Approved: Feb. 23, 1998
Date

MINUTES OF THE Senate Committee on Financial Institutions and Insurance.

The meeting was called to order by Chairperson Don Steffes at 9:00 a.m. on February 18, 1998 in Room 529-S of the Capitol.

All members were present except: Senator David Corbin

Committee staff present: Dr. William Wolff, Legislative Research Department
Fred Carman, Revisor of Statutes
Nikki Feuerborn, Committee Secretary

Conferees appearing before the committee: Bill Caton, Consumer Credit Commissioner
Tom Wilder, Kansas Insurance Department
Eloise Lynch, AARP, Salina
Newton Male, State Banking Commissioner
Daryl Becker, Meriden
Chuck Johns, Mercantile Bank of Topeka

Others attending: See attached list

Report of Subcommittee on SB 422 - Cancellation or Non-renewal

Chairman Steffes reported that the members of the Subcommittee had met and recommended that no action be taken on the bill for the following reasons: a) lack of registered complaints as reported by the Kansas Insurance Department; b) NAIC model not totally acceptable to KID nor to the industry; c) the Task Force recommended less regulation not more; and d) not enough support in the Committee to pass it out. Senator Biggs said he agreed with the section of the bill which would prohibit an insurance company from canceling a property owner for one weather related claim in a three year period, but was not convinced the section regarding the use of credit history for underwriting purposes was in the best interest of the consumer or the industry.

Action on SB 490--Finance charge on consumer credit sales

Consumer Credit Commissioner Bill Caton explained that the bill would govern finance charges on consumer loans in credit sales involving the sale of a motor vehicle (Attachment 1). This would make consumer credit sales (retail sales contracts) subject to the interest rate ceilings as follows:

1. For non-licensed lenders, the maximum rate will be 18%.
2. For licensed lenders, the maximum rate will be 36% on the first $780, 21% on $781 to $2,600, and 14.45% on amounts above $2,600 with an alternative maximum finance charge of 18%.

Technical amendments were proposed in the balloon amendment in Section 4. Mr. Caton did remind the Committee of the impossibility of limiting the upfront cost of used vehicles but that perhaps the public will become sophisticated enough to do some comparative shopping.

Senator Barone moved for the adoption of the amendments as presented. Motion was seconded by Senator Becker. Motion carried. Senator Barone then moved that the bill be reported favorably as amended. Motion was seconded by Senator Becker. Motion carried.

Hearing on SB 439--Medicare provider organizations, regulations and creation

Tom Wilder, Kansas Insurance Department, appeared before the Committee to explain that the bill would give KID the authority to regulate provider sponsored organizations which contract to provide health insurance coverage to Medicare beneficiaries (Attachment 2). He reviewed the various sections of the bill pointing out that the definitions area includes adding Medicare Provider Organizations to those provider sponsored groups which are authorized to offer Medicare+Choice Plans. Problems areas include federal law setting solvency levels but should a provider become insolvent, they come under the state bankruptcy laws.

Eloise Lynch, AARP representative from Salina, voiced their support for the bill (Attachment 3).

MINUTES OF THE Senate Committee on Financial Institutions & Insurance, Room 529-S Statehouse, on February 18, 1998.

Chairman Steffes continued the hearing until Friday, February 20, 1998.

Continued hearing on SB 574 - Powers of bank commissioner

Newton Male, State Banking Commissioner, appeared before the Committee stating that his first duty is to maintain the integrity of the banking industry in Kansas and protect the fiscal integrity of the state and the consumers (Attachment 4). He explained the necessity of protecting the dual banking system in Kansas and that the dollar amounts between national and state chartered banks are nearly equal. Of the approximately ten complaint calls they receive, most are complaints about national banks and the caller is advised to contact the Office of the Controller of the Currency in Washington, D.C. He asked that the Committee not repeal the "wild card" statute and explained the necessity of it in order to remain on a level playing field with federal powers granted to national banks. Time is often of the essence and having to wait for months until the Legislature is in Session in order to "okay" an action would be detrimental to the entire banking industry in Kansas. It would take less than a month for a state chartered bank to move its charter to "national" status thus causing a sizeable loss of fees and tax revenues to Kansas. In discussion of the membership of the State Banking Board, it is made up of six bankers and three private citizens. They do not receive advance information at their monthly meetings on "wild card" actions which would monetarily benefit their banks. Mr. Male suggested that the dip in privilege taxes may have been due to the large assessment made on savings and loans rather than the banks forming subsidiaries. Mr. Male informed the Committee that repeated phone calls had been made to the Department of Revenue regarding the fiscal impact of the implementation of the "wild card" privilege tax notice. These calls were not returned with any notice of expected change in tax revenues. He said it would have been impossible to prepare a fiscal impact statement because there was no way to know how many banks would take advantage of the option.

