

Approved: March 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 March 4, 1998 in Room 527-S of the Capitol.

All members were present except: Representative Larry Campbell

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

Conferees appearing before the committee: Bill Canton, Consumer Credit Commissioner
Bud Grant, Kansas Chamber of Commerce International

Others attending: See attached list

The chairman opened the hearing on **SB 462 - Definiton of terms in Uniform Consumer Credit Code.**

Proponent appearing:

Bill Caton, Consumer Credit Commissioner, explained that **SB 462** covered two unrelated issues regarding the Kansas Uniform Consumer Credit Code. He also requested amendments which will address a record keeping issue that has recently surfaced. In the first issue he's adding a new definition of "Origination Fee". Over the last 18 months his office has been inundated with license requests from out of state mortgage companies. These mortgage companies are interested in lending Kansas consumers money on second mortgages and they turn right around and sell these mortgages to the secondary market. A concern is that origination fees have been allowed by the KUCCC in K.S.A. 16A-2-401(9); it allows for a 3% prepaid origination fee. Originally it was intended to reimburse the lender for those inhouse costs they would incur by putting the loan on the books. The mortgage loan companies are charging the 3% blanket origination fee in addition to charging for items such as document preparation and underwriting fee, which should be included in the 3% origination fee. There are two different types of costs: closing costs and origination fee. There's a definition of closing costs in the code. The bill would add the wording "not included in the origination fee or payable to an assignee". The second issue is repeal of K.S.A. 16A-2-309(b) (1) and (2). This section prohibits a licensee, authorized to make supervised loans, from selling or leasing goods in the same location where loans are made. It is no longer necessary since usury limits on retail sales contracts have been repealed by the 1997 Legislature. The need for additional amendments just came to light a couple of weeks ago. In order for his office to determine whether the Code is being adhered to during the life of the loan, they need to obtain certain loan records. Presently, it is extremely difficult to get these records when out-of-state mortgage companies sell the loans to an assignee who is not required to be licensed. The recommended amendments will allow his office to obtain the necessary records from licensee, assignees, and loan servicers to complete their examination of loan files and documents. The person who owns the loan would have to keep records of the payments and would have to provide them to his office upon request, so that his office can complete the audit on the loan. Item one and the amendments are very consumer friendly and the second item won't really affect the consumer adversely or positively. (**Attachment 1**)

There were **no opponents** to the bill.

The chairman closed the hearing on **SB 462** and opened the hearing on **SB 470 - Maximum finance charge on certain consumer credit sales.**

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS, Room 527-S
Statehouse, at 3:30 p.m. on March 4, 1998.

Proponents appearing:

Bud Grant, KCCI, appeared on behalf of the Kansas Retail Council in favor of **SB 470**. Passage of the bill will result in pre-computed installment credit in Kansas being treated as it is in most other states, and in all of our neighboring states. It will greatly improve the state's credit environment for firms that offer pre-computed installment credit and should result in additional retail firms and jobs in the state. The bill was unanimously approved by the Senate Committee and passed the full Senate 40-0. He urged the committee to join the Senate and to recommend that **SB 470** be sent to the full House for passage. (**Attachment 2**)

Bill Caton, Kansas Consumer Credit Commissioner, appeared in favor of **SB 470**. The bill was introduced by a member of the retail credit industry to reinstate the ability to utilize "pre-computed" contracts on closed end retail sales contracts. "Pre-computed" contracts were allowed prior to 1993 but were removed by the Legislature, at the request of Commissioner Caton, in an effort to relieve the consumer from the "rule of 78s" prepayment calculations that were unfavorable to the consumers in the early life of the contract. **SB 470**, includes a new Section 1 (8) that governs the calculation of rebate upon prepayment. This subsection requires an "actuarial" interest calculation, which is equitable to the consumer. He said he would not be for the bill if it reinstated the "rule of 78s". A problem with the bill was referred to him this morning. On line 19 and 20 of the second page, it talks about rebate of any other charges, including charges of insurance. To avoid confusion, he has an amendment which adds the words "as prescribed by statute, rules and regulations, and administrative interpretations by the administrator." (**Attachments 3 and 4**)

There were **no opponents** to **SB 470**.

The chairman closed the hearing on **SB 470**.

The chairman said they would work **SB 462 - Definiton of terms in Uniform Consumer Credit Code**.

