

Approved: March 11, 1996
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 March 4, 1996 in Room 527S-of the Capitol.

All members were present except: Representative Clyde Graeber
Representative Ellen Samuelson
Representative Phill Kline
Representative Tom Sawyer
Representative Delbert Crabb

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

Conferees appearing before the committee: George Barbee, Kansas Assoc. of Financial Services
Jim McGuire, McGuire Mortgage Company
Matt Goddard, Heartland Community Bankers Association
Jim Maag, Kansas Bankers Association
Bill Caton, Consumer Credit Commissioner
Kathy Taylor, Kansas Bankers Association
Tim Randolph, Beneficial Finance

Others attending: See attached list

Hearing on SB 437: Maximum finance charges for consumer loans

George Barbee, Executive Director of Kansas Association of Financial Services, explained to the Committee how this bill would increase the allowable fee for origination points for a loan secured by an interest in land from a maximum of 3% to 5% (Attachment 1). Origination fees on closed end loans not secured by real estate would raise allowable points from 2% to 5% or a top limit of \$150.00. Loans over \$25,000 are not covered under the UCCC. This does not affect first mortgages, only second and subordinate mortgage loans. This legislation is requested because of the costs incurred in making second mortgages which are much the same as for first mortgages. Competition in the second mortgage industry is fierce but costs remain the same when the loan is booked but the borrower moves on to another lending agency. The lender will not be required to charge the maximum but this will allow for negotiation. There is a denial factor of approximately 60% for closed end loan applications which cost approximately \$103 to book. The fees are based on credit worthiness. The amendment would limit origination fees to loan balances older than six months when renewing or consolidating a previous consumer credit transaction .

Jim McGuire explained that his company, McGuire Mortgage Company in Prairie Village, as well as other lenders and borrowers will benefit by this bill which allows for an increase in origination fees (Attachment 2) This increase will increase the availability of credit as origination fees have been restricted to an unprofitable level. The federal government has acknowledged the need to increase the origination fees because few lenders were willing to participate in the FHA Title One Home Improvement program due to the 1% origination fee. They recently raised the fee to 5%.

Matt Goodard, Heartland Community Bankers Association, reminded the Committee that most consumer loans cost in excess of \$100 to originate (Attachment 3). This cost is increased if it is backed by land and an appraiser must be hired. Many times consumer loans are offered as a service to customers thus volume is not a goal. The lessening of the restriction on origination fees will allow banks to become more proactive in the consumer lending field. Fees are usually charged upfront.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,
Room 527S-Statehouse, at 3:30 a.m. on March 4, 1996.

Jim Maag, Kansas Bankers Association, explained that the proposed amendments to KSA 16a-2-401 are designed to reflect the inflationary changes which have occurred since the statute was amended in 1986 (Attachment 4). The would also reflect the increased costs of regulatory mandates required of all financial institutions as the result of federal laws and regulations. This bill will allow persons with poor financial credit to work within the UCCC rather than through pawn shops and pay day loans. The market situation will dictate the amount of origination fees with the maximum being charged for riskier type lending.

Bill Caton, Consumer Credit Commissioner, told the Committee that the increased fee structure would promote the use of closed end loan products with lenders being encouraged to make smaller loans (Attachment 5). Consumers are required to pay this money back quicker and at a cheaper rate than when they use credit cards.

Hearing on SB 411: UCCC, closing cost, application of payments

Bill Caton, Consumer Credit Commissioner, explained the amendments which are an attempt to reduce the burden of unnecessary and outdated regulations as requested by Governor Graves (Attachment 6). The amendments would:

1. Put the payment posting schedule which is now being used into the UCCC instead of listing it as a rule and regulation.
2. Make UCCC coincide with closing costs permitted by Federal Truth In Lending Regulation Z and includes appraisal fees by the lender or related party as a permissible closing cost. Many small banks in rural areas have their own in-house appraisers.
3. Change the type of CPI used in adjusting the dollar amount of a loan subject to certain allowable interest charges.
4. Clean up the language which states that a creditor is not allowed to compound late charges if the consumer misses one payment but pays the others on time.

Jim Mcguire, McGuire Mortgage Company of Prairie Village, presented testimony in support of the bill which rewrites the definition of closing costs to allow lenders to charge borrowers reasonable expenses paid to unrelated third parties (Attachment 2). Charges such as flood certificates, tax service fees, and appraisals will now be included in these closing cost fees.

George Barbee, Kansas Association of Financial Services, relayed his Association's approval of the Commissioner's amendment which would allow the Commissioner to exercise his responsibility to the consumer in determining "reasonableness" if third parties are erratic in their fee schedules (Attachment 7).

Tim Randolph, Beneficial Finance, told the Committee that their company did not make any separate charges for in-house appraisals on second mortgages. It is part of their origination fee.

Matt Goodard, Heartland Community Bankers Association, spoke in support of the clarifying language for the definition of closing costs (Attachment 8). The law allows collection of the actual fees paid to a government entity and reasonable expenses incurred by the lender. The bill also safeguards borrowers by requiring that delinquent payments made prior to the due date of the next installment be applied to the previous, delinquent payment.

Danielle Noe, Kansas Credit Union Association presented written testimony only (Attachment 9).

Hearing on SB 417: Certain charges on consumer credit transactions

George Barbee, Kansas Association of Financial Services, explained that open-ended loans offer borrowers a credit line based on the equity in their real estate (Attachment 10). The checks are issued to the borrower who make draws at their discretion and make payments on the balance similar to that of a credit card. This bill would allow a fee to be charged for maintenance of these loans.

Danielle Noe, Kansas Credit Union Association, presented written testimony only (Attachment 11).