Daryl Becker, State Bank of Meriden, said they had not formed a subsidiary as two of their largest depositors, Jefferson County and Jeff West School District, were uneasy with pledging securities and felt it was too risky (Attachment 5). He asked that the wild card statute not be repealed but did agree that perhaps some limits were indicated. Waiting for legislative action was not an option.

Chuck Johns, Mercantile Bank of Topeka, said their bank would be at great risk if they could not compete with national banks when such orders are issued. Their bank paid regulatory fees of $370,000 this past year and such funds would be loss to Kansas should they obtain either an out of state charter or become a national bank. He was asked to furnish to the Committee the amoutn Mercantile saved in privilege taxes by taking the formation of a subsidiary.

The hearing was continued.

The meeting was adjourned at 10:05 a.m. The next meeting is scheduled for February 19, 1998.

SENATE FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE GUEST LIST

DATE: 2/18/98

NAME	REPRESENTING
Sonya Allen	Office of the State Bank Commissioner
Judi Stork	✓
W. Newton Hale	"
Bill Caton	Consumer Cred. Comm
Bud Grant	KCCI
Clayton Porter	RCIL
Robert Epps	HCFA
Tom Bell	KIA
Roger Fraust	Nationsbank
Sue Anderson	CBA
Mike Astle	✓
Eloise Lynch	AARP
Bettie Sue Shumway	(Chair) AARP St. Leg.
Jeral Wright	Ks Dept of Credit Unions
Kathy Olsen	KBA
Linda McCarney	KS Insurance Dept.
Jack Hohman	Ks Dept of Credit Unions
DARYL BECKER	ST. BANK OF MERIDEN
CHUCK JOHNS	MERCANTILE BANK

SENATE FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE GUEST LIST

DATE: _____

NAME	REPRESENTING
John Holmgren	AARP-Topeka
Susan Anderson	Hein + Weir
Teresa Sirkenauer	State Farm
Keith K Landis	Christian Science
Danielle Kloe	Governors Office
J B Wells	Via Christi Health System

PROPOSED CHANGES TO SB 490
BILL CATON, CONSUMER CREDIT COMMISSIONER

Senate Bill 490, as originally submitted, reinstated usury limits on retail sales contracts involving the sale of motor vehicles by reinstating language that was removed from K.S.A. 16a-2-201 by the 1997 Legislature. I propose using modified language in K.S.A. 16a-2-401 (which governs finance charges on consumer loans) to govern maximum finance charges on consumer credit sales involving the sale of a motor vehicle. The language I propose will accomplish the following:

- Remove language from K.S.A. 16a-2-201 which is unnecessary after the 1997 amendments which removed rate ceilings from retail sales contracts.

- Clarify that retail sales contracts involving the sale of a motor vehicle are *not* included in the permissive language of K.S.A. 16a-2-201.

- Makes consumer credit sales (retail sales contracts) subject to the interest rate ceilings of K.S.A. 16a-2-401. Maximum finance charges will be set as follows:
    1. For non-licensed lenders, the maximum rate will be 18%
    2. For licensed lenders, the maximum rate will be 36% on the first $780, 21% on $781 to $2,600, and 14.45% on amounts above $2,600, with an alternative maximum finance charge of 18%.

These amendments would allow closer supervision of lenders who wish to charge more than 18% on retail sales contracts involving the sale of a motor vehicle. The attached chart compares finance charges and other pertinent information on selected loan balances, displaying the changes caused by the proposed amendments to the original SB 490.

