to use the information for employment purposes; or

(3) intends to use the information in connection with the underwriting of insurance involving the consumer; or

(4) intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(5) otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer.

History: L. 1973, ch. 85, § 138; Jan. 1, 1974.

CASE ANNOTATIONS

1. Compliance with subpoena requiring retail credit information would not subject retail merchant to action for damages. *Kansas Commission on Civil Rights v. Sears, Roebuck & Co.*, 216 K. 306, 320, 532 P.2d 1263.

50-704. Obsolete information. (a) Except as authorized under subsection (b) of this section, no consumer reporting agency may make any consumer report containing any of the following items of information:

(1) Bankruptcies which, from date of adjudication of the most recent bankruptcy, antedate the report by more than fourteen (14) years;

(2) suits and judgments which, from date of entry, antedate the report by more than seven (7) years or until the governing statute of limitations has expired, whichever is the longer period;

(3) paid tax liens which, from date of payment, antedate the report by more than seven (7) years;

(4) accounts placed for collection or charged to profit and loss which antedate the report by more than seven (7) years;

(5) records of arrest, indictment, or conviction of crime which, from date of disposition, release, or parole, antedate the report by more than seven (7) years; and

(6) any other adverse item of information which antedates the report by more than seven (7) years.

(b) The provisions of subsection (a) of this section are not applicable in the case of

any consumer credit report to be used in connection with

(1) a credit transaction involving, or which may reasonably be expected to involve, a principal amount of fifty thousand dollars (\$50,000) or more;

(2) the underwriting of life insurance involving, or which may reasonably be expected to involve, a face amount of fifty thousand dollars (\$50,000) or more; or

(3) the employment of any individual at an annual salary which equals, or which may reasonably be expected to equal twenty thousand dollars (\$20,000), or more.

History: L. 1973, ch. 85, § 139; Jan. 1, 1974.

50-705. Disclosure of investigative consumer reports. (a) A person may not procure or cause to be prepared an investigative consumer report on any consumer unless

(1) it is clearly and accurately disclosed to the consumer that an investigative consumer report including information as to the consumer's character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made, and such disclosure (A) is made in a writing mailed, or otherwise delivered, to the consumer, not later than three days after the date on which the report was first requested, and (B) includes a statement informing the consumer of the right to request the additional disclosures provided for under subsection (b) of this section; or

(2) the report is to be used for employment purposes for which the consumer has not specifically applied.

(b) Any person who procures or causes to be prepared an investigative consumer report on any consumer shall, upon written request made by the consumer within a reasonable period of time after the receipt by him or her of the disclosure required by subsection (a) (1) of this section, make a complete and accurate disclosure of the nature and scope of the investigation requested. This disclosure shall be made in a writing mailed, or otherwise delivered, to the consumer not later than five (5) days after the date on which the request for such disclosure was received from the consumer or such report was first requested, whichever is the later.

(c) No person may be held liable for any

violation of subsection (a) or (b) of this section if that person shows by a preponderance of the evidence that at the time of the violation the person maintained reasonable procedures to assure compliance with subsection (a) or (b).

History: L. 1973, ch. 85, § 140; Jan. 1, 1974.

50-706. Compliance procedures. (a)

Every consumer reporting agency shall maintain reasonable procedures designed to avoid violations of K.S.A. 50-704 and to limit the furnishing of consumer reports to the purposes listed under K.S.A. 50-703. These procedures shall require that prospective users of the information identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose. Every consumer reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by such prospective user prior to furnishing such user a consumer report. No consumer reporting agency may furnish a consumer report to any person if it has reasonable grounds for believing that the consumer report will not be used for a purpose listed in K.S.A. 50-703.

(b) Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.

History: L. 1973, ch. 85, § 141; Jan. 1, 1974.

50-707. Disclosures to governmental agencies. Notwithstanding the provisions of K.S.A. 50-703, a consumer reporting agency may furnish identifying information respecting any consumer, limited to name, address, former addresses, places of employment, or former places of employment, to a governmental agency.

History: L. 1973, ch. 85, § 142; Jan. 1, 1974.

50-708. Disclosures to consumers. (a) Every consumer reporting agency shall, upon request and proper identification of any consumer, clearly and accurately disclose to the consumer:

(1) The nature and substance of all information (except medical information) in

its files on the consumer at the time of the request.

(2) The sources of the information; except that the sources of information acquired solely for use in preparing an investigative consumer report and actually used for no other purpose need not be disclosed: *Provided*, That in the event an action is brought under the provisions of K.S.A. 50-701 to 50-722, inclusive, and amendments thereto, such sources shall be available to the plaintiff under appropriate discovery procedures in the court in which the action is brought.

