

Approved: February 10, 1998
Date

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS.

The meeting was called to order by Chairperson Ray Cox at 3:30 p.m. on February 3, 1998 in Room 527-S of the Capitol.

All members were present except:

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

Conferees appearing before the committee: None

Others attending: See attached list

The chairman opened the discussion on **HB 2718 - Regulation of Securities, definition.**

Dr. Wolff gave an overview of the changes. On page 1, line 22, some language is being streamlined. Rather than making reference to each of those separate subsections, they were all included by changing the language to say "this does not include an individual who represented an issuer only in transactions in securities exempted by". It has the effect of picking up one subsection. On page 3, there's just some clean-up language on line 33 and 34, it explains who regulates the different categories of investment advisors depending upon the dollar amount of the investments they manage. The top of page 4 has a further clarification for the definition of "investment adviser representative", which was not included in last year's bill, is being added here. In sections 2 and 3 there is a clarifying rewrite of the introductory sentence to make it clear that we are really only exempting transactions and securities by those sections, not everything else as well.

Representative Hayzlett made a motion to pass the bill and have it placed on the consent calendar. Representative Findley seconded the motion. The motion carried.

The chairman said that **HB 2702** would not be worked as Representative Carmody had informed him that this is being taken care of in a judiciary bill, of a greater magnitude, on trusts. He said the committee would just wait and see what transpired in that committee.

The chairman opened the discussion on **HB 2703 - Access devices, unauthorized transactions, notice.**

Dr. Wolff said that there are basically 2 issues involved as the bill is drafted now. First the term "machine readable instruments" is changed to "access device". The second change is that a third tier is being added to the penalty for failure to give notice of lost or misplaced cards. The first tier is \$50, second tier is up to \$300, and a third tier adds that if after 60 days you've still not given notice, then you will be responsible for all of the losses attributable to that card from the 61st day forward.

Bruce Kinzie handed out a balloon on the bill which really only does two things of significance. First, it makes the savings and loans statutes correspond to the banking statutes. The second change is the addition of the provision "If the consumer's delay is due to extenuating circumstances, the institution shall extend the times specified above to a reasonable period." So, it requires them to extend the 60 day period to a reasonable period. **(Attachment 1)**

Representative Dillon asked if there was a definition of reasonable. Bruce answered no, it's left wide open which is exactly what Reg E does.

Representative Welshimer stated concern that the second provision overrides the exclusions in Reg E for

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sickness or extensive travel. The banks are insured and the volume is small. She doesn't think that there's enough of a problem that we need this bill.

Representative Campbell questioned the unlimited amount of restitution after the 60 days, wanting to know if the liability can go over a person's credit limit. Dr. Wolff said the issue then becomes whether you have an extension on your line of credit on your account, or if you have a backup credit card on the card, or whatever.

Representative Ray asked if the amount of liability wouldn't be limited to the credit limits on a backup credit card. Dr. Wolff agreed that it depended on whatever line of credit you have established.

Representative Burroughs asked what you'd do when you tried to make notification of a lost or misplaced credit card and could only receive voice mail and can't get to a person. Matthew Goddard stated that under the law, especially Reg E, you just have to notify the institution; it's their responsibility to get the report to the correct person. Representative Ray asked what kind of proof you'd have that you told a machine or a person. Mr. Goddard recommended that you ask for confirmation in writing, even though legally all that is required is that you notify the institution. Representative Correll said that the Committee was hearing this but asked how we would get the word out to the public. Mr. Goddard said he thought it would be a rare situation where the notification would get lost. He would hope that most institutions would be responsible enough to notify the correct person.

Representative Gregory questioned Dr. Wolff as to whether this includes savings and loans and still excludes credit unions. Dr. Wolff said that was correct and advised that there has never been a corresponding statute that covered credit unions. Bruce Kinzie said we could add anyone we wanted to, to the statute, credit unions, companies who issued credit cards, etc.

Chuck Stones stated that he could probably come up with a worst case scenario, where someone might fall through the crack. But he thinks that in a court of law if someone stated that they called a certain institution on a certain day at a certain time to notify them, it would stand up in a court of law. He thinks the real point of the bill is personal responsibility. He thinks that if people don't balance their checkbooks and do not notify the institutions within 60 day, they are being financially irresponsible, and those cases do not warrant the loss to the institution and cost to other customers. That's the whole point of the bill.