Kathy Taylor, representing the Kansas Bankers Association, informed the Committee that this bill would allow financial institutions to recoup some of the costs associated with offering open-end consumer credit (Attachment 12). This bill would allow overdraft protection open-end credit lines which allows the bank to automatically deposit enough funds in the customer's account to cover the overdraft. A fee would be paid for

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,
Room 527S-Statehouse, at 3:30 a.m. on March 4, 1996.

this service and customers not wishing to participate would not be charged.

Matt Goddard, Heartland Community Bankers Association, reminded the Committee that not many Kansas savings institutions currently offer open-end lines of credit but this legislation would allow those that participate to charge a nominal monthly or annual fee (Attachment 13). Such costs would be comprised of mailing and handling costs, monthly line-usage statements, and annual interest statements.

Bill Caton, Consumer Credit Commissioner, said this legislation would encourage banks to offer overdraft protection line-of-credit (Attachment 14). Overdrafts are very costly to both the writer and recipient of the check and this would decrease the costs to all concerned. Competition will set the fees and charges as banking is a very competitive business.

Representative Cox moved for the approval of the minutes of February 21 and 22. Representative Correll seconded the motion. The motion carried.

The meeting adjourned at 4:55 p.m. The next meeting is scheduled for March 5, 1996.

The Kansas Association of Financial Services

George Barbee, Executive Director
Jayhawk Tower, 700 SW Jackson, Suite 702
Topeka, KS 66603-3758

913/233-0555

Fax: 913/357-6629

Statement to
House Committee on Financial Institutions and Insurance
on Senate Bill-437
Monday, March 4, 1996

Mr. Chairman and members of the committee, my name is George Barbee and I am representing the Kansas Association of Financial Services. I appreciate the opportunity to appear today in support of Senate Bill-437.

Senate Bill-437 addresses a change in the points that are presently permitted to be contracted for by a supervised lender on any consumer loan secured by an interest in land. These origination fee points are presently limited by statute not to exceed 3%. This bill would increase the allowable fee to 5%.

The bill also addresses origination fees on closed end loans not secured by real estate by raising the allowable points from 2% to 5%.

Note that first mortgage loans are exempt from the entire Uniform Consumer Credit Code, as are second and other subordinate mortgage loans made by the same lender as the first mortgage. This origination fee section for loans secured by land primarily affects home improvement loan lenders and others who take second mortgages without also having made the first mortgage loan.

It costs approximately \$440 to book one of these real estate loans. We incur many of the same costs in making a second mortgage loan as do the makers of the first mortgage. We are required to complete disclosure forms, verify employment history, verify credit history, perform inspections, and give notice to married applicants, to name a few of the expensive steps.

Competition is severe and just because you spent the \$440 average to book a loan is no guarantee that you will keep the loan and recover your full cost. The borrower is interested in the lowest payment possible and it is not at all unusual that they will refinance at the urging of competitors after the balance has been paid down to make refinancing feasible.

Please keep in mind that just because the statutes allow points for an origination fee does not mean that they are always contracted for in the loan. There is a great deal of negotiation in the making of a loan secured by land. The consumer

George Barbee

has more information today and is quick to point out their own particular credit history and the resultant level of risk to the lender. Some loans will be made at the upper limit that these amendments would allow, as well as others being made at less than the limit.

You will find an attachment to my statement that shows the status of points allowed around the nation. Many of the states have no caps on points, while several have caps at 5 points.

The cost of doing business for making closed end loans not secured by land also continues to increase. The average loan is approximately \$2,500 with an average term of 34 months. It costs approximately \$90 to book a small loan. The cost is to verify employment, verify income, verify collateral, and perform credit checks. Unfortunately, the cost for loan processing is incurred for approved loans and denied loans. On the average, 60% of loan applications are turned down.

This origination fee also can be waived or reduced based on the level of credit worthiness of the borrower. Sometimes the fees are even removed or absorbed by retailers. You occasionally see advertisements for automobiles or merchandise offered with no interest, no fees or closing costs for 90 days. Sometimes referred to as same as cash sales.

The statute limits the total dollar amount that can be charged on a closed end loan not secured by real estate to \$100. The bill would amend this amount upward to \$150. The \$100 level was established in 1986. Inflation compounded since 1986 equals 143%. The suggested amount in Senate Bill-437 would adequately compensate for past inflation and for approximately two years of future inflation.

Finally, Commissioner Caton placed a friendly amendment on the bill in the Senate to limit origination fees to loan balances older than six months when renewing or consolidating a previous consumer credit transaction. The KAFS members agreed to this provision in 1995 and agree with its inclusion in the statutes.

Mr. Chairman, on behalf of KAFS we urge you to pass Senate Bill-437 favorably as amended.

STATE	POINTS PERMITTED	PREPAYMENT PENALTIES ALLOWED (IN SOME FORM)	RULE OF 78s REFUNDS
ALABAMA	CAP-5	NO	< 61 MO.
ARIZONA	YES	YES	N/A
CALIFORNIA	CAP-5	YES	N/A
COLORADO	YES	NO	YES
CONNECTICUT	CAP-8	YES	N/A
DELAWARE	CAP-5	YES	N/A
FLORIDA	CAP-4NR CAP-10REF	YES	N/A
GEORGIA	YES	YES	N/A
HAWAII	YES	YES	N/A
IDAHO	YES	NO	< 61 MO.
ILLINOIS	CAP-3	NO	YES
INDIANA	CAP-2	YES	YES
IOWA	YES	NO	N/A
KANSAS	CAP-3	NO	N/A
KENTUCKY	YES	YES	N/A
LOUISIANA	CAP-5	YES	YES
MARYLAND	CAP-2	NO	N/A
MASSACHUSSETTS	YES	NO	N/A
MICHIGAN	CAP-2	YES	N/A
MINNESOTA	NO	NO	N/A
MISSOURI	CAP-2	YES	N/A
MONTANA	YES	NO	< 61 MO.
NEVADA	YES	YES	N/A
NEW HAMPSHIRE	YES	YES	N/A
NEW JERSEY	NO	NO	N/A
NEW MEXICO	YES	NO	N/A
NEW YORK	YES	NO	N/A