(3) The recipients of any consumer report on the consumer which it has furnished

(A) for employment purposes within the two-year period preceding the request, and

(B) for any other purpose within the six-month period preceding the request.

(b) The requirements of subsection (a) respecting the disclosure of sources of information and the recipients of consumer reports do not apply to information received or consumer reports furnished prior to the effective date of this act except to the extent that the matter involved is contained in the files of the consumer reporting agency on that date.

History: L. 1973, ch. 85, § 143; Jan. 1, 1974.

50-709. Conditions of disclosure to consumers. (a) A consumer reporting agency shall make the disclosures required under K.S.A. 50-708 during normal business hours and on reasonable notice.

(b) The disclosures required under K.S.A. 50-708 shall be made to the consumer

(1) in person if the consumer appears in person and furnishes proper identification; or

(2) by telephone if the consumer has made a written request, with proper identification, for telephone disclosure and the toll charge, if any, for the telephone call is prepaid by or charged directly to the consumer.

(c) Any consumer reporting agency shall provide trained personnel to explain to the consumer any information furnished to him or her pursuant to K.S.A. 50-708.

(d) The consumer shall be permitted to be accompanied by one other person of his or her choosing, who shall furnish reason-

able identification. A consumer reporting agency may require the consumer to furnish a written statement granting permission to the consumer reporting agency to discuss the consumer's file in such person's presence.

(e) Except as provided in K.S.A. 50-715 and 50-716, no consumer may bring any action or proceeding in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any consumer reporting agency, any user of information, or any person who furnishes information to a consumer reporting agency, based on information disclosed pursuant to K.S.A. 50-708, 50-709 or 50-714, except as to false information furnished with malice or willful intent to injure such consumer.

History: L. 1973, ch. 85, § 144; Jan. 1, 1974.

50-710. Procedure in case of disputed accuracy. (a) If the completeness or accuracy of any item of information contained in his or her file is disputed by a consumer, and such dispute is directly conveyed to the consumer reporting agency by the consumer, the consumer reporting agency shall within a reasonable period of time reinvestigate and record the current status of that information unless it has reasonable grounds to believe that the dispute by the consumer is frivolous or irrelevant. If after such reinvestigation such information is found to be inaccurate or can no longer be verified, the consumer reporting agency shall promptly delete such information in the presence of contradictory information in the consumer's file does not in and of itself constitute reasonable grounds for believing the dispute is frivolous or irrelevant.

(b) If the reinvestigation does not resolve the dispute, the consumer may file a brief statement setting forth the nature of the dispute. The consumer reporting agency may limit such statements to not more than one hundred words if it provides the consumer with assistance in writing a clear summary of the dispute.

(c) Whenever a statement of dispute is filed, unless there is reasonable grounds to believe that it is frivolous or irrelevant, the consumer reporting agency shall, in any subsequent consumer report containing the information in question, clearly note that it

is disputed by the consumer and provide either the consumer's statement or a clear and accurate codification or summary thereof.

(d) Following any deletion of information which is found to be inaccurate or whose accuracy can no longer be verified or any notation as to disputed information, the consumer reporting agency shall, at the request of the consumer, furnish notification that the item has been deleted or the statement, codification or summary pursuant to subsection (b) or (c) of this section to any person specifically designated by the consumer who has within two years prior thereto received a consumer report for employment purposes, or within six months prior thereto received a consumer report for any other purpose, which contained the deleted or disputed information. The consumer reporting agency shall clearly and conspicuously disclose to the consumer his or her rights to make such a request. Such disclosure shall be made at or prior to the time the information is deleted or the consumer's statement regarding the disputed information is received.

History: L. 1973, ch. 85, § 145; Jan. 1, 1974.

50-711. Charges for certain disclosures. A consumer reporting agency shall make all disclosures pursuant to K.S.A. 50-708 and furnish all consumer reports pursuant to K.S.A. 50-710(d) without charge to the consumer if, within thirty (30) days after receipt by such consumer of a notification pursuant to K.S.A. 50-714 or notification from a debt collection agency affiliated with such consumer reporting agency stating that the consumer's credit rating may be or has been adversely affected, the consumer makes a request under K.S.A. 50-708 or 50-710(d). Otherwise, the consumer reporting agency may impose a reasonable charge on the consumer for making disclosure to such consumer pursuant to K.S.A. 50-708, the charge for which shall be indicated to the consumer prior to making disclosure; and for furnishing notifications, statements, summaries, or codifications to persons designated by the consumer pursuant to K.S.A. 50-710(d), the charge for which shall be indicated to the consumer prior to furnishing such information and shall not exceed the charge that the consumer reporting

agency would impose on each designated recipient for a consumer report except that no charge may be made for notifying such persons of the deletion of information which is found to be inaccurate or which can no longer be verified.