Representative Welshimer said if the occurrences were as rare as what was presented at the hearing of the bill, and the institutions had insurance, she didn't see how the loss could be so great. She wanted to know where the real numbers were to show why the bill was necessary. Representative Cox asked Mr. Stone what the real loss was. Mr. Stone said they didn't track those numbers, they would have to call every institution in the state. They are only aware of the volume when people call into the legal department asking what regulation they are to follow.

Representative Burroughs brought the committee's attention to the testimony given last week by Matthew Goddard. The volume is quite small at savings and loans institutions.

Representative Humerickhouse pointed out that changing the period of time the customer has to notify, to a reasonable period, allows the institution to be more lenient to the customer.

Representative Burroughs made a motion to put the amendments, in the balloon, into the bill. The motion was seconded by Representative Dreher. The motion carried.

Representative Correll moved the bill be passed favorably as amended. Representative Ruby Gilbert seconded the motion.

Representative Campbell brought up the subject of adding the credit unions to the bill. Representative Cox said they hadn't asked, and asked why would we want to add them in? Representative Campbell said the bill referred to financial institutions and for the general public who banks at credit unions, that's their financial institution. From a policy standpoint, if we're doing this for banks and savings and loans, why not do this for credit unions. Representative Cox asked Dr. Wolff what regulation the credit union fell under now. Dr. Wolff said Reg E. A representative pointed out that we are bringing state law, which covers banks and savings and loans companies, into line with Reg E, so why would it be necessary. Bruce pointed out that we weren't bringing them completely into line with Reg E, the main difference is that back in 1975, when Reg E went into effect, it provided for the states to be more consumer friendly in some areas, one being the amount of liability. Representative Cox said he hated to throw them in without them coming to testify that they wanted to be included.

Representative Welshimer said that she thought the committee was saying that the amendments made the bill

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consumer friendly but it was absolutely not for the consumer. Representative Cox asked her to explain. Representative Welshimer said that the national banks as well as the state banks have been following the state law, which is more lenient than the federal law allows, and no one has been hurt more than \$500. Now, we're pulling the rug right out from under it. There will be no protection for someone who is unaware.

Matthew Goddard clarified that the bill does not require that you report the lost or misplaced card within 60 days. All it says is that after 60 days, if any further financial loses occur you are responsible.

Representative Ray asked if it were correct that under current state law, \$300 was the maximum amount a person could be liable for and that under the proposed law there is no maximum amount of liability. Representative Cox agreed with the statement but said it was not the amendment that does that, it was the bill. He said it was basically not a consumer bill but it was one of taking financial responsibility. If the committee wants to vote it down fine, if it wants to vote it in fine. Whatever the committee decides. But we have the balloon in it now.

Representative Campbell asked why the credit union wouldn't be a part of it. Representative Cox said they haven't express a desire to be a part of it. He said he hates to put them in when they have failed to express a desire to be a part of it. He said if it passes out here and they want to be a part of it, they can go to the Senate with the request.

A vote was taken on the motion. The motion carried with Representative Welshimer voting no.

Representative Grant made a motion to approve the minutes of the January 29, 1998 meeting. Representative Geringer seconded the motion. The motion carried.

The meeting adjourned at 4:04 p.m.

The next meeting is scheduled for February 5, 1998.

HOUSE BILL No. 2703

By Committee on Financial Institutions

1-23

9 AN ACT concerning ~~banks and banking~~ relating to access devices; unau-
10 thorized transactions; notice; amending ~~K.S.A. 1997 Supp. 9-1111d~~
11 and repealing the existing ~~sections~~.

financial institutions

K.S.A. 17-5569 and 17-5570 and

9-1111 and

sections

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

14 ~~Section 1~~ K.S.A. 1997 Supp. ~~9-1111d~~ is hereby amended to read as
15 follows: 9-1111d. (a) The amount of a depositor's liability for an unau-
16 thorized transaction or a series of unauthorized transactions by a machine
17 readable instrument ~~an access device~~ shall not exceed \$50, unless the
18 depositor fails to notify the bank within four business days after learning
19 of the loss or theft of the ~~machine readable instrument access device~~, then
20 the depositor's liability shall not exceed \$300, *except that if the depositor*
21 *fails to notify the bank of the unauthorized transaction or series of unau-*
22 *thorized transactions by an access device that appears on a periodic state-*
23 *ment within 60 days of the bank's transmittal of the statement, the de-*
24 *positor's liability shall not exceed the amount of the unauthorized*
25 *transactions that occur after the close of the 60 days and before notice to*
26 *the bank and that the bank establishes would not have occurred ~~had~~ the*
27 *depositor notified the bank within the 60-day period.*

