Approved: March 31, 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 17, 1998 in Room 527-S of the Capitol.

All members were present except: Representative Ruby Gilbert - Excused

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

Conferees appearing before the committee: Bud Grant, Kansas Chamber of Commerce International
Bill Caton, Consumer Credit Commissioner
George Barbee, Kansas Association of Financial Services
Kathy Taylor Olsen, Kansas Bankers Association

Others attending: See attached list

The chairman presented the minutes of the March 4, 1998 meeting for approval. Representative Campbell moved to approved the minutes as presented. Representative Grant seconded the motion. The motion carried.

The Chairman opened the hearing on **SB 490 - Financial charges on consumer credit sales**.

Neutral conferee:

Bud Grant, KCCI, appeared as a neutral conferee on behalf of the Kansas Retail Council. He said he took some responsibility for the bill being before the committee. Last year the Kansas Retail Council requested and strongly supported **SB 27**. It deregulated open and closed-end credit sales in Kansas and put all retailers under the same credit umbrella. The bill was precipitated by federal action allowing national retailers to export deregulated rates into Kansas. **SB 27** has worked well but an unintended consequence is that automobile sales were included. **SB 490** would change that. Mr. Grant said he supported the bill in the Senate because he thought it important that both houses consider the issue. (**Attachment 1**)

Proponent appearing:

Bill Caton, Consumer Credit Commissioner, appeared stating that he didn't take a stand on **SB 27** when it came before the committee last year because it was his assumption that deregulating retail sales contracts was probable a first step in deregulating all interest rates on all loans. He thought it let the legislature do what it wished and he didn't have an issue on either side of it. He does think, that in his opinion, competition is the best regulator that he has seen. His office has taken the position that anything they can do to foster competition also fosters better regulation, because when a consumer has a variety of places to go to borrow money that gives them the opportunity to shop. The consumer industry in Kansas is healthy and competitive. Three years ago they had a little over 260 licensees, now they have over 600. Most are the mortgage loan companies but there are several new loan companies that have come into Kansas. When Senator Barone questioned him about the fact that now we've deregulated retail sales contracts on vehicles and asked why this happened, he indicated to him that it's his opinion that it's very difficult to regulate interest rates on vehicles because the price of the vehicle is not regulated. Credit is evaluated before the price of the car is given. **SB 490** reinstates the usury limits on retail sales contracts on motor vehicles. It also requires a lender who charges over 18% to have a license with the Kansas Consumer Credit Commissioner. Currently, retail sales contractors have to be registered with his office. They do examination regulation on a complaint basis only, rather than by going over their books. There are over 6,000 retail credit grantors in the state of Kansas. Since 1974, when Kansas adopted the Kansas Uniform Consumer Credit Code, he thinks it has been the Legislatures' intent to have those who wish to charge higher interest rates have a higher amount of regulation. He said he wonders if last years' deregulation of interest rates on retail sales contracts was consistent with what the intent of the UCCC was back in 1974. He thinks that his office and the industry is getting a mixed signal from the Kansas statutes. We do not have a usury rate on retail sales contracts but we do have on consumer loans. Now a lender cannot charge as much, when he loans money on goods and services, as the retailer that sales the goods and services. He thinks the philosophical question of "do we deregulate or do we not?" has to be answered and now might be a good time to do so. He believes that continued regulation of disclosure is very, very appropriate. He understands some of Senator Barone's concerns but has some

questions regarding them. Since Missouri still has usury laws on vehicles, some people from his district are losing business because people are not coming over from across the boarder to Pittsburg, Kansas to purchase them. If you want to reinstate interest rate on motor vehicles, he thinks **SB 490** does that, and does it appropriately. He also thinks that in some point in time there ought to be a discussion as to which way Kansas wants to go. Do we want to go with the 27 to 30 other states that have deregulated interest rates or do we want to continue to have usury rate and regulation on interest rates? (**Attachment 2**)

Representative Ray asked if he was in favor of regulating the motor vehicle lending rate. Mr. Caton said his position is that he wants to do what the Legislature wishes. It's his opinion that competition is the best regulator. He said we absolutely positively need to regulate disclosure. He's not real sure interest rates can be regulated because of what can be done with the price of the vehicle. She asked if he was a proponent of the bill. He said he was appearing on behalf of Senator Barone, he came to express some of his concerns.

Representative Gregory asked what a supervisors lenders license was. Mr. Canton said it is really a license to charge higher interest rates.

Representative Cook questioned how he could say he was in favor of competition and ask the Legislature to regulate. Mr. Caton said the bill would work if the Legislature wanted to regulate.