History: L. 1973, ch. 85, § 146; Jan. 1, 1974.

50-712. Public record information for employment purposes. A consumer reporting agency which furnishes a consumer report for employment purposes and which for that purpose compiles and reports items of information on consumers which are matters of public record and are likely to have an adverse effect upon a consumer's ability to obtain employment shall

(a) at the time such public record information is reported to the user of such consumer report, notify the consumer of the fact that public record information is being reported by the consumer reporting agency, together with the name and address of the person to whom such information is being reported; or

(b) maintain strict procedures designed to insure that whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported it is complete and up to date. For purposes of this paragraph, items of public record relating to arrests, indictments, convictions, suits, tax liens, and outstanding judgments shall be considered up to date if the current public record status of the item at the time of the report is reported.

History: L. 1973, ch. 85, § 147; Jan. 1, 1974.

50-713. Restrictions on investigative consumer reports. Whenever a consumer reporting agency prepares an investigative consumer report, no adverse information in the consumer report (other than information which is a matter of public record) may be included in a subsequent consumer report unless such adverse information has been verified in the process of making such subsequent consumer report, or the adverse information was received within the three-month period preceding the date the subsequent report is furnished.

History: L. 1973, ch. 85, § 148; Jan. 1, 1974.

50-714. Requirements on users of con-

sumer reports. (a) Whenever credit or insurance for personal, family or household purposes, or employment involving a consumer is denied or the charge for such credit or insurance is increased either wholly or partly because of information contained in a consumer report from a consumer reporting agency, the user of the consumer report shall so advise the consumer against whom such adverse action has been taken and supply the name and address of the consumer reporting agency making the report.

(b) Whenever credit for personal, family, or household purposes involving a consumer is denied or the charge for such credit is increased either wholly or partly because of information obtained from a person other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, the user of such information shall, within a reasonable period of time, upon the consumer's written request for the reasons for such adverse action received within sixty (60) days after learning of such adverse action, disclose the nature of the information to the consumer. The user of such information shall clearly and accurately disclose to the consumer the right to make such written request at the time such adverse action is communicated to the consumer.

(c) No person shall be held liable for any violation of this section if the person shows by a preponderance of the evidence that at the time of the alleged violation he or she maintained reasonable procedures to assure compliance with the provisions of subsections (a) and (b).

History: L. 1973, ch. 85, § 149; Jan. 1, 1974.

50-715. Civil liability for willful non-compliance. Any consumer reporting agency or user of information which willfully fails to comply with any requirement imposed under K.S.A. 50-701 to 50-722, inclusive, and amendments thereto, with respect to any consumer is liable to that consumer in an amount equal to the sum of

(a) any actual damages sustained by the consumer as a result of the failure;

(b) such amount of punitive damages as the court may allow; and

(c) in the case of any successful action to

enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

History: L. 1973, ch. 85, § 150; Jan. 1, 1974.

Law Review and Bar Journal References:

"Recovery of Attorney Fees in Kansas," Mark A. Furney, 18 W.L.J. 535, 560 (1979).

CASE ANNOTATIONS

1. Compliance with subpoena requiring retail credit information would not subject retail merchant to action for damages. *Kansas Commission on Civil Rights v. Sears, Roebuck & Co.*, 216 K. 306, 320, 532 P.2d 1263.

50-716. Civil liability for negligent noncompliance. Any consumer reporting agency or user of information which is negligent in failing to comply with any requirement imposed under K.S.A. 50-701 to 50-722, inclusive, and amendments thereto, with respect to any consumer is liable to that consumer in an amount equal to the sum of

(a) any actual damages sustained by the consumer as a result of the failure;

(b) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

History: L. 1973, ch. 85, § 151; Jan. 1, 1974.

Law Review and Bar Journal References:

"Recovery of Attorney Fees in Kansas," Mark A. Furney, 18 W.L.J. 535, 560 (1979).

CASE ANNOTATIONS

1. Compliance with subpoena requiring retail credit information would not subject retail merchant to action for damages. *Kansas Commission on Civil Rights v. Sears, Roebuck & Co.*, 216 K. 306, 320, 532 P.2d 1263.

50-717. Jurisdiction of courts; limitation of actions. An action to enforce any liability created under the provisions of K.S.A. 50-701 to 50-722, inclusive, and amendments thereto, may be brought in the district court of the county in which the controversy arose, within two years from the date on which the liability arises, except that where a defendant has materially and willfully misrepresented any information required under the provisions of such sections of this act to be disclosed to an individual and the information so misrepresented is material to the establishment of the defendant's liability to that individual under such provisions of this act, the action may be brought at any time within two years

after discovery by the individual of the misrepresentation.