Insert Section 1 (See attached)

Sec. 2.

had

28 (b) For purposes of this section:

29 (1) "Unauthorized transaction by a machine readable instrument ~~an~~
30 ~~access device~~" means an electronic fund transfer initiated by an access
31 device from a depositor's account initiated by a person other than the
32 depositor without actual authority to initiate the transfer and from which
33 the depositor receives no benefit. The term does not include any elec-
34 tronic fund transfer: (A) Initiated by a person who was furnished with the
35 access device to the depositor's account by the depositor, unless the de-
36 positor has notified the bank involved that transfers by that person are
37 no longer authorized; (B) initiated with fraudulent intent by the depositor
38 or any person acting in concert with the depositor; or (C) that is initiated
39 by the bank or its employees.

If the consumer's delay in notifying the
financial institution was due to extenuating
circumstances, the institution shall extend the
times specified above to a reasonable period.

40 (2) "To notify the bank" means a depositor takes such steps as are
41 reasonably necessary to provide the bank with the pertinent information,
42 whether or not any particular officer, employee or agent of the financial
43 institution does in fact receive the information. Notice may be given to

Bank

Bank

Savings & Loan

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1 the bank, at the depositor's option, in person, by telephone or in writing.
 2 Notice in writing is considered given at the time the depositor deposits
 3 the notice in the mail or delivers the notice for transmission by any other
 4 usual means to the bank. Notice is also considered given when the bank
 5 becomes aware of circumstances that lead to the reasonable belief that
 6 an unauthorized electronic fund transfer involving the depositor's account
 7 has been or may be made.

8 (3) "Access device" means a card, code or other means of access to a
 9 depositor's account, or any combination thereof, that may be used by the
 10 depositor to initiate electronic fund transfers.

11 Sec. ~~2-7~~ K.S.A. ~~1997 Supp. 9-1111d~~ is hereby repealed.
 12 Sec. ~~3-7~~ This act shall take effect and be in force from and after its
 13 publication in the statute book.

Insert Sections 3 and 4 (See attached)

5.

6.

17-5569 and 17-5570 and K.S.A. 1997 Supp.
 9-1111 and 9-1111d are



1-2

Section 1. K. A. 1997 Supp. 9-1111 is hereby amended to read as follows: 9-1111. The general business of every bank shall be transacted at the place of business specified in its certificate of authority and at one or more branch banks established and operated as provided in this section. Except for the establishment or operation of a trust branch bank or the relocation of an existing trust branch bank pursuant to K.S.A. 1997 Supp. 9-1135 and amendments thereto, it shall be unlawful for any bank to establish and operate any branch bank or relocate an existing branch bank except as hereinafter provided. Notwithstanding the provisions of this section, any location at which a depository institution, as defined by K.S.A. 9-701 and amendments thereto, receives deposits, renews time deposits, closes loans, services loans or receives payments on loans or other obligations, as agent, for a bank pursuant to subsection (25) of K.S.A. 9-1101 and amendments thereto or other applicable state or federal law, or is authorized to open accounts or ~~receive deposits under subsection (28) of K.S.A. 9-1101,~~ and amendments thereto, shall not be deemed to be a branch bank:

(a) For the purposes of this section, the term "branch bank" means any office, agency or other place of business located within this state, other than the place of business specified in the bank's certificate of authority, at which deposits are received, checks paid, money lent or trust authority exercised, if approval has been granted by the state bank commissioner, under K.S.A. 9-1602, and amendments thereto;

(b) after first applying for and obtaining the approval of the state banking board, one or more branch banks may be established and operated anywhere within this state by a bank incorporated under the laws of this state;

(c) an application to establish and operate a branch bank or to relocate an existing branch bank shall be in such form and contain such information as the rules and regulations of the state bank commissioner, adopted pursuant to K.S.A. 9-1713, and amendments thereto, shall provide;

(d) the application shall include estimates of the annual income and expenses of the proposed branch bank, the annual volume of business to be transacted by it, the nature of the banking business to be conducted at the proposed branch bank, the primary geographical area to be served by it and the personnel and office facilities to be provided at the proposed branch bank;