STATE	POINTS PERMITTED	PREPAYMENT PENALTIES ALLOWED (IN SOME FORM)	RULE OF 78s REFUNDS
NORTH CAROLINA	CAP-2	YES	N/A
OHIO	YES	YES	< 61 MO.
OKLAHOMA	YES	NO	< 61 MO.
OREGON	YES	YES	N/A
PENNSYLVANIA	YES	NO	N/A
RHODE ISLAND	YES	NO	N/A
SOUTH CAROLINA	CAP-4	NO	< 61 MO.
SOUTH DAKOTA	NO	NO	N/A
TENNESSEE	CAP-4	NO	< 61 MO.
UTAH	CAP-5	NO	N/A
VIRGINIA	CAP-5	NO	N/A
WASHINGTON	YES	NO	< 37 MO.
WEST VIRGINIA	NO	NO	< 36 MO.
WISCONSIN	NO	NO	< \$5K & < 37 MO.
SUMMARY	5 NO 19 YES 17 WITH CAPS 41 TOTAL	24 NO 17 YES 41 TOTAL	27 N/A 4 AVAILABLE 10 WITH LIMITS 41 TOTAL



McGUIRE MORTGAGE CO.

3826 W. 75th St. PRAIRIE VILLAGE, KS. 66208 (913) 262-9393 FAX (913) 262-4258

March 4, 1996

**TESTIMONY TO THE KANSAS HOUSE FINANCIAL INSTITUTIONS
AND INSURANCE COMMITTEE IN SUPPORT OF SENATE BILL NUMBER
437, BY JIM MCGUIRE, PRESIDENT, MCGUIRE MORTGAGE COMPANY,
3826 W 75TH STREET, PRAIRIE VILLAGE, KANSAS, 66208**

McGuire Mortgage Company is a Kansas based mortgage banker specializing in home equity and nonconforming real estate loans. My company and our employees are in favor of the provision in S.B. 437 allowing supervised lenders to receive an origination fee not to exceed 5% of the amount financed on consumer loans secured by an interest in land. We believe this change will benefit both borrowers and lenders because when origination fees are restricted to an unprofitable level, the availability of credit for Kansas consumers is reduced and credit options are less plentiful.

The U.S. Department of Housing and Urban Development recently arrived at this conclusion in an attempt to stimulate interest in FHA Title One Home Improvement lending. For years, HUD had restricted lenders to charging no more than a 1% origination fee. Because this artificially low fee made these loans unprofitable to originate, very few lenders were willing to participate in the program. In 1995, HUD made a number of changes in the Title 1 program to encourage more lender participation, and these changes included raising the allowable origination fee from 1% to 5%. This consensus figure was reached by HUD after months of public comment from consumer and industry trade groups. We believe it makes sense for Kansas statute to be in conformity with federal rules in this regard.

We believe the consumer will be well served by increased competition and a greater availability of credit options. McGuire Mortgage Company is a Kansas based lender with branch offices in Chicago, Phoenix, and aggressive expansion plans. These plans include a restrictive state to do business in terms of allowable origination fees. We are concerned that out of state lenders will have an unfair advantage by being able to charge much higher fees in their "home markets". In addition we feel we are at a competitive disadvantage with mortgage brokers who have no restrictions at all or the amount of their fees. For example, if a customer comes to us directly and wants to borrow \$10,000, we can charge just under \$300.00. That same borrower working through a

James F. D. D.
Attachment 2
March 4, 1996

broker may pay a \$1,000 broker fee or more because broker fees are unregulated.

In summary, we feel an upward adjustment in the maximum origination fee to %5 is reasonable and justified. While we recognize the need for prudent regulation of fees we feel the marketplace should primarily dictate acceptable fees and the marketplace will inevitably reward those companies that provide competitive products and a high level of customer service.

S.B. 411

McGuire Mortgage Company is also a proponent of S.B. 411 which rewrites the definition of "closing costs" to allow lenders to charge borrowers reasonable expenses paid to unrelated third parties. The current definition of "closing costs" is basically a laundry list of fees which because of the rapid changes in the industry is obsolete.

For example, many lenders utilize the services of title companies to provide escrow closing services. This practice is commonplace in the conforming first mortgage business, however, supervised lenders are restricted to charging only for document preparation. Other examples include, flood certifications to insure that a property is not in a flood zone and tax service fees which verify that the borrower pays their property taxes. This is particularly important for loans subject to the consumer credit code because escrow accounts for the payment of taxes are typically not set up.

In summary, the proposed amendment recognizes the evolving nature of consumer lending while at the same time protecting consumers by stipulating that closing costs must be payable to unrelated third parties. Furthermore, the proposed amendment will alleviate compliance problems and make the UCCC conform with the charging of closing costs under federal Truth-in-Lending Regulation Z. This makes sense for lenders and consumers.



Matthew S. Goddard, Vice President

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

To: House Financial Institutions and Insurance Committee

From: Matthew Goddard
Heartland Community Bankers Association

Date: March 4, 1996

Re: Senate Bill No. 437

The Heartland Community Bankers Association appreciates the opportunity to appear before the House Committee on Financial Institutions and Insurance in support of SB 437.

This bill would allow consumer lenders to charge a nonrefundable origination fee not to exceed five percent of the amount financed on loans secured by land. At present, state law allows an origination fee of three percent. The bill would also increase the maximum origination fee for loans not backed by a land security from either two percent or \$100 under current law to five percent or \$150.

Increasing what is allowed for an origination fee would be of great benefit to Kansas thrift institutions. Most consumer loans cost in excess of \$100 to originate. This cost is increased if it is backed by land because of the need to hire an appraiser. It is not unusual for origination costs to exceed the fee that is passed on to the customer.