History: L. 1973, ch. 85, § 152; Jan. 1, 1974.

50-718. Obtaining information under false pretenses. Any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses shall be deemed guilty of a class A misdemeanor and upon conviction thereof shall be punished in the manner provided by law.

History: L. 1973, ch. 85, § 153; Jan. 1, 1974.

50-719. Unauthorized disclosures by officers or employees. Any officer or employee of a consumer reporting agency who knowingly and willfully provides information concerning an individual from the agency's files to a person not authorized to receive that information shall be deemed guilty of a class A misdemeanor and upon conviction thereof shall be punished in the manner provided by law.

History: L. 1973, ch. 85, § 154; Jan. 1, 1974.

50-720. Penalties. Any person violating any of the provisions of K.S.A. 50-701 to 50-719, inclusive, and amendments thereto, for which penalties are not otherwise hereinbefore provided shall be deemed guilty of a class C misdemeanor and upon conviction thereof shall be punished in the manner provided by law.

History: L. 1973, ch. 85, § 155; Jan. 1, 1974.

50-721. Enforcement by consumer credit commissioner. The consumer credit commissioner is hereby authorized to enforce the provisions of K.S.A. 50-701 to 50-720, inclusive, and amendments thereto, and for such purpose is hereby authorized to adopt such rules and regulations as may be necessary for the proper administration and enforcement of the provisions of such sections of this act.

History: L. 1973, ch. 85, § 156; Jan. 1, 1974.

50-722. Citation of act. K.S.A. 50-701 to 50-722, inclusive, and amendments thereto, may be cited as the fair credit reporting act.

History: L. 1973, ch. 85, § 157; Jan. 1, 1974.

No. 47,405

KANSAS COMMISSION ON CIVIL RIGHTS, *Appellee*, v. SEARS, ROEBUCK
AND COMPANY, *Appellant*.

(532 P. 2d 1263)

SYLLABUS BY THE COURT

1. **COURTS—Invoking Appellate Jurisdiction.** The appellate jurisdiction of the supreme court may be invoked by appeal as a matter of right from a final decision of a district court in any action except in an action for recovery of money where the amount in controversy does not exceed \$500.
2. **CIVIL RIGHTS—Objective of Kansas Act Against Discrimination.** A principal objective of the Kansas Act Against Discrimination is to eliminate and prevent discrimination, segregation or separation in places of public accommodations.
3. **SAME—Buying Goods on Credit—Payments by Installments—Judicial Notice of the Buying and Credit Practice.** The practice of buying goods and merchandise on credit and paying the purchase price by installments has become so widespread and commonplace a custom that judicial notice may be taken of the practice.
4. **SAME—Refusal of Credit to a Purchaser on Basis of Race etc.—Constitutes Unlawful Discriminatory Practice.** The refusal of credit to a purchaser or a prospective buyer in connection with the retail sale of goods and merchandise on the basis of race, religion, color, sex, physical handicap, national origin or ancestry constitutes an unlawful discriminatory practice within the purview of the Kansas Act Against Discrimination. (K. S. A. 44-1001, *et seq.* [Weeks, 1973].)
5. **SAME—"Place of Public Accommodations" Defined.** In keeping with the broad policy of eradicating discrimination from our society, the term "place of public accommodations" is interpreted to include those places of business which are held open to the general public and where members of the general public are invited to come for business purposes.
6. **SAME—Illustrations of Public Accommodations.** Stores, shops and other business establishments offering goods, facilities and accommodations to the public are places of public accommodation within the meaning of the Kansas Act Against Discrimination.
7. **SAME—Rule of Eiusdem Generis Not Applicable to Anti-discrimination Statutes.** The trend of modern authority is not to apply the rule of *eiusdem generis* in construing anti-discrimination statutes by restricting "places of public accommodation" to such places as may be listed specifically in the statute.
8. **SAME—"Place of Public Accommodations"—Not Limited to Those Enumerated by Statute.** The term "place of public accommodation" as used in K. S. A. 44-1009 (c) (1) (Weeks, 1973) is not limited or restricted to those businesses, facilities or accommodations which are especially enumerated in K. S. A. 44-1002 (i) (Weeks, 1973).
9. **SAME—Intrusion of Constitutional Rights Must Be Reasonable.** The basic requirement of the constitution and of the courts is that an intrusion of

*Appellee, v. SEARS, ROEBUCK
Appellant.*

REPORT

The appellate jurisdiction of
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action except in an action for
controversy does not exceed \$500.