(e) the application shall include the name selected for the proposed branch bank. The name selected for the proposed branch bank shall not be the name of any other bank or branch bank doing business in the same city or town nor shall the name selected be required to contain the name of the applicant bank. If the name selected for the proposed bank does not contain the name of the applicant bank, the branch bank shall provide in the public lobby of such branch bank, a public notice that it is a branch bank of the applicant bank;

(f) the application shall include an affidavit of publication of notice that applicant bank intends to file an application to establish a branch bank or relocate an existing branch bank. The notice shall be published in a newspaper of general circulation in the county where the applicant bank proposes to locate the branch bank. The notice shall be in the form prescribed by the state banking board and at a minimum shall

contain, the name and address of the applicant bank, the location of the proposed branch, a solicitation for written comments concerning the proposed branch be submitted to the state banking board, and provide for a comment period of not less than 10 days prior to the board's final consideration of the application;

(g) upon receipt of an application meeting the above requirements, if there is any written objection to the application filed with the board, within 60 days after receipt of the application, the state banking board shall hold a hearing in the county in which the applicant bank seeks to establish and operate a branch bank. If there is no written objection filed with the board within the time period specified under subsection (f), the board may hold a hearing on the application in such county. Notice of the time, date and place of such hearing if one is to be held shall be published in a newspaper of general circulation in such county by the bank seeking to establish and operate the branch bank not less than 10 or more than 30 days ~~prior to the date of the hearing~~, and an affidavit of publication thereof shall be filed with the commissioner. Not less than 10 days or more than 30 days prior to any such date of the hearing, the commissioner shall give notice of the time, date and place of such hearing by registered or certified mail to all banks and national banking associations having their principal places of business or branch banks in the county wherein the applicant bank seeks to locate a branch bank. At any such hearing, all interested persons shall be allowed to present written and oral evidence to the board in support of or in opposition to the application. Upon completion of a transcript of the testimony given at any such hearing, the transcript shall be filed in the office of the commissioner and copies shall be furnished to the members of the state banking board not less than 14 days prior to the meeting of the board at which the application will be considered;

(h) the state banking board shall approve or disapprove the application, within 90 days after consideration of the application and the evidence gathered during the board's investigation. If the board finds that:

(1) There is or will be at the time the branch bank is opened the need for the same in the community to be served by it;

(2) there is a reasonable probability of usefulness and success of the proposed branch bank;

(3) the applicant bank's financial history and condition is sound; and

(4) the proposed branch bank can be established without undue injury to properly conducted existing banks and national banking associations, the application shall be granted, otherwise, the application shall be denied;

(i) any final action of the board approving or disapproving an application shall be subject to review in accordance with the act for judicial review and civil enforcement of agency actions upon the petition of any adversely affected or aggrieved person who appeared and offered evidence at the hearing upon the application;

(j) any branch bank lawfully established and operating on the effective date of this act may continue to be operated by the bank then operating the branch bank and by any successor bank;

(k) branch banks which have been established and are being

maintained by a bank at the time of its merger into or consolidation with another bank or at the time its assets are purchased and its liabilities are assumed by another bank may continue to be operated by the surviving, resulting or purchasing and assuming bank. The surviving, resulting or purchasing and assuming bank, with approval of the state bank commissioner, may establish and operate a branch bank or banks at the site or sites of the merged, constituent or liquidated bank or banks;

(l) any state bank or national banking association having its principal office and main banking house in this state may provide and engage in banking transactions by means of remote service units wherever located, which remote service units shall not be considered to be branch banks authorized herein. Any banking transaction effected by use of a remote service unit shall be deemed to be transacted at a bank and not at a remote service unit;

(m) as a condition to the operation and use of any remote service unit in this state, a state bank or national banking association, each hereinafter referred to as a bank, which desires to operate or enable its customers to utilize a remote service unit must agree that such remote service unit will be available for use by customers of any other bank or banks upon the request of such bank or banks to share its use and the agreement of such bank or banks to share all costs, including a reasonable return on capital expenditures incurred in connection with its development, installation and operation. The owner of the remote service unit, whether a bank or any other person, shall make the remote service unit available for use by other banks and their customers on a nondiscriminatory basis, conditioned upon payment of a reasonable proportion of all costs, including a reasonable return on capital expenditures incurred in connection with the development, installation and operation of the remote service unit. Notwithstanding the foregoing provisions of this subsection, a remote service unit located on the property owned or leased by the bank where the principal place of business of a bank, or an attached auxiliary teller facility or branch bank of a bank, is located need not be made available for use by any other bank or banks or customers of any other bank or banks;