Representative Grant if the bill was good for consumers. Mr. Caton said he didn't think it would be as good for the consumer as Senator Barone hoped that it would.

Opponent appearing:

George Barbee, KAFS, appeared in opposition to **SB 490**. While **SB 27** may have inadvertently included retail sales on autos, it was not a bad idea to allow the benefits to apply to the market place in a uniform, inclusive manner. Companies have expenses and need to be able to react to changes in economic conditions. Money is a commodity and the price of money changes on a day to day basis. It's not fair to place price controls on money any more than it is to have any other type of price control. Rate caps reduce the number of lenders. When the person borrowing is a higher risk, the lender must be able to price the loan in accord to the risk. He respectively asked that the committee report the bill adversely. (**Attachment 3**)

The chairman closed the hearing on **SB 490** and opened the hearing on **SB 531 - Credit agreements; actions for legal or equitable relief or defenses**.

Proponent appearing:

Kathy Taylor Olsen, KBA, appeared in support of the provisions in **SB 531**. As way of background, there is a body of law called the "statute of frauds". It's a body of law which basically says that these certain agreements must be in writing and if they are not in writing, they are not enforceable. In 1988 the Legislature added credit agreements to that law and required that credit agreements must contain a notice that the writing is the entire agreement, that there are no unwritten oral credit agreements between them. Due to some questions, the statute was amended in 1989 to clarify what a credit agreement is not. All they have done is add a couple more items to the list. First they've added "deposit account agreements' and "agreements in connection with deposit accounts for the payments of overdrafts". These amendments will hopefully clear up confusion that was created by a District Court judge's ruling last year that found these types of agreements could be construed as credit agreements. The second set of amendments are in response to litigation that has occurred in other states. Thirty-eight other states have passed similar provisions. The Courts have interpreted this law to mean that it only prohibits a plaintiff in a lawsuit from claiming that there are no side oral agreements. If you are the defendant, you can still claim the oral side agreement. The KBA doesn't think that is fair. It was the intent of the Legislature to have the entire agreement on a piece of paper and neither party should be able to claim a side oral agreement. The third set of amendments block the "equitable" doctrines as an end run around the requirements of a written credit agreement. (**Attachment 4**)

Representative Geringer asked the chairman if he was going to work a bill for someone who wasn't wearing green. The Chairman said sure. Kathy assured Representative Geringer that she had green in her suit.

The chairman closed the hearing on **SB 531** and asked the committee what their opinion of the bill was.

Representative Cook moved to pass the bill favorably and put it on the consent calendar. Representative Geringer seconded the motion. The motion carried.

The meeting adjourned at 4:16 p.m.

It will be determined later whether or not the committee will meet again.

The minutes were sent to the committee members for review on March 26, 1998 with the understanding that minutes would be considered approved if no additions, deletions, or corrections were received by 5:00 p.m. on March 31, 1998. None were received.

HOUSE FINANCIAL INSTITUTIONS COMMITTEE GUEST LIST

DATE: March 17, 1998

NAME	REPRESENTING
Carrie Rucht	Brad Smoot
Kathy Olsen	KBA
Ron Thornburgh	KCCI
Chuck Stones	KBA
Mike Astle	Comm Bankers Assn
Greg Hill	Federico Consulting
Bill Caton	Consumer Credit Comm.
Tim Randolph	Beneficial Corporation
George Barbee	Ks assn of Fin Services

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry

835 SW Topeka Blvd. Topeka, KS 66612-1671 (785) 357-6321 FAX (785) 357-4732 e-mail: kcci@kspress.com

SB 490

March 18, 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 appear here today on behalf of the Kansas Retail Council, a major division of the Kansas Chamber of Commerce and Industry. My comments about SB 490 will be brief.

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.

In 1997, this Committee and the full Legislature passed, and the Governor signed, SB 27. The Kansas Retail Council had requested and strongly supported the bill. Its purpose was to deregulate open and closed-end credit sales in Kansas. You will recall that 29 states had already

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Attachment 1

tak ne same step, which was precipitated by federal action. National retailers with credit ce s in deregulated states were allowed to export deregulated rates into Kansas. The result was a two-tiered system; national retailers unregulated, main street merchants regulated. Passage of SB 27 put all retailers under the same credit umbrella and it is working very well.

In my opinion, an unintended consequence of SB 27, is what SB 490 addresses. When this committee discussed deregulating retail credit, no one advised you that automobile sales were included...I didn't, financial institutions didn't, the automobile industry didn't. Mr. Caton has advised me that when he and I discussed SB 27, he pointed this fact out to me...and I am confident he did. My only explanation for not remembering this and bringing it to the Committee's attention, is that I was not supporting the bill for the automobile dealers. They were not competing in a market where their competition was playing with rules different from theirs. I requested and supported the bill for your small Kansas merchants to give them the same flexibility in the area of credit as their large neighbors.