Against Discrimination. A prin-
Discrimination is to eliminate
separation in places of public

Buyings by Installments—Judicial
The practice of buying goods
purchase price by installments
a custom that judicial notice

Basis of Race etc.—Constitutes
sal of credit to a purchaser
the retail sale of goods and
color, sex, physical handicap,
lawful discriminatory practice
Discrimination. (K. S. A.

Defined. In keeping with the
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Be Reasonable. The basic
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a constitutional right is permissible if it is reasonable. The constitution only protects people from unreasonable intrusions into their privacy. (Following *Atchison, T. & S. F. Rly. Co. v. Lopez*, 216 Kan. 108, 531 P. 2d 455.)

10. *SAME—Encroachment on Personal Liberty—When Statute Not Invalid.* Where there is a significant encroachment upon personal liberty the state may prevail only on showing a subordinating interest which is compelling. A state statute, if reasonably necessary for the effectuation of a legitimate and substantial state interest, and not arbitrary or capricious in its application, is not invalid under the due process clause of the federal constitution. (Following *Atchison, T. & S. F. Rly. Co. v. Lopez*, supra.)
11. *SAME—Enforcement of Subpoena for Credit Records—Enforcement Does Not Violate Right of Privacy.* The enforcement of a subpoena issued by the Kansas Commission on Civil Rights requiring disclosure by a retail merchant of persons to whom credit was extended, and their credit ratings, is not constitutionally impermissible as violating their rights of privacy. The public policy of the state as declared in the Act Against Discrimination requires that interests of the individuals affected be subordinated in order that discrimination in "places of public accommodation" be ended.
12. *SAME—Subpoenaed Information Would Not Violate Constitutional Rights—No Basis for Damage Action.* Where it is determined that disclosure of subpoenaed information would not violate the constitutional rights of the parties affected, there is no basis for their maintaining an action for damages under 42 U. S. C. § 1983. (Following *Atchison, T. & S. F. Rly. Co. v. Lopez*, supra.)
13. *SAME—Federal and State Fair Credit Reporting Act—Liability.* Both the federal Fair Credit Reporting Act and its Kansas counterpart contain provisions imposing civil liability for the "willful" or "negligent" non-compliance with "any requirements imposed" under those acts, but allowance is made for the furnishing or production of credit reports "in response to the order of a court having jurisdiction to issue such an order."
14. *SAME—Records of Confidential Character—"In Camera" Examination—Protective Orders.* Where records of a confidential character are produced in court in response to a subpoena or other process, the court is vested with authority to conduct an "in camera" examination and issue such protective orders as it deems advisable to keep the information from prying eyes and to prevent its misuse.

Appeal from Shawnee district court, division No. 2; MICHAEL A. BARBARA, judge. Opinion filed March 1, 1975. Affirmed.

Mark L. Bennett, of Topeka, argued the cause, and Clayton M. Davis and Mark L. Bennett, Jr., also of Topeka, were with him on the brief for the appellant.

Charles S. Scott, of Topeka, argued the cause, and Curt T. Schneider, attorney general, and Roger W. Lovett, were with him on the brief for the appellee.

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

IN THE MATTER OF AN INQUISITION PURSUANT
TO THE PROVISIONS OF K.S.A. 22-3101

PROTECTIVE ORDER

NOW on this _____ day of _____, 19____, comes on for hearing an inquisition subpoena issued by District Judge _____ concerning the credit reports of _____, and the Credit Bureau of Topeka, Inc., appears by Bill Shaw, its president, and Walter N. Scott, Jr., their attorney.

Upon response to said subpoena, it was brought to the Court's attention that the Credit Bureau of Topeka is regulated under the provisions of K.S.A. Article VII, Chapter 50, the Fair Credit Reporting Act. That under the provisions of K.S.A. 50-707, entitled "Disclosures to Governmental Agencies", the only information that may be furnished the said governmental agency shall be identifying information respecting any consumer, limited to name, address, former addresses, places of employment, or former places of employment. That K.S.A. 50-703 provides for permissible purposes of reports. That said provision states that a consumer reporting agency may furnish a consumer report under the following circumstances and no other: "(a) in response to the order of a Court having jurisdiction to issue said order."

That in accordance with the above named provisions, as defined in Kansas Commission on Civil Rights v. Sears, Roebuck and Company, 216 Kan. 306, the credit reports of _____ shall be released to the officers and/or representatives of the District Attorney's Office conducting a purported investigation,

under the following circumstances:

1. That said credit report shall not be disclosed to any other persons without a further protective of the District Court.
2. That no copies be made of said credit reports.
3. That said credit reports be returned to the Credit Bureau of Topeka upon the conclusion of said inquisition.