Representative Welshimer moved to adopt the amendment to **SB 462**. Representative Cook seconded the motion. The motion carried.

Representative Welshimer moved to pass out **SB 462** favorably as amended. Representative Grant seconded the motion. The motion carried.

The chairman said they would work **SB 470 - Maximum finance charge on certain consumer credit sales**.

Bruce Kinzie said he recommended that a small change be made to the balloon which Commissioner Canton handed out. He suggested that the insert be made a separate sentence, adding the beginning words of "The rebate for the insurance shall be separate".

Representative Cook made a motion to add Mr. Kinzie's words to the balloon and to adopt the balloon into the bill. Representative Gregory seconded the motion. The motion carried.

Representative Correll made a motin to pass **SB 470** out as amended. Representative Grant seconded the motion. The motion carried.

The chairman presented the minutes for the February 19, 1998 committee meeting for approval. Representative Gilbert moved to approve the minutes as presented. Representative Ray senconded the motion. The motion carried.

The date of the next meeting will be determined later.

**TESTIMONY ON SENATE BILL #462
HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS**

BILL CATON, CONSUMER CREDIT COMMISSIONER

MARCH 4, 1998

Thank you for the opportunity to come before you today to testify as a proponent of Senate Bill #462. This bill was introduced by my office in an attempt to clarify certain provisions of the Kansas Uniform Consumer Credit Code (the "Code"). There are two unrelated issues addressed by this bill, so I will address them separately. I am also requesting an amendment that will address a record keeping issue that has recently surfaced and will discuss this later in my testimony.

I. ADDITION OF NEW DEFINITION - "ORIGINATION FEE"

With the tremendous increase of out-of-state mortgage companies applying for licenses under the Code to do business in Kansas over the past two years, the Office of the Consumer Credit Commissioner has determined that there have been at the least a gross misunderstanding as to what an "origination fee" is and what types of fees may be included in the origination fee which is limited by statute (K.S.A. 16a-2-401(9)(a)). This office has been challenged in its findings and interpretations of this section of the Code. I believe these challenges have been with cause since the Code did not define "origination fee". I have requested assistance from the Attorney General's Office regarding interpretation of the Code regarding this matter, and have been advised that defining "origination fee" could resolve this problem.

This bill adds the wording "not included in the origination fee or payable to an assignee" the definition of "Closing costs" defined in K.S.A. 16a-1-301(7)(b) on page two of the bill and adds the new definition of "Origination fee" on page 6, lines 10 through 17 of the bill. After conferring with George Barbee of the Kansas Association of Financial Services, who had some concerns regarding the wording, I would suggest that this section be amended as follows: adding a colon (:) behind the words "exclusive of" in line 14 and change the word "or" to "and" in line 16. I believe these changes should make it clear that closing costs as defined in K.S.A. 16a-1-301(7), interest rate reduction charges and brokers fees are *not* included in the "origination fee" and may be charged in addition to origination fees if they are properly documented and disclosed.

I believe this portion of the bill will alleviate my concerns that mortgage companies are charging consumers fees that were intended to be included in the origination fee and then charging a 3% loan origination fee on top of these itemized charges. Please note that this has *not* been a concern with the traditional consumer loan companies, but isolated to mortgage companies, most of which are operating out-of-state, and many of which are more concerned with originating loans and how many fees they can generate rather than assisting the consumer in working out their financial difficulties with sound financial advice.

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II. REPEAL OF K.S.A.16a-2-309(b)(1) AND (2)

This section of the Code prohibited a licensee authorized to make supervised loans from selling or leasing goods in the same location where loans are made. This prohibition is no longer necessary since usury limits on retail sales contracts have been repealed by the 1997 Legislature.

I do not believe this long standing prohibition has accomplished its original intent in recent years as many retail sales contracts have ended up being converted to supervised loans by the company purchasing the contract. I do not believe this change will be detrimental to the consumer.

REQUEST FOR ADDITIONAL AMENDMENTS

Our office has recently run across difficulties in obtaining loan records necessary to complete the financial tests to determine if the Code is being adhered to during the life of the loan. The problem arises when a loan, most often a second mortgage loan made by an out-of-state mortgage company, is sold or assigned to an assignee who is not required to be licensed. This office has no jurisdiction over these assignees (which has been confirmed by the Attorney General's Office), and is unable to obtain current payment records from these assignees or their loan servicing agent, if a loan servicer is involved.