It is my opinion that the proposed amendments to SB 490 would provide clearer direction to lenders and retail credit grantors. It would also allow higher rates on smaller loans, which would address the concerns of lenders who need to charge higher interest rates to higher risk borrowers. I also believe it follows the spirit of the Kansas Uniform Consumer Credit Code by requiring supervision of lenders and retail credit grantors who wish to charge higher finance charges.

Be aware that all of these interest rate limits can be effectively offset by increasing the sales price of the vehicle, which cannot be regulated. Those consumers who have poor credit history will still be at the mercy of car dealers who are willing to take the increased risk in financing a vehicle. It is my opinion that unscrupulous car dealers make up a very small minority of the industry, and will continue to exist as long as there is a free market.

Senate F.I. & I
Attachment 1
2/18/98

COMPARISON OF FINANCE CHARGES
CONSUMER LOANS VS. RETAIL SALES CONTRACTS

	Loan Amount	Months Term	Monthly Payment	Finance Charge*	Total of Payments	APR*	Total Dollar Difference
Loan Rate	$1,000.00	24	$59.55	$429.20	$1,429.20	36.946%	
Sales Rate	$1,000.00	24	$52.40	$257.60	$1,257.60	23.054%	$171.60
Loan Rate	$1,000.00	48	$39.41	$891.68	$1,891.68	35.724%	
Sales Rate	$1,000.00	48	$31.58	$515.84	$1,515.84	22.136%	$375.84
Loan Rate	$2,000.00	24	$113.46	$723.04	$2,723.04	31.581%	
Sales Rate	$2,000.00	24	$102.87	$468.88	$2,468.88	21.100%	$254.16
Loan Rate	$2,000.00	48	$72.12	$1,461.76	$3,461.76	30.093%	
Sales Rate	$2,000.00	48	$60.87	$921.76	$2,921.76	20.009%	$540.00
Loan Rate	$3,000.00	24	$165.97	$983.28	$3,983.28	28.852%	
Sales Rate	$3,000.00	24	$152.76	$666.24	$3,666.24	20.050%	$317.04
Loan Rate	$3,000.00	48	$103.59	$1,972.32	$4,972.32	27.436%	
Sales Rate	$3,000.00	48	$89.88	$1,314.24	$4,314.24	19.113%	$658.08
Loan Rate	$4,000.00	24	$216.80	$1,203.20	$5,203.20	26.644%	
Sales Rate	$4,000.00	24	$203.69	$888.56	$4,888.56	20.055%	$314.64
Loan Rate	$4,000.00	48	$133.14	$2,390.72	$6,390.72	25.229%	
Sales Rate	$4,000.00	48	$119.84	$1,752.32	$5,752.32	19.113%	$638.40
Loan Rate	$5,000.00	24	$266.91	$1,405.84	$6,405.84	25.021%	
Sales Rate	$5,000.00	24	$254.61	$1,110.64	$6,110.64	20.054%	$295.20
Loan Rate	$5,000.00	48	$162.00	$2,776.00	$7,776.00	23.634%	
Sales Rate	$5,000.00	48	$149.81	$2,190.88	$7,190.88	19.117%	$585.12
Loan Rate	$10,000.00	24	$509.73	$2,233.52	$12,233.52	20.158%	
Sales Rate	$10,000.00	24	$504.23	$2,101.52	$12,101.52	19.030%	$132.00
Loan Rate	$10,000.00	48	$301.12	$4,453.76	$14,453.76	19.401%	
Sales Rate	$10,000.00	48	$296.68	$4,240.64	$14,240.64	18.559%	$213.12
Loan Rate	$14,000.00	24	$703.92	$2,894.08	$16,894.08	18.735%	
Sales Rate	$14,000.00	24	$703.92	$2,894.08	$16,894.08	18.735%	$0.00
Loan Rate	$14,000.00	48	$414.18	$5,880.64	$19,880.64	18.40%	
Sales Rate	$14,000.00	48	$414.18	$5,880.64	$19,880.64	18.40%	$0.00

* Includes 2% loan origination fee

Session of 1998

SENATE BILL No. 490

By Committee on Financial Institutions and Insurance

1-22

AN ACT concerning finance charges on consumer credit sales; amending K.S.A. 1997 Supp. 16a-1-301, 16a-2-201 and 16a-2-202 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1997 Supp. 16a-1-301 is hereby amended to read as follows: 16a-1-301. In addition to definitions appearing in subsequent articles, in K.S.A. 16a-1-101 through 16a-9-102, and amendments thereto:

(1) "Actuarial method" means the method, defined by rules and regulations adopted by the administrator, of allocating payments made on a debt between the amount financed and the finance charge pursuant to which a payment is applied first to the accumulated finance charge and the balance is applied to the unpaid amount financed.