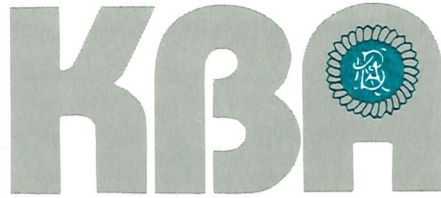
Many of our members offer consumer loans as a service to customers. Our membership has always specialized in mortgage lending and has not become heavily involved in consumer lending. As a result, it is very difficult to "break even" through volume.

This legislation is not about increasing industry profits. It is simply in pursuit of being able to charge the customer what the charge is to the lender, a basic tenet of business. Still, we do not expect many of our members to immediately raise the origination fees they charge to the new legal maximum. The demands of competition in the open marketplace will have a greater influence on what they charge than any legislative actions.

We respectfully request that the House Committee on Financial Institutions and Insurance recommend SB 437 for passage.

Thank you.

House FD
Attachment 3
March 4, 1996



The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

March 4, 1996


TO: House Committee on Financial Institutions and Insurance
RE: **SB 437** - Origination fees on consumer loans

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before the committee in support of **SB 437**. The bill would amend subsections (a) and (b) of subsection (9) of K.S.A. 16a-2-401. That statute is part of the Uniform Consumer Credit Code (UCCC) and is the statute which defines what finance charges and origination fees are allowable under the Code on consumer loans.

The bill increases the nonrefundable origination fee which may be allowed on consumer loans secured by land from 3% to 5% of the amount financed and also increases the allowable nonrefundable origination fee on closed-end credit sales and consumer loans not secured by land from 2% to 5% of the amount financed. The maximum dollar amount for such origination fees on the latter type of loan is moved from \$100 to \$150. These amendments are designed to reflect the inflationary changes which have occurred, since the statute was last amended in 1986 and to also reflect the increased costs of regulatory mandates required of all financial institutions as the result of federal laws and regulations.

We believe the ceilings placed on finance charges and fees runs contrary to what is happening in the marketplace. In today's highly competitive consumer lending environment, institutions would be hard-pressed to sustain their market share if they were imposing maximum rates and fees. What is happening in home equity lending and in credit card lending are classic examples of how the marketplace - not statutory restrictions - determine rates and fees. If you do not believe it is appropriate to remove the restrictions now in place in the UCCC then we do request that the adjustments requested in **SB 437** be adopted.


James S. Maag
Senior Vice President

*House File
Attachment 4
March 4, 1996*

COMMENTS ON SENATE BILLS 417 AND 437
BILL CATON, CONSUMER CREDIT COMMISSIONER
MARCH 4, 1996

S. B. 417 - periodic finance charges on open end credit

- credit card products have this fee
- most open end credit products have similar annual maintenance requirements as credit card products
- this would include bank overdraft protection line-of-credit. This fee would **encourage** banks to offer this product on a wider basis. The current fee and interest structure does not provide sufficient income to offer this product to its customers on a widespread basis. It is viewed as a curtesy product by many bankers and not as a profit center. Overdrafts are **more costly** to consumers than overdraft protection. A typical insufficient returned check can cost:
 - \$12 to \$18 by bank each time the check is presented (usually twice)
 - \$20 to \$30 by the recipient of the check**a \$10 bad check could cost a consumer over \$60 in fees.** Although there is a deterrent factor in these costs, many overdrafts are by decent consumers that have made an error in figuring their balance. The bank has no reason or incentive to review this customer's creditworthiness when a insufficient check has been presented to the bank. An overdraft protection product that provides a reasonable return on bank capital is in the best interest of the consumer. Competition will set the fees and charges: banking is a very competitive business.

S.B. 437 - prepaid finance charges

- My concern on charging prepaid finance charges on "old money" within 6 months of an original loan was addressed satisfactorily by the Senate.
- The increased fee structure will promote the use of closed end loan products. Lenders will be encouraged to make smaller loans. Structured closed end credit usually requires debts to be paid back much faster than credit card or related types of open end credit products. I am very concerned about current consumer trends toward excessive open end credit and the misuse of credit card debt. The lack of availability of small closed end loans contribute to this problem.

I SUPPORT BOTH BILLS AS PRESENTED.

House File 4
Attachment 5
March 4, 1996

TESTIMONY
BILL CATON, CONSUMER CREDIT COMMISSIONER
SENATE BILL No. 411
MARCH 4, 1996

Thank you for the opportunity to testify before you today on Senate Bill 411. I requested introduction of this bill to amend the Kansas Uniform Consumer Credit Code ("UCCC") in several areas. I will briefly describe each amendment in the order they appear in the bill and the reason for requesting the amendment.

As you know, Governor Graves requested all agencies to review all regulations with the intent to drastically reduce the burden of unnecessary and outdated regulations. I have attached my memorandum of June 19, 1995 which sets forth my review of regulations associated with this agency. Three of the four amendments requested in Senate Bill 411 will allow repeal of regulations, which is the desire of the Governor.

The first amendment requested is a new section which starts on line 14 of page one and requires an assignee of a consumer credit contract to post a payment to the contract on the same date it is received by the assignor. This will avoid delayed posting on assigned contracts where the original creditor receives the payment and then forwards the payment on to a subsequent purchaser of the contract. This amendment will allow the repeal of K.A.R. 75-6-4, which requires the same payment posting schedule this amendment would require.

The second request amends the definition of "closing costs" with respect to a debt secured by an interest in land. This amendment starts on line 15 of page two. I have requested this amendment to alleviate a serious compliance problem with lenders in the second mortgage market. This amendment will make the UCCC coincide with closing costs permitted by Federal Truth-In-Lending Regulation Z and K.S.A. 16-207(d) except that it would only allow charges payable to unrelated third parties. The Senate amended this bill to include appraisal fees by the lender or related party as a permissible closing cost at my request.