IT IS, THEREFORE, ORDERED, that the Credit Bureau of Topeka, its officers and employees, are hereby given a protective order and they are hereby ordered to release the credit reports of _____ to the parties above named. It is further ordered that the representatives of the law enforcement officers involved and the District Attorney's Office are to follow the restrictions imposed by this order.

DISTRICT JUDGE

APPROVED:

DISTRICT ATTORNEY'S OFFICE

STATE OF KANSAS



Bernie Norwood, Director
4 Townsite Plaza Suite 210
200 S.E. 6th Street
Topeka, Kansas 66603-3512

(913) 296-3946
FAX (913) 296-0922

Department of Revenue
Division of Alcoholic Beverage Control

MEMORANDUM

TO: Representative Bill Bryant, Chairman,
House Financial Institutions and Insurance Committee
FROM: D. Philip Wilkes, Attorney, Revenue Criminal Fraud Unit
DATE: February 20, 1995
SUBJECT: House Bill 2482 Testimony

Mr. Chairman and members of the committee: thank you for the opportunity to appear and express the Department of Revenue's concern over portions of House Bill 2482. I am Phil Wilkes, a Revenue Department Attorney assigned to the Department's Criminal Fraud Unit.

The Department of Revenue's concern about the bill centers on the requirement for governmental entities to give notice to individuals and businesses when information relating to them is obtained from financial institutions through the use of subpoenas. As you may know, the Director of Taxation currently has statutory authority through K.S.A. 79-3233 and K.S.A. 79-5207 to issue subpoenas to gather information relating to:

- investigations of alleged tax fraud including possible criminal prosecution.
- the collection of the tax on illegal drugs from drug dealers.

Both of these functions have been delegated by the Director of Taxation to the Department's Criminal Fraud Unit within the Division of Alcoholic Beverage Control (ABC), because, as a law enforcement agency, ABC:

- works closely with local, state and federal law enforcement agencies
- has agents stationed across the state working in all counties
- has access to criminal justice information
- agents have been trained to perform financial investigations including tax fraud

*House F&I
Attachment 5*

2-20-95

The subpoena powers of the Director of Taxation are used extensively by the Criminal Fraud Unit in carrying out these two functions.

It is unclear to us whether the Criminal Fraud Unit would be exempt under Subsection 11(p) from the notice requirements of the bill, since we are acting under the statutory authority of the Director of Taxation in carrying out the tax fraud investigation and drug tax collection functions. We feel that this issue needs to be clarified, because the notice requirements of the bill would severely impact on the speed and confidentiality we use to successfully carry out both of these functions.

In our tax fraud investigations, we have occasion to subpoena financial records for a number of purposes. These activities are carried out throughout the state and it is not uncommon for one source of information to lead to new sources in quick succession. These new sources could involve different individuals, businesses and financial institutions, each of which would require a new subpoena. Obviously, our activities would be greatly hampered if, at each step of the process, we had to stop and have a hearing, even the type of hearing provided in Section 7. Most district court judges are just not that available on short notice and the required agent and attorney time would effectively reduce the number of such investigations to a small percentage of what we are now able to do with our limited resources.

In collecting the tax on illegal drugs, the Department relies heavily on the element of surprise in locating and seizing bank accounts and other assets revealed by financial records before the drug dealer can hide or liquidate his assets. Our success in this area often comes down to whether we are able to identify and seize bank accounts immediately after we have notified the drug dealer of his tax liability. It is not uncommon for these activities to happen during the night and for us to find and seize the drug dealer's bank accounts as soon as the local banks open the next morning. In such cases, it is unlikely that we will be able to have a hearing, even under Section 7, in time to prevent the assets from disappearing.

We would respectfully ask that our tax fraud investigations and drug tax collection activities be clearly exempted from sections 1 through 18 of the bill in order to ensure the continued success of these important functions. Again, thank you Mr. Chairman for the time. I would be glad to answer any questions.



Jeffrey D. Sonnich, Vice-President

700 S. Kansas Ave., Suite 512
Topeka, Kansas 66603
(913) 232-8215

February 20, 1995

TO: House Committee on Financial Institutions and Insurance
FROM: Jeffrey Sonnich, KNOLSI
RE: Amendments to HB 2126

Mr. Chairman. Members of the Committee the Kansas-Nebraska-Oklahoma League of Savings Institutions appreciates the opportunity to appear before the House Committee on Financial Institutions and Insurance to request consideration of amendments to H.B. 2126.