(2) "Administrator" means the consumer credit commissioner appointed pursuant to K.S.A. 16-403, and amendments thereto.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance.

(4) "Amount financed" means the total of the following items:

(a) In the case of a sale, the cash price of the goods, services, or interest in land, less the amount of any down payment whether made in cash or in property traded in, and the amount actually paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest in, a lien on, or a debt with respect to property traded in;

(b) in the case of a loan, the net amount paid to, receivable by, or paid or payable for the account of the debtor, plus the amount of any discount excluded from the finance charge (paragraph (b) of subsection (18) of K.S.A. 16a-1-301); and

(c) in the case of a sale or loan, to the extent that payment is deferred and the amount is not otherwise included and is authorized and disclosed to the customer:

(i) Amounts actually paid or to be paid by the creditor for registration, certificate of title, or license fees, and

(ii) permitted additional charges (K.S.A. 16a-2-501).

interpretation as so stated in said written communication by the consumer credit commissioner of the Kansas uniform consumer credit code and rules and regulations pertaining thereto.

(43) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, except devices moved by human power, used exclusively upon stationary rails or tracks or is intended solely for lawn care or snow removal.

(44) "Motor vehicle" means every vehicle, other than a motorized bicycle or a motorized wheelchair, which is self-propelled.

Sec. 2. K.S.A. 1997 Supp. 16a-2-201 is hereby amended to read as follows: 16a-2-201. (1) With respect to a consumer credit sale, other than a sale pursuant to open end credit, a seller may contract for and receive a finance charge not exceeding that permitted by this section.

~~(2) The finance charge, calculated according to the actuarial method,~~ may not exceed the equivalent of the following:

The total of:

(a) Twenty-one percent per year on that part of the unpaid balance of the amount financed which is $1,000 or less;

(b) fourteen and forty-five hundredths percent per year on that part ~~of the unpaid balance of the amount financed which is more than $1,000.~~

(3) This section does not limit or restrict the manner of calculating the finance charge whether by way of add-on, discount, or otherwise, so long as the rate of the finance charge does not exceed that permitted by this section.

(4) For the purposes of this section, the term of a sale agreement commences with the date the credit is granted or, if goods are delivered or services performed 10 days or more after that date, with the date of commencement of delivery or performance.

(5) Subject to classifications and differentiations the seller may reasonably establish, the seller may make the same finance charge on all amounts financed within a specified range. A finance charge so made does not violate subsection (2) if:

(a) When applied to the median amount within each range, it does not exceed the maximum permitted by subsection (2); and

(b) when applied to the lowest amount within each range, it does not produce a rate of finance charge exceeding the rate calculated according to paragraph (a) by more than 8% of the rate calculated according to paragraph (a).

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

~~(7) Notwithstanding any other provision of this section, with respect~~

(2) With respect to a consumer credit sale other than open end credit not involving the sale of a motor vehicle, the seller may contract for and receive a finance charge not exceeding that agreed to by the consumer.

1-4

~~to a consumer credit sale other than open end credit not involving the~~ *sale of a motor vehicle*, the seller may contract for and receive a finance charge not exceeding that ~~agreed~~ to by ~~the consumer~~.

~~*(8) As an alternative to the rates set forth in subsection (2), the seller may contract for and receive a finance charge not exceeding 18% per year on the unpaid balances of the amount financed.*~~

Sec. 3. K.S.A. 1997 Supp. 16a-2-202 is hereby amended to read as follows: 16a-2-202. (1) With respect to a consumer credit sale made pursuant to open end credit, the parties to the sale may contract for the payment by the buyer of a finance charge not exceeding that permitted in this section.