Discussions with the Kansas Bankers Association revealed that the third party restriction could be a problem with the banking industry. Many rural bankers perform their own property appraisals for various reasons; one of which is the lack of qualified appraisers in rural areas. It is appropriate to allow reasonable charges for this "in-house" service, so I prepared an additional amendment that would allow such charges. The Senate adopted this amendment in Senate Bill 411. I am reluctant to permit "in-house" charges other than for appraisal fees. I also intend to issue an administrative interpretation to determine "reasonable" if abuses develop.

I am confident this will alleviate the compliance problem within the industry. The violation most noted in our compliance examinations is the charging of a "closing fee" which is usually payable to a title insurance company acting as closing agent. Most mortgage lenders that do not have a physical office near the borrower use third party closing agents to close real estate loans. This is not permitted under current statute. Most of these charges are valid and reasonable. I have often seen these costs offset by higher finance charges. I believe that continuity with other laws, both federal

House File D
Attachment 6
March 4, 1996

and state, is compelling enough reason to justify this amendment request.

The third amendment is found on lines 22 and 23 of page 8. This amendment reflects the current index that is used in determining the dollar amount applied to maximum allowable interest rates. This will allow the repeal of K.A.R. 75-6-25 which addresses this subject. In 1978, the Federal Reserve System began publishing a more comprehensive consumer index and the administrator at that time decided to use the updated index. Future changes in the index are not contemplated, and I believe it is appropriate the statute should reflect the actual index used in the formula.

The fourth and final amendment request begins on line 33 of page 9. This will allow the repeal of K.A.R. 75-6-10 which is a very convoluted and difficult to understand regulation. This amendment does not alter the current concept that a creditor is not allowed to "compound" late charges if the consumer misses one payment but pays the others on time.

In conclusion, Senate Bill 411, if enacted, will allow the repeal of three regulations and provide more uniform compliance standards on second mortgage loans. I respectfully request favorable consideration of this bill.



KANSAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

Bill Graves
Governor

Wm. F. Caton
Commissioner

MEMORANDUM

TO: Brent Anderson, Governor's Counsel

FROM: Wm. F. Caton, Commissioner 

DATE: June 19, 1995

RE: Rules and Regulations

The Kansas Uniform Consumer Credit Code (UCCC) is presently affected by 19 relatively short rules and regulations, many of which were adopted in 1974 subsequent to the passage of the UCCC. A review of each regulation follows with a recommendation to retain, repeal or amend the regulation or amend statute in order to delete a regulation.

KAR 75-6-1. Making transactions outside of the scope of the Kansas uniform consumer credit code subject to same. - This regulation clarifies that if both the lender and borrower agree to make a transaction subject to the UCCC which normally is not subject to the UCCC, no additional signatures are required if the contract contains admitting language.
Recommendation: Retain as is.

KAR 75-6-2. Finance charges, actuarial method. - KSA 16a-1-301(1) stipulates the actuarial method be defined in rules and regulations to maintain flexibility as new financial products are utilized by the industry and federal Truth-in-Lending regulations (Reg. Z) are amended from time to time.
Recommendation: Retain as is.

KAR 75-6-3. Precomputed finance charges. - The UCCC was amended in 1993 to prohibit the use of precomputed contracts due to isolated abuse by lenders who took advantage of the computation method which penalized consumers in certain instances. This amendment affects several regulations which can be repealed. Existing precomputed contracts would still be subject to these regulations which were in effect at the time the contract was executed prior to 1994.
Recommendation: Repeal entire regulation.

KAR 75-6-4. Payments received by the assignor. - This regulation requires creditors to post payments the same day payment is received from the consumer. The reference to KSA 16a-2-201(4) should be 16a-3-203 to be more accurate. The UCCC and Reg. Z are silent on closed end transactions as to when payments should be posted to a consumer's account. Although I am not aware of any past or present problems in this area, a regulation or statute clarifying this topic is appropriate.
Recommendation: Amend KSA 16a-2-201(4) and 16a-2-401(4) to include the requirement of same day posting of payments and repeal entire regulation.

KAR 75-6-6. Computation of time. - This regulation is necessary to accurately define this computation. This regulation was recently amended to reflect current statutes.
Recommendation: Retain as is.

Mr. Brent Anderson
June 19, 1995
Page 2

KAR 75-6-7. Annual percentage rate-computation of charges. KSA 16a-2-201 is silent to the use of a single interest rate that incorporates the statutorily allowed multiple step interest rates, whereas KSA 16a-2-401 specifically permits the use of a single interest rates. This regulation was adopted in 1975 to clarify this inconsistency. Interpretation of the statute is relatively straight forward and probably does not need additional clarification.
Recommendation: Repeal entire regulation.

KAR 75-6-8. Record retention-date of final entry. - The "date of final entry" was expanded in this regulation and could be interpreted to be redundant. This office has had no significant problems regarding record retention to date and I do not anticipate future problems.
Recommendation: Repeal entire regulation.

KAR 75-6-9. Additional charges. - This regulation was adopted in 1975 and amended in 1985 to prohibit creditors from charging consumers for certain items and excluding them from the "finance charge" and including them in "other charges" that the creditor performed or a related party performed. This regulation is now inconsistent with Reg. Z as federal law allows this practice. However, Reg. Z is only addressing disclosure and states are permitted to govern allowable charges. This regulation should be retained for the consumers' protection.
Recommendation: Retain as is.

KAR 75-6-10. Current installment. - The definition of a "current installment" with respect to delinquency charges is clarified in this regulation. A simple amendment to KSA 16a-2-502(1) to clarify payment timing in the statute would alleviate the need for this regulation.
Recommendation: Amend KSA 16a-2-502(1) and repeal entire regulation.

KAR 75-6-11. Conversion of precomputed loan to interest bearing basis. - Precomputed contracts are no longer permitted and this regulation is no longer necessary.
Recommendation: Repeal entire regulation.