The attached balloon would incorporate those amendments requested during the previous hearing as well as address those concerns expressed by the Register of Deeds Association. If adopted the bill would allow the lender or closing agent who is paying off the indebtedness to cause entry of satisfaction, by signing a mortgage release document, if the mortgagee fails to release the mortgage within 20 days of written demand. If the lender or closing agent falsely releases the mortgage they would be liable for the full amount of the indebtedness together with interest, attorneys fees, and any other damages that the mortgagee or mortgagee's assignee has incurred.

While we would rather see proof of the payment be recorded publicly, we believe that shifting the liability back to the lender or closing agent will be sufficient to reduce any fraudulent releases. We believe that all parties expressing interest in this bill are in agreement with the balloon language.

We appreciate your consideration of the attached amendments and would respectfully request adoption and favorable passage of HB 2126.

Jeffrey D. Sonnich
Vice President

JDS:cip

encl.

*House File
attachment 6
2-20-95*

HOUSE BILL No. 2126

By Committee on Financial Institutions and Insurance

1-20

9 AN ACT concerning mortgages on real property; relating to the entry of
10 satisfaction thereof; amending K.S.A. 58-2306 and 58-2309a and re-
11 pealing the existing sections.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 58-2306 is hereby amended to read as follows: 58-
15 2306. (a) Except as otherwise provided by this section, any mortgage of
16 real property that has been or may hereafter be recorded shall be assigned
17 or discharged by an instrument acknowledging the assignment or satis-
18 faction of such mortgage, signed by the mortgagee or ~~his or her~~ *such*
19 *mortgagee's* duly authorized attorney in fact, assignee of record, or per-
20 ~~sonal representative or by the mortgagor or the lender who has caused~~
21 ~~the indebtedness to be paid in full upon compliance with K.S.A. 58-2309a,~~
22 ~~and amendments thereto;~~ and duly acknowledged and certified as other
23 instruments affecting real estate. Such instrument shall contain the name
24 of the mortgagor and mortgagee, a legal description of the property and
25 the volume and page in which the mortgage is recorded.

or by the lender or a designated closing agent acting
as a closing agent in a sale or refinance of the real
estate subject to said mortgage who has caused the
indebtedness to be paid in full upon compliance with
K.S.A. 58-2309a, and amendments thereto,

26 (b) Where the mortgagee or assignee of record is deceased, and
27 where the estate of such deceased mortgagee or assignee of record is in
28 process of administration, in this or any other state, an assignment or a
29 full release of such mortgage may be made by the executor or adminis-
30 trator without any showing as to the provisions of the will of the deceased,
31 but there must accompany such assignment or release, as a part thereof,
32 a certificate from a court of competent jurisdiction appointing such ex-
33 ecutor or administrator, under the hand of its proper officer, and attested
34 by its seal, certifying as to such appointment, and that such executor or
35 administrator is, at the date of such assignment or release, still so acting
36 under the authority of such court. Such certificate shall not be required
37 when the executor or administrator is acting under appointment of the
38 district court of the county where the real estate mortgaged is located.
39 Where the estate of such deceased has not been administered upon, or
40 where the estate of such deceased has been administered and settled and
41 the executor or administrator discharged, such assignment or release may
42 be made by the heirs at law or legatee of such deceased mortgagee or
43 assignee, and competent evidence must be furnished by them of the fact.

6-2

1 (c) Where the mortgagee or assignee of record is a firm or partner-
 2 ship, such mortgage shall be assigned or discharged by an instrument
 3 acknowledging the assignment or satisfaction of such mortgage as here-
 4 inbefore provided. Such instrument shall be signed either by each mem-
 5 ber of the firm or partnership, or by the firm or partnership, or by the
 6 firm or partnership by one of the members thereof.

7 (d) Any mortgage which, prior to July 1, 1977, has been released by
 8 a notation on the original mortgage instrument and signed by the mort-
 9 gagee or the mortgagee's duly authorized attorney in fact, assignee of
 10 record or personal representative may be recorded in the office of the
 11 register of deeds of the county where the mortgaged property is located.
 12 When recorded, such release shall have the same force and effect as
 13 mortgages discharged in accordance with subsection (a).

