

Approved: February 17, 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 10, 1998 in Room 527-S of the Capitol.

All members were present except: Representative Campbell - Excused  
Representative Gilbert - Excused

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

Conferees appearing before the committee: Annie Kuether, State Representative  
Candy Shively, SRS  
Matthew Goddard, Heartland Community Bankers Association  
Kathy Taylor Olsen, Kansas Bankers Association  
Sue Schmelzer, Kansas Credit Union Association

Others attending: See attached list

The Chairman opened the hearing on HB 2809 - Electronic fund transfers.

**Proponent** appearing:

**Representative Annie Kuether** asked Bruce Kinzie to give an overview of the bill. He said that last week we had a hearing on HB 2703, which included the banks and savings and loan. What HB 2809 does is take a part of Reg E, which is the federal regulation on this particular part of the industry, and quantifies it in Kansas law to apply to all financial institutions including credit unions, card issuers etc. It goes into a little more of the definitional part of it on access devices and updates a lot of the language. It has the same provisions that the committee passed in HB 2703, including the third tier and extenuating circumstances. It also provides the Kansas provision of the 4 day, \$50 - \$300 limitation instead of the Reg E 48 hours, \$50 - \$500 provision. It repeals the S&L and the banks' provisions and envisions a simple provision location for all financial institutions as to this particular aspect. It also provides for a \$2 cap or 4% of the gross amount of the transaction, whichever is less. **Representative Kuether** thanked Bruce and said she originally became interested in the issue because she wanted to make sure that debit cards were being addresses as much as credit cards were for consumers. She also became aware of the different amounts being charged for the use of ATM machines. She asked the committee to please consider passing HB 2809. (**Attachment 1**)

Representative Grant asked what the range of ATM fees were. Representative Kuether said from no charge to \$2. When asked if the charge was for each time you use the card, Representative Kuether said yes it can be.

Representative Correll asked if the bill was for all financial institutional including credit unions. Bruce answered yes.

Neutral Position:

**Candy Shively**, SRS, testified in a neutral capacity. The department of SRS presently issues cash benefits and food stamp benefits to eligible recipients through an electronic transfer. The electronic transfer was made possible by the recent exemption of state benefits from Reg E. The exemption was enacted at the urging of states who expressed concern over the high cost of complying with the Electronic Funds Transfer Act. In Kansas the potential cost could be as high as \$7.6 million. Even though the SRS interprets HB 2809 as not applying to such benefits, they wished to offer an amendment which excludes the electronic benefit transfer programs established or administered by the Secretary of the Kansas Department of Social and Rehabilitation Services, least someone else interprets the bill as applying to these benefits. (**Attachment 2**)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS, Room 527-S  
Statehouse, at 3:30 p.m. on February 10, 1998.

Representative Cox asked what percentage the 1,500 debit cards, which are lost or stolen each month, is of the total number of debit cards. Candy said there are about 65,000 open households for food stamps purposes and about 18,000 who are receiving cash assistance.

**Opponents** appearing:

**Matthew Goddard**, Heartland Community Bankers Association, said that for the most part they do not oppose what's in **HB 2809**; however, new section 4 is where they raise objection, mainly to the last sentence. That's where they limit the transactions fee that's allowed to no more than \$2 or 4%, whichever is less. It's impractical to charge 4% because ATM's are not programmed to calculate 4%, this could cause them to require a minimum amount withdrawal of perhaps \$25. The ATM fee is a user charge, a convenience fee. Financial institutional should be able to charge non-customers to use their facilities. (**Attachment 3**)

**Kathy Taylor Olsen**, Kansas Bankers Association, said that the majority of **HB 2809** contains the same items as those made earlier in **HB 2703**, which the KBA requested. In new section 4, when transaction fee is mentioned, they are assuming it refers to foreign or non-proprietary, a fee for not using your own banks' ATM. They would ask that it be clarified by adding the words "foreign or non-proprietary". Banks are already required to disclose the transaction fee if there is one. They oppose the limitation of the fee of \$2 or the 4%. First of all, ATM's are incapable of computing transactions fees, it would be extremely costly to enable them to do so or to replace them. Also, they believe any type of price setting would be anti-competitive. Competition is the name of the game as the number of ATM's has increased. (**Attachment 4**)

**Sue Schmelzer**, representing Kansas Credit Union Association, which represents 151 credit unions in the state, said they have a couple of concerns with **HB 2809**. It addresses consumer liability for unauthorized transfers. The credit unions in Kansas, whether they're federal or state chartered, are required to follow Reg E. If the bill were to pass as it stands today, federal chartered credit unions would still have to comply with Reg E, but state chartered credit unions would have to comply with the requirements required in this bill. Credit unions believe assessing an ATM surcharge is a pricing and market issue and it's not one that should be legislated. However, she did point out that it's the philosophy of credit unions to charge no or very low fees. Presently she is only aware of one credit union which charges an ATM fee in Kansas. (**Attachment 5**)

Bruce Kinzie clarified that other than the transaction fee, everything would be the same for state and federal chartered credit unions, because Reg E says that if the state law or any agreement between the consumer and financial institution imposes a lesser liability than provided by this section, the consumers liability shall not exceed the amount imposed under the state or the agreement. Other than the transaction fee, everything is the same as Reg E. **Sue** said they are opposed to the bill because it would change the current liability.