KAR 75-6-16. Deficiency balance. - The definition of "commercial unit of goods" is already defined in KSA 84-2-105(6) and it is reasonable to refer to that definition in the absence of an additional definition.
Recommendation: Repeal entire regulation.

KAR 75-6-17. Date of notice to cure default and date the notice to consumer begins. - A clarification of whether a creditor could count the mailing date as one of the 20 required days for the right to cure was the purpose for this regulation. I cannot recall of any situation where a creditor exercised their cure rights on the 20th day; it is typically resolved before the 20th day and if not resolved, one day is not going to make a significant difference.
Recommendation: Repeal entire regulation.

KAR 75-6-18. Fraudulent conduct. - Federal Truth-in-Lending and Truth-in-Leasing regulations (Reg. Z and Reg. M) now adequately address advertising requirements for lenders regarding disclosure of pertinent information. The UCCC is updated to reflect current federal regulations when KAR 75-6-26 is updated.
Recommendation: Repeal entire regulation.

KAR 75-6-23. No assignment of earnings. - Payroll deduction authorization for periodic payments is required to be on a separate form signed by the borrower by this regulation. It prohibits any authorization from being embedded or concealed in small print on the contract. Although I am

Mr. Brent Anderson
June 19, 1995
Page 3

not aware of any current problems in this area, I believe this is good consumer protection and should be continued.

Recommendation: Retain as is.

KAR 75-6-24. Adjustment in dollar amounts. - This regulation is the mechanism required by statute to adjust the dollar amounts used in determining maximum allowable finance charges.

Recommendation: Retain as is.

KAR 75-6-25. Change in reference base index. - A more comprehensive base index which included data that represented considerably more consumers was published by the Federal Reserve System in 1978 and the Consumer Credit Commissioner at that time opted to use the expanded consumer price index to formulate any adjustments in the dollar amounts used in determining maximum allowable finance charges. A simple amendment to the statute to specify the new index instead of the old one would alleviate the need for this regulation.

Recommendation: Amend KSA 16a-2-401a(1) and repeal entire regulation.

KAR 75-6-26. Federal truth-in-lending act requirements. - Statute mandates disclosure requirements to remain synonymous with Federal Truth-in-Lending Regulation Z and Regulation M to avoid confusing discrepancies for both the lender and consumer.

Recommendation: Retain as is.

KAR 75-6-29. Refunding precomputed installment contracts made on and after July 1, 1988. Precomputed contracts are no longer permitted under the UCCC and this regulation can be deleted.

Recommendation: Repeal entire regulation.

KAR 104-1-2. Adjustable rate notes secured by a real estate mortgage or a contract for deed to real estate. - This is a joint regulation by the Consumer Credit Commissioner, Credit Union Administrator, Savings and Loan Commissioner (now non-existent) and the Bank Commissioner regarding adjustable rate loans on real estate mortgages. It clarifies KSA 16-207b which was enacted long before adjustable rate mortgages were utilized.

Recommendation: Retain as is.

This concludes the review of all the regulations affecting this agency. If the Governor concurs with these recommendations, several regulations can be eliminated and relatively simple amendments can be made to statutes. To simplify the process and avoid multiple hearings before the Legislative committees, I would suggest that a bill be introduced to the 1996 Legislature and then repeal the recommended regulations if the bill is passed and signed by the Governor. Please contact me if you have any questions during your review. I will not proceed until an appropriate response is received from the Governor's office.

WFC:dr

The Kansas Association of Financial Services

George Barbee, Executive Director
Jayhawk Tower, 700 SW Jackson, Suite 702
Topeka, KS 66603-3758

913/233-0555

Fax: 913/357-6629

Statement to
House Committee on Financial Institutions and Insurance
on Senate Bill-411
Monday, March 4, 1996

Mr. Chairman and members of the committee, my name is George Barbee, Executive Director of the Kansas Association of Financial Services.

I appreciate the opportunity to appear in support of Senate Bill-411 which would simplify a very confusing part of the Uniform Commercial Credit Code relating to the charge of fees to recover costs of making loans secured by real estate. Specifically, closing costs.

Closing costs are defined in 16a-1-301-(7) beginning with line 16 of page two in the bill. While a closing cost is defined, a closing fee is not defined, and therefore not allowed even though the consumer finance lender is paying a closing fee to a third party, usually a title insurance company, to perform the actual closing of the loan.

The amendment proposed by Commissioner Caton would clear up this confusion on compliance by allowing "reasonable expenses."

The Kansas Association of Financial Services representatives have discussed this amendment with Commissioner Caton and we are comfortable that he will exercise his responsibility to the consumer in determining reasonableness if third parties are erratic in their fee schedules.

In regard to the proposed amendment on this subject, we would seldom use our own appraisers or closing agents, but we do consider this a friendly amendment and it is supported by KAFS.

It should be noted that while this amendment clears up some confusion, the industry is giving up the current authority to recover some cost of performing some services in house by being restricted to third party pass through fees. Please keep this in mind when you are working SB-437.

We view the other amendments as printed in SB-411 to meet the directives of the Governor to the Commissioner and we support those as well.

Thank you for the opportunity to appear in support of this bill as we urge you to report it favorably. I would be glad to stand for questions, should there be any.



Matthew S. Goddard, Vice President

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

To: House Financial Institutions and Insurance Committee

From: Matthew Goddard
Heartland Community Bankers Association

Date: March 4, 1996

Re: Senate Bill No. 411

The Heartland Community Bankers Association appreciates the opportunity to appear before the House Committee on Financial Institutions and Insurance in support of SB 411.

This bill would bring about greater conformity to similar provisions of state law when describing what closing costs for a loan may be charged to the borrower. Credit items such as second mortgages are covered by KSA 16a-1-301 (7), dealing with closing costs for debts secured with a land interest. Without SB 411, this section offers a delineated list of eight items that may be assessed as closing costs.