14 Sec. 2. K.S.A. 58-2309a is hereby amended to read as follows: 58-
 15 2309a. (a) When the indebtedness secured by a recorded mortgage is
 16 paid and there is no agreement for the making of future advances to be
 17 secured by the mortgage, the mortgagee or the mortgagee's assignee shall
 18 enter satisfaction or cause satisfaction of such mortgage to be entered of
 19 record forthwith, paying the required fee. ~~In the event the mortgagee or~~
 20 ~~the mortgagee's assignee fails to enter satisfaction or cause satisfaction of~~
 21 ~~such mortgage to be entered within 20 days after written demand by~~
 22 ~~certified or registered mail, the mortgagor or the lender who has caused~~
 23 ~~the indebtedness to be paid in full may cause satisfaction of the mortgage~~
 24 ~~to be entered as set forth hereinafter. Satisfaction of the mortgage by the~~
 25 ~~mortgagor or the lender who has caused the indebtedness to be paid in~~
 26 ~~full shall require proof of payment in full of the remaining indebtedness~~
 27 ~~due the mortgagee or assignee. The mortgagor or the lender who has~~
 28 ~~caused the indebtedness to be paid in full shall attach to the mortgage~~
 29 ~~release filed pursuant to K.S.A. 58-2306, and amendments thereto, a pay-~~
 30 ~~off statement from the mortgagee or the mortgagee's assignee dated within~~
 31 ~~45 days of the date the indebtedness has been paid in full, a canceled~~
 32 ~~check or proof of electronic funds transfer showing payment in full of the~~
 33 ~~amount shown on the pay-off statement and a certificate or affidavit show-~~
 34 ~~ing written demand directed to the mortgagee or the mortgagee's assignee~~
 35 ~~by certified or registered mail showing the failure to release the mortgage.~~
 36 ~~Upon recording of such satisfaction by the mortgagor or the lender who~~
 37 ~~has caused the indebtedness to be paid in full and proof of payment, such~~
 38 ~~mortgage shall be deemed fully released as if discharged by the mortgagee~~
 39 ~~or mortgagee's assignee.~~

40 (b) When a mortgage is recorded covering real estate in which the
 41 mortgagor has no interest, the mortgagee or the mortgagee's assignee
 42 shall enter satisfaction or cause satisfaction of such mortgage to be en-
 43 tered of record, paying the required fee without charge to the mortgagor

In the event the mortgagee or the mortgagee's assignee fails to enter satisfaction or cause satisfaction of such mortgage to be entered within 20 days after written demand by certified or registered mail, the lender or a designated closing agent acting as a closing agent in a sale or refinance of the real estate subject to said mortgage, who upon reliance of written payoff information provided by the mortgagee, and which payoff information shall be deemed as the correct and full amount due and owing under said mortgage, has caused the indebtedness to be paid in full may cause satisfaction of the mortgage to be entered. If in fact the mortgagee or mortgagee's assignee was not paid in accordance with the aforesaid payoff information when the mortgage was released the lender or the closing agent in a sale or refinance of the real estate subject to said mortgage who signed the false release shall be liable in damages to the mortgagee or mortgagee's assignee for the entire indebtedness together with interest thereon, attorney fees, and any additional damages that the mortgagee or mortgagee's assignee has incurred. Upon recording of such satisfaction by the lender or closing agent in a sale or refinance of the real estate subject to said mortgage, who has caused the indebtedness to be paid in full, such mortgage shall be deemed fully released as if discharged by the mortgagee or mortgagee's assignee.

1 or the mortgagor's assigns.

2 (c) A mortgagor, a mortgagor's heirs or assigns or anyone acting for
3 such mortgagor, heirs or assigns, or the owner of real estate upon which
4 a mortgage has been recorded by someone having no interest in the real
5 estate, may make demand upon a mortgagee or assignee of a mortgagee
6 for the entering of satisfaction of the mortgage, as provided for in sub-
7 sections (a) and (b).

8 (d) Any mortgagee or assignee of a mortgagee who refuses or neglects
9 to enter satisfaction of such mortgage within 20 days after demand has
10 been made as provided in subsection (c) shall be liable in damages to the
11 person for whom the demand was made in the sum of \$500, together
12 with a reasonable attorney's fee for preparing and prosecuting the action.
13 The plaintiff in such action may recover any additional damages that the
14 evidence in the case warrants. Civil actions may be brought under this
15 act before any court of competent jurisdiction, and attachments may be
16 had as in other cases.

17 (e) The mortgagee or assignee of a mortgagee entering satisfaction
18 or causing to be entered satisfaction of a mortgage under the provisions
19 of subsection (a) shall furnish to the office of the register of deeds the
20 full name and last known post office address of the mortgagor or the
21 mortgagor's assignee. The register of deeds shall forward such informa-
22 tion to the county clerk who shall make any necessary changes in address
23 records for mailing tax statements.

24 Sec. 3. K.S.A. 58-2306 and 58-2309a are hereby repealed.

25 Sec. 4. This act shall take effect and be in force from and after its
26 publication in the statute book.