I supported SB 490 in the Senate because I thought it important that both houses consider the issue. Now it is before you and your final determination.

SENATE BILL 490
SUMMARY OF TESTIMONY
MARCH 17, 1997
BILL CATION, CONSUMER CREDIT COMMISSIONER

Senate Bill 490 reinstates usury limits on retail sales contracts on motor vehicles. This is accomplished by adding language to the current statute the governs interest rates on supervised loans (K.S.A. 16a-2-401) that would include retail sales contracts. This bill will also require a lender who wishes to charge over 18% (which, under current law, is 18% on the first $1,000 and 14.45% on any additional amounts) to obtain a supervised lender's license and be subject to closer supervision by the Office of the Consumer Credit Commissioner.

Current law does not contain any usury limits of retail sales contracts, as that was removed by the 1997 Legislature. It has been my understanding from reviewing the Kansas Uniform Consumer Credit Code (the "Code") and interpreting the Code's sections, that it has been intended to have lenders and retail credit grantors to be subjected to more supervision if they wish to charge the higher interest rates permitted by the Code.

The current version of the Code sends mixed signals both to industry and my office as to the intent of the Legislature as to the regulation of interest rates. I believe it is now time for the Legislature to have some philosophical discussion as to the regulation of interest rates : specifically, is there a need to maintain usury rates on consumer credit transactions or should the Legislature complete the process of de-regulation of interest rates and allow the free market to set interest rates.

Let me assure you that the regulation of ***disclosure*** has always been maintained at a very high level and to my knowledge there has never been any serious discussion at either the federal or state level of de-regulating disclosure regulation. On the contrary, federal regulations Z and M have consistently expanded disclosure requirements on all consumer credit transactions. It is my person opinion that disclosure of facts in a consistent manner is as much or more important as the interest rate used in a transaction. Current disclosure regulations ***requires*** that all costs of the transaction, including interest rates, be accurately revealed to the consumer.

If the Committee desires to re-impose interest rate ceilings on retail sales contracts on vehicle, Senate Bill 490 would be a logical way to do so. I am sensitive to Senator Barone's concerns and I believe SB 490 would address his concerns. ***But I am also concerned that currently, we have a disparity in our statutes that allows a seller of goods and services who sells on credit terms to charge a higher rate of interest than a third party lender who lends money on those same goods and services.***

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Attachment 2

The Kansas Association of Financial Services
George Barbee, Executive Director
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913/233-0555 Fax: 913/357-6629

Statement To
House Committee on Financial Institutions
Senate Bill 490
Tuesday, March 17, 1998

Mr. Chairman and members of the Committee, my name is George Barbee, president of Barbee & Associates, appearing today as the executive director of the Kansas Association of Financial Services (KAFS). This association is comprised of consumer finance companies serving Kansas through approximately 150 offices and employing an estimated 600 people.

In 1997, the Legislature passed Senate Bill 27 which removed government imposed rates on retail sales contracts. This bill was introduced at the request of the Kansas Chamber of Commerce and Industry. While it was targeted at "main street" retail sales, it also included retail sales transactions on autos. While this may have been inadvertent and not the objective of KCCI, it was not a bad idea to allow the benefits to apply to the market place in a uniform, inclusive manner.

The state changes were made last year to add Kansas to a growing list of 29 states that had already removed rate controls. Why? Government imposed price controls do not work. They limit competition, limit credit available, and limit consumer choice.

For any company to do business in Kansas in the area of consumer lending, they must invest a considerable amount to establish a presence in the form of the expense of a facility, the expense of hiring employees, the expense of equipment, and the expense of marketing. To have companies established and then not allow them to react to changes in economic conditions is unwise.

Kansans are accustomed to dealing in the commodities marketplace. We are not told through government price controls what the maximum selling price is to be for wheat, gasoline, lumber, and other commodities, yet, this bill sets a limit on the selling of the commodity – money.

Kansans understand when the price of wheat increases or decreases because of market conditions. We understand that the cost of bread must increase if the cost of wheat increases. But, we seem to have difficulty understanding that money is a commodity.

It costs to obtain money to loan. Consumer finance companies do not have depositors for a source of money to lend as do banks and savings and loans institutions. Finance companies borrow money to lend. The rate is subject to change and is changing on a day to day basis. Market pressures are felt when costs increase or if the risk to lend is high. It is not fair to place price controls on lenders who have invested in Kansas and not allow them to react to changes in economic conditions.