The language contained in KSA 16-207 (d) is more appropriate for the task of assessing legitimate closing costs to the borrower. The law allows collection of the actual fees paid to a government entity and reasonable expenses incurred by the lender.

Consumers are protected in SB 411 by the requirement that any assessed "reasonable expenses" must be payable to a third party unrelated to the lender. The lone exception to this is in the case of appraisals.

The bill also safeguards borrowers by requiring that delinquent payments made prior to the due date of the next installment be applied to the previous, delinquent payment. A majority of our members already follow this practice.

We respectfully request that the House Committee on Financial Institutions and Insurance recommend SB 411 for passage.

Thank you.

House F&I

Attachment 8

March 4, 1996

Kansas
Credit
Union
Association

Testimony on SB 411
AN ACT concerning the UCCC

Presented to the
House Committee on Financial Institutions and Insurance
March 4, 1996

Mr. Chairman and members of the Committee:

I am Danielle Noe and I am the Governmental Affairs Director for the Kansas Credit Union Association. Our association represents 160 credit unions who sever more than 600,000 members.

We are here today in support of SB 411.

SB 411 makes several clarifications to the Uniform Consumer Credit Code. The first change found in Section 1, would clarify that if a creditor assigns a debt, but continues to service the debt (i.e. accept the payment for the debt), the date of payment is the date the payment is recieved by the creditor, not the date the creditor sends the payment to the assignee. This language would prevent the consumer from being penalized for making the payments on time, even though the payment is not received by the assignee on the due date.

SB 411 would also remove the list of specific costs that can be considered as closing costs. The new language would allow actual fees paid to public officials and state or federal agencies and reasonable other expenses paid to other third parties. The new language would allow for flexibility in determining closing costs which can be charged in connection to a debt secured with an interest in land. The UCCC allows financial institutions to recoup actual costs associated with fees charged by third parties.

816 SW Tyler
Topeka, KS 66612
(913) 232-2446
(913) 232-2730 fax

8410 W. Kellogg
Wichita, KS 67209

P.O. Box 757
Dodge City, KS
67801

Haver F. D. D.
Attachment 9
March 4, 1996

Finally, section 4 relates to how a payment should be applied when there is a delinquency. SB 411 would clarify that when a payment is made prior to the due date of the next installment, the payment shall be applied to the previous installment, in order to determine when delinquency charges apply. The change in Section 4 will simply clarify what is already occurring in financial institutions. In addition, many credit unions have not been charging a delinquency fee because their data systems could not determine how to apply a payment. In order to track delinquency fees, it is done manually by many credit unions. This clarification should allow most data systems to be programmed to charge fees when there is a delinquency.

Mr. Chairman, we thank you for the opportunity to testify and urge you to vote favorably on the passage of SB 411.

The Kansas Association of Financial Services

George Barbee, Executive Director
Jayhawk Tower, 700 SW Jackson, Suite 702
Topeka, KS 66603-3758

913/233-0555

Fax: 913/357-6629

Statement to
House Committee on Financial Institutions and Insurance
on Senate Bill-417
Monday, March 4, 1996

Mr. Chairman and members of the committee, my name is George Barbee and I am representing the Kansas Association of Financial Services. The members of KAFS are familiar names, such as Beneficial, Associates, Norwest, American General, Household, and more.

I appreciate the opportunity today to appear in support of Senate Bill-417 which has been suggested by the Kansas Bankers Association.

Equity loans secured by land are very popular in the lending industry. Consumer finance companies frequently make these loans on an open ended basis. The borrower is allowed a credit line, based on the equity in their real estate. The lender issues checks to the borrower who can draw amounts at their discretion and make payments on the balance, much the same as a credit card. Rates on these loans can be fixed or a varying adjusted fee.

This is the consumer finance industry's method of competing with credit card companies. However, credit card companies are allowed to charge an annual fee for the use of their credit cards.

These open end lines of credit require a great deal of annual maintenance, such as possible annual adjusting of rates and sending monthly billings as loan balances vary. Prudent lenders are making annual credit checks on the borrower as the loan balances increase. This bill would simply allow Kansas lenders to have the same fee privilege as do credit card companies.

We believe that competition will set the amount of fees, if any, the same as it is with credit card fees. As you know, some credit cards charge no fees while others, such as platinum cards, charge hundreds of dollars annually.

Mr. Chairman we appreciate the opportunity to voice our support for this measure and urge you to report Senate Bill-417 favorably.

George Barbee
Attachment 10

Kansas
Credit
Union
Association

Testimony on SB 417

AN ACT concerning certain charges on consumer credit sales

Presented to the

House Committee on Financial Institutions and Insurance

March 4, 1996

Mr. Chairman and members of the Committee:

I am Danielle Noe and I am the Governmental Affairs Director for the Kansas Credit Union Association. Our association represents 160 credit unions who serve more than 600,000 members.

Credit unions process a significant amount of open end accounts. Lines of credit, overdraft protection, home equity loans, and credit cards are just a few of the types of open end credit accounts offered by credit unions. Two of the most frequent questions we receive about open end lending is "Can I charge an annual fee?" and "Why not?"

SB 417 would allow lenders to charge annual fees on open end accounts.

Currently, the only type of open end account which is allowed to charge an annual fee is a credit card. SB 417 would allow lenders to cover the costs associated with keeping a revolving account available. Open end accounts have costs not

816 SW Tyler
Topeka, KS 66612
(913) 232-2446
(913) 232-2730 fax

8410 W. Kellogg
Wichita, KS 67209

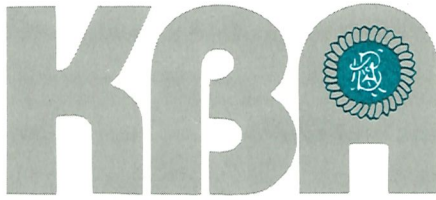
P.O. Box 757
Dodge City, KS
67801

*Hansen, F.D.S.
Attachment 11
March 4, 1996*

associated with closed end lending. For example, every time an advance is taken on the account there is time and paperwork involved. The costs associated with taking an advance cannot be charged to the consumer.