These records are necessary in order to determine if the consumer is being treated fairly in the following areas:

- to determine if principal and interest are credited to the account correctly and in a timely manner
- to determine if late charges and any other potential charges are properly applied to the account
- to determine if appropriate procedures are followed and consumers' rights are not violated in the collection and foreclosure process
- to determine if prepayments are properly accounted for and any refunds are applied to the account or paid to the borrower.

The recommended amendments to K.S.A. 16a-2-304 will allow this office to obtain the necessary records from licensees, assignees, and loan servicers to complete our examination of loan files and documents. I do not believe that anybody anticipated the extent of mortgage lending under the Code and the extensive selling and assigning of these loans in the secondary market when the Code was enacted in 1974. This office feels it cannot fulfill its responsibilities to consumers if we cannot obtain the necessary documentation to determine if they are being properly treated at both the inception of the loan and during the life of the loan.

Please consider this amendment favorably. Thank you for your consideration. I will stand for questions.

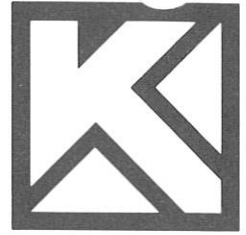
PROPOSED AMENDMENTS TO SB 462

(Inserted after Section 2 and before Section 3 of the bill)

16a-2-304. (UCCC) Records; annual reports. (1) Every licensee and any assignee or servicer of a consumer credit transaction shall maintain records in conformity with generally accepted accounting principles and practices in a manner that will enable the administrator and, in the case of a supervised financial organization its supervisory official or agency, to determine whether the licensee, assignee or servicer ~~is~~ are complying with the provisions of K.S.A. 16a-1-101 through 16a-9-102, and amendments thereto. The record keeping system of a licensee, assignee or servicer shall be sufficient if the licensee, assignee or servicer make~~s~~ the required information reasonably available. The records need not be kept in the place of business where supervised loans are made, if the administrator or supervisory official or agency is given free access to the records wherever located. Every licensee and any assignee of a consumer credit transaction shall provide the administrator with the name, address, telephone number, contact person and any other reasonable information regarding the location and availability of current records of a consumer credit transaction. The records pertaining to any loan need not be preserved for more than two years after making the final entry relating to the loan, but in the case of a revolving loan account the two years is measured from the date of each entry.

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry



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SB 470

March 4, 1998

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

House Committee on Financial Institutions

by

Bud Grant
Vice President and General Manager

Mr. Chairman and members of the Committee:

My name is Bud Grant and I am appearing here today on behalf of the Kansas Retail Council, a division of the Kansas Chamber of Commerce and Industry. I appreciate the opportunity to express its support for SB 470.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 47% of KCCI's members having less than 25 employees, and 77% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

My comments will be brief Mr. Chairman. The Credit Commissioner is here and will do a far better job than I explaining the bill and providing the Committee with background information.

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However, I do want to take a moment to share with the Committee why the retail community supports SB 470.

Passage of this bill will result in precomputed installment credit in Kansas being treated as it is in most other states, and all of our neighboring states. It will greatly improve the state's credit environment for firms that offer precomputed installment credit and should result in additional retail firms and jobs in the state.

The bill is consumer friendly because the customer has an exact knowledge of what the financing will cost and exactly how long the pay off will take, as well as a clear understanding of the size of the monthly payment. The bill does not impose additional interest if a payment is a few days late, as the current actuarial method does.

SB 470 helps the consumer, the retailer, and will hopefully result in further economic development in Kansas. It was approved by the Senate Committee unanimously and passed the full Senate on a vote of 40-0.

I urge the Committee to join with the Senate and to recommend that SB 470 be sent to the full House for passage.

Thank you again Mr. Chairman and I would be pleased to attempt to answer any questions.