(2) A charge may be made in each billing cycle which is a percentage of an amount no greater than:

(a) The average daily balance of the account, which is the sum of the actual amounts outstanding each day during the billing cycle divided by the number of days in the cycle;

(b) the unpaid balance of the account on the last day of the billing cycle; or

(c) the median amount within a specified range within which the average daily balance of the account or the unpaid balance of the account on the last day of the billing cycle is included. A charge may be made pursuant to this paragraph only if the seller, subject to classifications and differentiations the seller may reasonably establish, makes the same charge on all balances within the specified range and if the percentage when applied to the median amount within the range does not produce a charge exceeding the charge resulting from applying that percentage to the lowest amount within the range by more than 8% of the charge on the median amount.

~~(3) With respect to a consumer credit sale made pursuant to open end credit, the parties may contract for and the seller or holder may receive a finance charge in an amount not exceeding the rate or rates specified in the agreement governing the account.~~ *If the billing cycle is monthly, the charge may not exceed 1.75% of that part of the amount pursuant to subsection (2) which is $1,000 or less and 1.2% on that part of this amount which is more than $1,000. If the billing cycle is not monthly, the maximum charge is that percentage which bears the same relation to the applicable monthly percentage as the number of days in the billing cycle bears to 30. For the purposes of this section, a variation of not more than four days from month to month is "the last day of the billing cycle."*

(4) Notwithstanding ~~subsection (3)~~ *subsections (3) or (5)*, if there is an unpaid balance on the date as of which the credit service charge is ~~applied, the seller may contract for and receive a charge not exceeding~~

(3) With respect to a consumer credit sale made pursuant to open end credit, not involving the sale of a motor vehicle, which is governed under K.S.A.]6a-2-40] and amendments thereto, the parties may contract for and the seller or holder may receive a finance charge in an amount not exceeding the rate or rates specified in the agreement governing the account.

~~$.50 if the billing cycle is monthly or longer, or the pro rata part of $.50~~ which ~~bears~~ the same relation to $.50 as the number of days in the billing cycle bears to ~~30~~ if the billing cycle is shorter than monthly.

(5) Notwithstanding any other provision of this section, with respect to a consumer credit sale pursuant to open end credit not involving the sale of a motor vehicle, the parties may contract for and the seller or holder may receive a finance charge in an amount not exceeding the rate or rates specified in the agreement governing the account.

(6) As an alternative to the rates set forth in subsection (3), the parties to the sale may contract for and the seller may receive a finance charge not exceeding 18% per year on the amount determined pursuant to subsection (2).

See insert on attachment

Sec. ~~4.~~ K.S.A. 1997 Supp. 16a-1-301, 16a-2-201 and 16a-2-202 are hereby repealed.

K.S.A. 16a-2-401 and

Sec. ~~5.~~ This act shall take effect and be in force from and after its publication in the statute book.

Sec. 1. K.S.A. 16a-2-401 is hereby amended to read as follows: 16a-2-401. (1) With respect to a consumer loan and a consumer credit sale involving a motor vehicle, including a loan pursuant to open end credit, a lender may contract for and receive a finance charge, calculated according to the actuarial method, ~~not exceeding 18% per year on the unpaid balance of the amount financed not exceeding $1,000 and 14.45% per year on that portion of the unpaid balance in excess of $1,000~~.

(2) As an alternative to the rates set forth in subsection (1), with respect to a supervised loan and consumer credit sale involving a motor vehicle made under a license issued by the administrator, including a loan pursuant to open end credit, a supervised lender may contract for and receive a finance charge, calculated according to the actuarial method, not exceeding the equivalent of the greater of either of the following:

The total of: (a) Thirty-six percent per year on that part of the unpaid balance of the amount financed which is $300 or less; and

(b) twenty-one percent per year on that part of the unpaid balance of the amount financed which is more than $300, but does not exceed $1,000; and

(c) fourteen and forty-five hundredths percent per year on that portion of the unpaid balance of the amount financed which is more than $1,000; or

(d) eighteen percent per year on the unpaid balance of the amount financed.

(3) This section does not limit or restrict the manner of calculating the finance charge, whether by way of add-on, discount, or otherwise, so long as the rate of the finance charge does not exceed that permitted by this section. The finance charge may be contracted for and earned at the single annual percentage rate that would earn the same finance charge as the graduated rates when the debt is paid according to the agreed terms and the calculations are made according to the actuarial method.

(4) The term of a loan or consumer credit sale involving a motor vehicle for the purposes of this section commences on the date the loan is made.