We believe that the ability to recover the costs associated with open end accounts will encourage more financial institutions to offer such accounts to their consumers. We ask that you act favorably on SB 417.

Thank you again for the opportunity to testify on SB 417.



The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

March 4, 1996

TO: House Committee on Financial Institutions and Insurance

RE: **SB 417**

The Kansas Bankers Association appreciates the opportunity to appear in support of **SB 417**. This legislative proposal will allow financial institutions to recoup some of the costs associated with offering open-end consumer credit.

The KBA proposed a similar bill in 1992 (HB 2746). This bill passed both the Senate and the House of Representatives, but was vetoed by the Governor.

As you know, consumer credit transactions are covered by the Uniform Consumer Credit Code (UCCC). Under the consumer protection provisions of the UCCC, a financial institution is allowed to collect interest from its customer in exchange for the use of the loaned money. The UCCC also provides that certain other "additional charges" may be collected by the financial institution in connection with a consumer credit transaction.

These additional charges are found in KSA 16a-2-501. **SB 417** would amend subsection (1)(c). This subsection has long been the center of some controversy among bank counsel. Some bank attorneys have interpreted that section to mean that only in the case of credit cards, could additional charges be collected for cash advances, going over the credit limit and an annual or monthly fee. It hardly seems reasonable that the drafters of this legislation intended for financial institutions to be able to recoup such costs of lending only for one type of open-end credit - credit card operations.

On the other hand, 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 on other types of consumer credit transactions. We believe this legislation is needed to clarify the matter.

The 1992 version of this proposal was very specific. At that time, many financial institutions had begun offering a fairly new type of open-end credit referred to as "overdraft protection open-end credit lines". Essentially, the institution and the customer enter into an agreement that when the customer overdraws his or her 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. Those customers not wishing to participate simply do not.

*House File
Attachment 12
March 4, 1996*

SB 417
Page Two

With the current language of the UCCC, there is no clear provision to allow a financial institution to recoup the costs associated with overdraft protection open-end credit lines. For example, there are costs involved in setting up such an account, plus the costs involved each time 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 same is true of other types of open-end credit in that every time the credit card or open account is accessed, costs are involved.

SB 417 eliminates the language in KSA 16a-2-501(1)(c) which has caused the conflicting interpretations. As amended by the Senate Committee, the fees listed in this subsection would be available only for customers who choose to maintain an open-end credit account.

In conclusion, we urge you to vote favorably on the passage of **SB 417**. Please keep in mind that this bill does **not** represent a mandatory fee of increase in fees for all bank customers. It would simply allow a financial institution to recover the costs associated with offering open-end consumer credit to its customers who **choose** to have it.

Kathleen A. Taylor
Associate General Counsel



Matthew S. Goddard, Vice President

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

To: House Financial Institutions and Insurance Committee

From: Matthew Goddard
Heartland Community Bankers Association

Date: March 4, 1996

Re: Senate Bill No. 417

The Heartland Community Bankers Association appreciates the opportunity to appear before the House Committee on Financial Institutions and Insurance in support of SB 417.

This bill would allow financial institutions to charge certain fees in connection with open-end lines of credit. As it is now written, K.S.A. 16a-2-501 allows these fees only when a lender credit card is involved.

Few, if any, Kansas savings institutions currently offer open-end lines of credit. This legislation would allow Kansas savings institutions who offer the service to charge a nominal monthly or annual fee. More institutions would consider and possibly make them available as a customer service if they were allowed to assess fees in order to offset the expense of maintaining these accounts. While the incurred costs vary from institution to institution, they generally include mailing and handling costs, monthly line-usage statements and annual interest statements.

We respectfully request that the House Committee on Financial Institutions and Insurance recommend SB 417 for passage.

Thank you.

*House FID
Attachment 13
March 4, 1996*

COMMENTS ON SENATE BILLS 417 AND 437
BILL CATON, CONSUMER CREDIT COMMISSIONER
MARCH 4, 1996

S. B. 417 - periodic finance charges on open end credit

- credit card products have this fee
- most open end credit products have similar annual maintenance requirements as credit card products
- this would include bank overdraft protection line-of-credit. This fee would **encourage** banks to offer this product on a wider basis. The current fee and interest structure does not provide sufficient income to offer this product to its customers on a widespread basis. It is viewed as a curtesy product by many bankers and not as a profit center. Overdrafts are **more costly** to consumers than overdraft protection. A typical insufficient returned check can cost:
 - \$12 to \$18 by bank each time the check is presented (usually twice)
 - \$20 to \$30 by the recipient of the check**a \$10 bad check could cost a consumer over \$60 in fees.** Although there is a deterrent factor in these costs, many overdrafts are by decent consumers that have made an error in figuring their balance. The bank has no reason or incentive to review this customer's creditworthiness when a insufficient check has been presented to the bank. An overdraft protection product that provides a reasonable return on bank capital is in the best interest of the consumer. Competition will set the fees and charges: banking is a very competitive business.

S.B. 437 - prepaid finance charges

- My concern on charging prepaid finance charges on "old money" within 6 months of an original loan was addressed satisfactorily by the Senate.
- The increased fee structure will promote the use of closed end loan products. Lenders will be encouraged to make smaller loans. Structured closed end credit usually requires debts to be paid back much faster than credit card or related types of open end credit products. I am very concerned about current consumer trends toward excessive open end credit and the misuse of credit card debt. The lack of availability of small closed end loans contribute to this problem.

I SUPPORT BOTH BILLS AS PRESENTED.

Hause F.D.D.
Attachment 14
March 4, 1996