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It is no more fair to place these government imposed limits on loans than it would be to place price limits on lawnmowers, garden furniture, milk, bread or any other product. Price controls do not work.

Will price controls affect consumer choice? Yes. Rate caps do nothing more than limit or reduce the number of lenders who are willing to lend to risky borrowers. A car dealer's sources will be limited. In the long run, rate caps end up hurting those individuals that they are designed to protect. These high risk borrowers are forced out of the traditional lending institutions and into the pawn shops, check cashing outlets, or the guy at the end of the alley.

Price controls that limit competition and consumer choice also affect credit availability. When sources of competitive loans are reduced it restricts who can receive a loan. As an example, let's take an automobile customer who has had past problems with making payments and has a less than sterling credit report. The reasons can vary from bad health to just plain bad luck, but the customer needs a car to go to work. Perhaps the job even depends on having proper transportation. The salary is such that the customer can budget for a particular payment amount. We have a willing borrower, but because of price controls we can not have a willing lender to meet the needs of this high risk customer.

With an artificially imposed rate cap the lenders will only make loans to those customers who will repay their loan. The lender must to able to price the loan to match the risk. If not, high-risk consumers will be inclined to turn to both legitimate and illegitimate sources of credit. The growth of pay-day lenders, check cashers, pawnshops, buy-here pay-here auto lenders, and title loan companies have flourished in those states that tightly regulate consumer finance lending but do not have any caps on these types of businesses. The cost to the consumer is significantly higher then through motor vehicle finance lenders.

The statutes, as amended in 1997, allow the lender to set criteria to match rates with risk.

The credit research center at Purdue University has stated:

> "Competition controls prices more effectively than rate ceilings. Long-term effects of binding rate ceilings are worse than short-term effects because entry and innovation is discouraged."

We believe that statement to be true, but it can only be proven over time. The amendments from last year became effective in July, a mere nine months ago. We request that the 1997 changes be given time to work. We will see more competition causing credit availability and consumer choice. When you step back and look at this situation it boils down to a purely philosophical perspective. Either you believe in the free market system or you do not.

We respectfully request that SB 490 be reported adversely.

Thank you for the opportunity to express the views of the Kansas Association of Financial Services. I will be glad to stand for questions.

The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

TO: House Committee on Financial Institutions

FROM: Kathy Taylor Olsen

DATE: March 17, 1998

RE: SB 531 – Statute of Frauds, Credit Agreements

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before the committee in support of the provisions of SB 531, which amends state law regarding credit agreements under the statute of frauds. This bill really contains three sets of amendments which will be described after a brief background of the law.

Background.

The body of law called "statute of frauds" was developed to set forth those types of agreements or contracts that must be in writing. In other words, agreements that must be in writing in order to be enforceable.

In 1988 the Kansas Legislature passed KSA 16-117 and 16-118 which requires that credit agreements must be in writing in order to be enforceable by the debtor or the creditor. Furthermore, the statute requires that credit agreements must contain a notice that the writing is the entire agreement between the debtor and the creditor – and it requires that both parties must sign the credit agreement in affirmation that there are no unwritten oral credit agreements between them.

In 1989, KSA 16-117 was amended because there was some question as to what constituted a "credit agreement". As clarification, the law now contains a laundry list of what a "credit agreement" is not.

Proposed Amendments.

1. The amendments found in subsection (a) of Section 1, further clarify what a credit agreement is not. Added to the laundry list are "deposit account agreements" and "agreements in connection with deposit accounts for the payment of overdrafts". These amendments will hopefully clear up confusion that was created by a District Court judge's ruling last year that found these types of agreements could be construed as credit agreements. Clearly deposit agreements were never intended to serve as credit agreements as they do not represent an extension of credit and are not signed by both parties.

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email kbaoffice@ink.org

2. The amendments found in subsection (a) of Section 2, are in response to litigation that has occurred in other states. Some 38 states have passed similar provisions to their statute of frauds. Just as our statute reads, other state statutes provide that "a debtor or a creditor may not **maintain an action** unless the agreement is in writing". Other states' courts have interpreted this language to all either party to use evidence of a side oral agreements as a **defense** in a lawsuit. These amendments make it clear that the Kansas Legislature intended that the written agreement was to be the final word - where all terms and conditions are contained. And this is true whether it is the basis for an **affirmative** court action or whether it is to be used as a **defense** in a court action.

3. The amendments found in new subsection (c) of Section 2, are designed to block the use of what are called "equitable" doctrines as an end run around the requirement of a written credit agreement. So that it is once again clear that the original intent of this legislation was to provide that the entire agreement between a debtor and a creditor appear in a writing, signed by both parties.

Thank you for your attention to **SB 531** and we would hope for your favorable consideration.