The chairman closed the hearing on **HB 2809**.

Representative Grant moved the minutes for the February 3 and February 5 meetings be approved. Representative Geringer seconded the motion. The motion carried.

Meeting adjourned at 4:04 p.m.

The next meeting is scheduled for February 17, 1998.



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TOPEKA

HOUSE OF  
REPRESENTATIVES

February 10, 1998

Chairman Cox and members of the Financial Institutions Committee:

Thank you for allowing me to come before you today as a proponent for House Bill 2809. I became interested in these issues this fall after it became increasingly clear to me that our state law needed some clarifications...to become more "consumer friendly".

This bill essentially pertains to the consequences a consumer will be liable for if there is an unauthorized electronic fund transfer from your account. I was concerned that consumer's were not particularly well taken care of if such an event should occur.

In new section 4, the proposed changes concerning ATM (or electronic terminals) imposing transaction fees on consumers. While I certainly appreciate the financial institutions need to make a money, I felt that these transaction fees needed to be looked at more closely.

After comparing what actions other states have done (and I believe there are 17 other states addressing this issue), came up with a \$2 cap or 4% of the gross amount of the transaction, whichever is less.

I believe that many consumers were being greatly impacted by these fees. As a parent of teenage children, I am well aware of the variety of fees being charged! They do add up!

I ask that you support HB 2809.

A large, elegant handwritten signature in cursive script that reads "Annie".

House Financial Institutions

2-10-98

Attachment 1

**State of Kansas  
Department of Social  
& Rehabilitation Services**

Rochelle Chronister, Secretary  
Janet Schalansky, Deputy Secretary

For additional information, contact:

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**House Committee on Financial Institutions  
Tuesday, February 10, 1998**

**Testimony: House Bill 2809**

**Income Maintenance / Employment Preparation Services  
Candy Shively, Commissioner  
785.296.6750**

*House Financial Institutions  
2-10-98  
Attachment 2*

**Kansas Department of Social and Rehabilitation Services**  
**Rochelle Chronister, Secretary**

**House Committee on Financial Institutions**  
**HB 2809**

**February 10, 1998**

Mr. Chairman and Members of the committee, thank you for the opportunity to appear before you today on behalf of Secretary Chronister to discuss House Bill No. 2809. I am Candy Shively, Commissioner of Income Maintenance - Employment Preparation Services.

**Background**

The Kansas Department of Social and Rehabilitation presently issues cash and food stamp benefits electronically. The electronic delivery of such benefits was made possible by the recent exemption of state benefit programs from Regulation E of the Electronic Funds Transfer Act. The application of Regulation E to the state's electronic benefit transfer system would have limited the liability of clients whose benefits were either lost or stolen. However, the state would have had to assume the losses by replacing the client losses in excess of the client's liability.

With the passage of the Personal Responsibility and Work Opportunity Act of 1996, Congress exempted needs-tested electronic benefit programs administered by states or local governments from the requirements of Regulation E. The exemption was enacted at the urging of states who expressed concern over the high cost of complying with the Electronic Funds Transfer Act. The impact to Kansas was no exception. Assuming the prompt reporting of lost or stolen debit cards, the cost to the state to replace benefits could range as high as \$7.6 million. This estimate is based on approximately 1,500 debit cards reported lost or stolen each month.

**House Bill No. 2809**

House Bill No. 2809 limits the customer's liability in cases of unauthorized withdrawals. The department interprets the intent of House Bill No. 2809 as not applying to cash and food stamp electronic benefit transfers; however, because the bill may be interpreted as applying to such benefits, the following amendment is offered for consideration:

Line 43, New Section 1 (f):

"Electronic fund transfer" means any transfer of funds, other than a transaction originated by check, draft or similar paper instrument, that is initiated through an electronic terminal, telephone, computer

or magnetic tape for the purpose of ordering, instructing or authorizing a financial institution to debit or credit an account. The term includes, but is not limited to:

- (1) Point-of-sale transfers;
- (2) automated teller machine transfers;
- (3) direct deposits or withdrawals of funds;
- (4) transfers initiated by telephone; and
- (5) transfers resulting from debit card transactions, whether or not initiated through an electronic terminal.