TESTIMONY ON SENATE BILL #470
HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS

BILL CATON, CONSUMER CREDIT COMMISSIONER
MARCH 4, 1998

Thank you for the opportunity to appear before you to present my position on Senate Bill 470. This bill was introduced by a member of the retail credit industry to reinstate the ability to utilize "pre-computed" contracts on closed end retail sales contracts. This type of contract allows the creditor to calculate interest charges using the following assumptions:

- All months have 30 days
- All years have 360 days
- All payments made by the consumer are made on the due date regardless of the actual date of payment

"Pre-computed" contracts were allowed prior to 1993, when they were removed from the Kansas Uniform Consumer Credit Code (the "Code") by the Legislature at my request in an effort to relieve the consumer from "rule of 78s" prepayment calculations that were unfavorable to consumers in the early life of the contract. Deletion of "pre-computed" contracts accomplished this, and there was little resistance from the retail credit industry or the consumer loan industry.

Senate Bill 470 also includes a new Section 1 (8) that governs the calculation of rebate upon prepayment. This subsection requires an "actuarial" interest calculation, which is equitable to the consumer. "Actuarial" contracts calculate interest by actual number of days between payments and uses a 365 day year, however, the final payment will almost always be different than the preceding payments and will need to be calculated immediately prior to the final payment. If the consumer consistently pays a few days early, the final payment will be less than the other payments, usually only by a few dollars. Conversely, consistently late consumers will have a larger payment. Some consumers do not like the "unknown" of the last payment, even when the difference is very minor.

I have no problem with "pre-computed" contracts being reinstated into the Code as long as "Rule of 78s" prepayment calculations are not used, which is accomplished in SB 470. I also believe that other retail credit grantors will begin using "pre-computed" contracts because they will not have to explain the effect early or late payments have on the last payment amount. This bill does not have a significant impact on consumers. It does not reward a consumer who consistently pays early with a lower last payment. Nor does it penalize a consistently late payer with a larger last payment as does an "actuarial" contract. Again, these variances are usually very minute, usually less than \$10 on a small retail sales contract.

I will be happy to address any concerns or answer any questions.

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1 not exceed the maximum permitted by subsection (2); and
2 (b) when applied to the lowest amount within each range, it does not
3 produce a rate of finance charge exceeding the rate calculated according
4 to paragraph (a) by more than 8% of the rate calculated according to
5 paragraph (a).

6 (6) Notwithstanding subsection (2), the seller may contract for and
7 receive a minimum finance charge of not more than \$5 when the amount
8 financed does not exceed \$75, or not more than \$7.50 when the amount
9 financed exceeds \$75.

10 (7) Notwithstanding any other provision of this section, with respect
11 to a consumer credit sale other than open end credit, the seller may
12 contract for and receive a finance charge not exceeding that agreed to by
13 the consumer.

14 (8) *Rebate upon prepayment:*

15 (a) *Except as provided for in this section, upon prepayment in full of*
16 *a precomputed consumer credit transaction, the creditor shall rebate to*
17 *the consumer an amount not less than the amount of rebate provided in*
18 *subsection (b), paragraph (1), or redetermine the earned finance charge*
19 *as provided in subsection (b), paragraph (2), and rebate any other un-*
20 *earned charges including charges for insurance. If the rebate otherwise*
21 *required is less than \$1, no rebate need be made.*

22 (b) *The amount of rebate and redetermined earned finance charge*
23 *shall be as follows:*

24 (1) *The amount of rebate shall be determined by applying, according*
25 *to the actuarial method, the rate of finance charge which was required to*
26 *be disclosed in the transaction:*

27 (i) *Where no deferral charges have been made in a transaction, to the*
28 *unpaid balances for the actual time remaining as originally scheduled for*
29 *the period following prepayment; and*

30 (ii) *where deferral charges have been made in a transaction, to the*
31 *unpaid balances for the actual time remaining as extended by deferral for*
32 *the period following prepayment.*

33 *The time remaining for the period following prepayment shall be either*
34 *the full days following prepayment; or both the full days, counting the*
35 *date of prepayment, between the prepayment date and the end of the*
36 *computational period in which the prepayment occurs, and the full com-*
37 *putational periods following the date of prepayment to the scheduled due*
38 *date of the final installment of the transaction.*

39 (2) *The redetermined earned finance charge shall be determined by*
40 *applying, according to the actuarial method, the rate of finance charge*
41 *which was required to be disclosed in the transaction to the actual unpaid*
42 *balances of the amount financed for the actual time the unpaid balances*
43 *were outstanding as of the date of prepayment. Any delinquency or de-*

The rebate for the insurance shall be separate

as prescribed by statute, rules and regulations, and administrative interpretations by the administrator.