(n) for purposes of this section, "remote service unit" means an electronic information processing device, including associated equipment, structures and systems, through or by means of which information relating to financial services rendered to the public is stored and transmitted, whether instantaneously or otherwise, to a bank and which, for activation and account access, is dependent upon the use of ~~a--machine-readable instrument~~ an access device, as defined in K.S.A. 9-1111d, and amendments thereto, in the possession and control of the holder of an account with a bank. The term shall include "online" computer terminals and "offline" automated cash dispensing machines and automated teller machines, but shall not include computer terminals or automated teller machines or automated cash dispensing machines using systems in which account numbers are not machine read and verified. Withdrawals by means of "offline" systems shall not exceed \$300 per transaction and shall be restricted to individual not corporate or commercial accounts.

Sec. 3. K.S.A. 17-5569 is hereby amended (), read as follows (17-5569. The amount of a depositor's liability for an unauthorized transaction or a series of unauthorized transactions by ~~a--machine--readable--instrument~~ an access device shall not exceed \$50, unless the depositor fails to notify the savings and loan association within four business days after learning of the loss or theft of the ~~machine-readable-instrument~~ access device, then the depositor's liability shall not exceed \$300, except that if the depositor fails to notify the savings and loan association of the unauthorized transaction or series of unauthorized transactions by an access device that appears on a periodic statement within 60 days of the savings and loan association's transmittal of the statement, the depositor's liability shall not exceed the amount of the unauthorized transactions that occur after the close of the 60 days and before notice to the savings and loan association and that the savings and loan association establishes would not have occurred had the depositor notified the savings and loan association within the 60-day period. If the consumer's delay in notifying the financial institution was due to extenuating circumstances, the institution shall extend the times specified above to a reasonable period.

Savings & loan
Savings & loan

Sec. 4. K.S.A. 17-5570 is hereby amended to read as follows: 17-5570. For the purposes of this act: (a) ~~The-term~~ "Financial transactions" shall include receiving deposits of every kind and nature, receiving payments payable to the savings and loan association and making withdrawals from the customer's account, but such term shall not include opening an account or initiating a loan.

(b) ~~The-term~~ "Remote service unit" ~~shall--mean~~ means an electronic information processing device, including associated equipment, structures and systems, through or by means of which information relating to financial services rendered to the public is stored and transmitted, whether instantaneously or otherwise, to a savings and loan association and which, for activation and account access, is dependent upon the use of ~~a-machine-readable instrument~~ an access device, other than a passbook, in the possession and control of the holder of an account with a savings and loan association. ~~The--term~~ "Remote service unit" shall include "on-line" computer terminals and "on-line" or "off-line" automated cash dispensing machines and automated teller machines, but shall not include computer terminals, automated cash dispensing machines or automated teller machines using systems in which account numbers are not machine-read and verified.

(c) ~~The-term~~ "Savings and loan association" ~~shall--mean~~ means any state chartered savings and loan association in which deposits are insured or any federally chartered savings and loan association domiciled in this state.

(d) "Unauthorized transaction by an access device" means an electronic fund transfer initiated by an access device from a depositor's account initiated by a person other than the depositor without actual authority to initiate the transfer and from which the depositor receives no benefit. The term does not include any electronic fund transfer: (1) Initiated by a person who was furnished with the access device to the depositor's account by the depositor, unless the depositor has notified the savings and loan association involved that the transfers by that person are no longer authorized; (2) initiated with fraudulent

intent by the depositor or any person acting in concert with the depositor; or (3) that is initiated by the savings and loan association or its employees.

(e) "To notify the savings and loan association" means a depositor takes such steps as are reasonably necessary to provide the savings and loan association with the pertinent information, whether or not any particular officer, employee or agent of the financial institution does in fact receive the information. Notice may be given to the savings and loan association, at the depositor's option, in person, by telephone or in writing. Notice in writing is considered given at the time the depositor deposits the notice in the mail or delivers the notice for transmission by any other usual means to the savings and loan association. Notice is also considered given when the savings and loan association becomes aware of circumstances that lead to the reasonable belief that an unauthorized electronic fund transfer involving the depositor's account has been or may be made.

(f) "Access device" means a card, code or other means of access to a depositor's account, or any combination thereof, that may be used by the depositor to initiate electronic fund transfers.