The term does not include payments made by check, draft or similar paper instrument at an electronic terminal *[,or needs-tested electronic benefit transfer programs established or administered by the secretary of the Kansas department of social and rehabilitation services]* ."

This amendment refers to state needs-tested programs to distinguish between other forms of electronic transfers. Thank you for the opportunity to discuss the potential impact of this bill.

Candy Shively - 785 / 296-6750  
Income Maintenance - Employment Preparation Services

For: Rochelle Chronister  
Secretary  
Department of SRS

To: House Committee on Financial Institutions

From: Matthew Goddard  
Heartland Community Bankers Association

Date: February 10, 1998

Re: House Bill 2809

The Heartland Community Bankers Association appreciates the opportunity to appear before the House Committee on Financial Institutions to express our opposition to **House Bill 2809**.

While we understand how easy it is to jump on the anti-ATM transaction fee bandwagon, HCBA feels the pricing of financial services products is best left to the private sector and free market. House Bill 2809 enters the always dangerous territory of the legislature substituting its judgement for that of the free marketplace.

The primary objection of HCBA to HB 2809 is the final sentence of New Section 4. The bill restricts the transaction fee for using an electronic terminal to an amount not to exceed \$2 or four percent of the gross amount of the transaction, whichever is less.

Red flags immediately begin waving when we see a percentage-based cap on ATM fees. Automated teller machines are not programmed to compute a different transaction fee based on the transaction amount each time a transaction is made. The practical result of a four percent transaction fee restriction is that ATM owners will institute minimum withdrawal amounts. If an institution wishes to charge \$1 for non-account holders to use their ATM, then you could not withdraw less than \$25.

More alarming for HCBA than the practical aspect of a percentage fee is the greater issue of state-imposed price controls. The fees addressed in HB 2809 are not imposed on an institution's account holders, only non-account holders who choose to use that institution's resources. There is one simple way for consumers to avoid paying ATM transaction fees and it does not require legislative mandates. As the *Kansas City Star* reported in an article on avoiding bank fees in December 1995, "avoid using another bank's ATM machine network."

Several surveys have shown that transaction fees change consumer behavior. Convenience fees prompt consumers to use their own financial institution's ATM's, find machines that don't charge non-costomers and request cash back from point of sale debit card transactions at grocery stores. In addition, consumers don't have to use ATM's. They can make purchases and pay bills with checks, debit cards and credit cards. ATM's are intended to be a consumer convenience, not a



replacement for other forms of monetary transactions. Despite what we sometimes may think, their usage is not vital to the continued existence of the human race.

Price restrictions such as those in HB 2809 also stifle innovation and threaten emerging technologies. A new generation of ATM's make available non-cash items such as postage stamps, prepaid telephone cards, movie tickets and other products. The new trend at ski resorts in California, for example, is ATM's that sell lift tickets. These machines carry a greater price than conventional ATM's and may require a transaction fee in order to make them economically viable.

While our main objections to HB 2809 are in New Section 4, several other problems exist with the legislation. Although non-financial institution automated teller machines may fall under the jurisdiction of the bill as it is currently drafted, HCBA feels any law should explicitly include the owners, operators and lessors of ATM's or anyone else who offers ATM services to the public. To not do so could both discriminate against financial institutions and undermine what it is the bill tries to accomplish by exempting a growing industry that includes a quarter of all ATM's.

This is an issue which is also being debated on the federal level. The disclosures included in the bill are already required by federal authorities and the major networks. ATM legislation is a top priority of Senate Banking Committee Chairman Al D'Amato and House Banking Financial Institutions Subcommittee Chairwoman Marge Roukema and Rep. Charles Schumer have introduced legislation in the House. At some point it becomes unnecessary to take every federal regulation and law and codify it into state law.

Consumers benefit from the convenience of readily-available ATM's. Many consumers are willing to pay for that convenience. If they aren't, they don't have to take advantage of that convenience and don't have to incur any of the costs that come with it. Consumers are able to make that decision without government setting prices for private business.

We respectfully request that the House Committee on Financial Institutions recommend HB 2809 unfavorable for passage.

Thank you.



The KANSAS BANKERS ASSOCIATION  
A Full Service Banking Association

February 10, 1998

To: House Committee on Financial Institutions

From: Kathy Taylor Olsen, Kansas Bankers Association

Re: **HB 2809: Electronic Fund Transfers**

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today to discuss the provisions of **HB 2809** which deals with electronic fund transfers.

After reviewing the contents of this bill, we believe that the bulk of the changes made coincide with the changes we promoted in **HB 2703**. As you recall, that bill was our effort to update the language contained in state law regarding a bank customer's liability for unauthorized transactions by a "machine readable instrument". We used federal law, Regulation E, as our model to change this term to "access device". Similarly, we asked you to consider providing a third tier of customer liability also found in Regulation E. This bill does that and goes a step further so that our state law is updated and made compatible with federal law.

We are very supportive of those provisions as found in Sections 1, 2, 3, 5, 6, 7, 8, 9, etc.

And we are mostly supportive of New Section 4, found on Page 4, Lines 11-17. That section of the bill first, requires a financial institution to disclose that they are imposing a transaction fee for the use of the electronic terminal. We are assuming that the reference here is to a "nonproprietary transaction fee", or one that is imposed when a bank customer uses an ATM not owned by the bank. Bank ATM owners typically do not impose a transaction fee on their own customers, but if they do, federal law requires the fee to be disclosed in the initial customer agreement. To clarify the matter, we would suggest modifying "transaction fee" with either "nonproprietary" transaction fee or "foreign" transaction fee.

Currently, such transaction fees are being disclosed as is required in **HB 2809**. Under industry-drafted ATM network rules, ATM owners must post a notice that a fee will be imposed. Thus, if the ATM you are using will charge a fee for your transaction, that fee will be displayed. After displaying the amount of the fee, the ATM screen must ask you whether you want to continue. If not, it gives you the opportunity to exit the transaction before any fees are applied.

New Section 4 also contains a transaction fee limitation of \$2.00 or 4% of the gross amount of the transaction, whichever is less. Let me first state that currently, there is no capability for an ATM to be programmed to compute a percentage of the transaction. The cost to our industry to acquire electronic terminals able to compute percentages of cash advances would be very high.

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*2-10-98*  
*Attachment 4*

Secondly, placing such a cap on transaction fees runs contrary to the spirit of a competitive market wherein the consumer's choices and the business' costs determine what the amount of such a fee should be. Remember, transaction fees are users' fees – consumers have a choice and they need not pay the fee. Electronic fund terminals are everywhere – not just in banks, savings and loans, and credit unions. They are in convenience stores, supermarkets, airports, shopping malls, hospitals, universities, and other areas. Consumers can avoid a transaction fee by using their own bank's machine or using an ATM that does not impose a fee, or by using alternative means to obtain cash, such as checks, debit cards, credit cards, bank tellers and traveler's checks. OR consumers can opt to pay a fee for the convenience of accessible cash.

On the other side of the coin, such fees help cover the costs of providing the convenience of cash. Banks incur interchange and other networking costs in addition to costs incurred in the physical set up of the terminal and providing security for its users. Maintaining electronic fund terminals is not a profitable business for most owners. The Federal Reserve Board completes a Functional Costs Analysis each year. According to the Fed, on average, expenses exceed revenues by thousands of dollars per machine per year. Losses will vary tremendously, but they will average about \$10,000 per machine per year.

In summary, the KBA supports the provision of **HB 2809** that bring our electronic fund transfers law up-to-date and more aligned with Regulation E, however, we would ask that you not approve placing a cap on the amount of electronic fund transaction fees. Thank you.



KANSAS CREDIT UNION ASSOCIATION

**TESTIMONY ON HB 2809  
BEFORE HOUSE FINANCIAL INSTITUTIONS COMMITTEE  
FEBRUARY 10, 1998**

Mr. Chairman and Committee Members. I am Sue Schmelzer from the Kansas Credit Union Association. Thank you for allowing me to testify on HB 2809. We have a couple of concerns with this bill as it is currently written.

The bill before the committee today also addresses consumer liability for unauthorized transfers. However, if the goal of the bill before the committee today is to have both state and federal financial institutions address this issue in the same manner, this has not been accomplished.

Credit unions in Kansas, whether state or federally chartered, currently are required to comply with Regulation E -- the federal regulation that deals with electronic funds transfers and addresses the liability of consumers for unauthorized transfers. If this bill were to pass as it stands today, federally-chartered credit unions would still have to comply with Reg. E while state-chartered credit unions would have to comply with requirements set forth in this bill.

I would also like to address the issue of setting a cap on ATM surcharges. Credit unions believe that the assessment of an ATM surcharge is a pricing and market issue and should not be legislated. However, I would also point out that it is the general philosophy of credit unions to charge very low or no fees. For example, we are aware of only one credit union in Kansas that is currently assessing an ATM surcharge.

Again, thank you for the opportunity to testify, and I would be happy to answer any questions you may have.

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*Attachment 5*