(5) Subject to classifications and differentiations the lender may reasonably establish, the lender may make the same finance charge on all amounts financed within a specified range. A finance charge so made does not violate subsections (1) and (2) if:

(a) When applied to the median amount within each range, it does not exceed the maximum amount permitted in subsections (1) and (2); and

(b) when applied to the lowest amount within each range, it does not produce a rate of finance charge exceeding the rate calculated according to paragraph (a) by more than 8% of the rate calculated according to paragraph (a).

(6) Notwithstanding subsections (1) and (2), a lender may contract for and receive a minimum finance charge of not more

than $5 when the amount financed does not exceed $75, or not more than $7.50 when the amount financed exceeds $75.

(7) This section shall not apply to a loan secured by an interest in land the interest rate of which is governed by subsection (b) of K.S.A. 16-207, and amendments thereto, unless made subject hereto by agreement.

(8) Except for paragraph (a) of subsection 9, this section shall not apply to a loan secured by an interest in land subordinate to a prior mortgage and held by a lender other than the lender of the first mortgage, the interest rate of which is governed by subsection (b) or (h) of K.S.A. 16-207, and amendments thereto, unless made subject hereto by agreement.

(9) (a) In addition to the applicable finance charge or rate of interest prescribed by law, a supervised lender may contract for and receive a nonrefundable origination fee not to exceed 3% of the amount financed on any consumer loan secured by an interest in land, which fee shall be a nonrefundable, prepaid finance charge.

(b) In addition to the applicable finance charge permitted for consumer credit sales other than sales by way of open end credit or for consumer loans not secured by an interest in land, a creditor may contract for and receive, in connection with any such sale or loan, a nonrefundable origination fee in an amount not to exceed the lesser of 2% of the amount financed or $100, which fee shall be a nonrefundable, prepaid finance charge.

Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

MEMORANDUM

To: Senate Financial Institutions
and Insurance Committee

From: Tom Wilder

Re: Senate Bill 439 (Medicare Provider Sponsored Organizations)

Date: February 18, 1998

Senate Bill 439 will give the Insurance Department the authority to regulate provider sponsored organizations ("PSOs") which contract to provide health insurance coverage to Medicare beneficiaries. Last fall, Congress approved the Balanced Budget Act which established new "Medicare+Choice" Plans offered through health maintenance organizations and provider sponsored groups. Provider sponsored organizations include doctors and hospitals and these groups are permitted to offer their services directly to Medicare enrollees on a risk bearing basis without using an insurer as an intermediary.

The federal act assumes provider sponsored organizations will obtain a state license before they are permitted to offer Medicare+Choice contracts. However, the state licensing requirements can be waived in the following circumstances:

- If the state fails to act on the license application within 90 days.
- If the state denies the application for a license because it imposes licensing requirements that are not applied to similar organizations.
- If the state applies solvency requirements that are different from federal solvency standards for Medicare PSOs. These federal solvency requirements are still being developed by the Department of Health and Human Services.

Senate FI&I
Attachment 2
2/18/98

420 SW 9th Street
Topeka, Kansas 66612-1678

913 296-3071
Fax 913 296-2283

☎ Consumer Assistance Hotline
1 800 432-2484 (Toll Free)

Currently, Kansas law does not allow provider sponsored groups to offer health insurance coverage unless the organization is licensed either as an accident and health insurance company or as a health maintenance organization ("HMO"). Senate Bill 439 adds a new category of licensed entity under the Kansas Health Maintenance Organizations Act for "Medicare Provider Organizations." The legislation gives the Insurance Department the ability to license Medicare PSOs and to impose on these provider groups some of the same operational requirements that are applied to health maintenance organizations doing business in this state.

The bill places provider sponsored organizations offering Medicare+Choice Plans under the jurisdiction of the Insurance Department and makes the following changes to the Kansas HMO laws:

Section 1. (Definitions) - A new definition of a "Medicare Provider Organization" is added to the law. These are provider sponsored groups which are authorized to offer Medicare+Choice Plans as defined in the Balanced Budget Act of 1997. Medicare Provider Organizations are also added to several of the other definitions in the HMO act as appropriate.

Section 2. (Certificates of Authority) - This section outlines the information which must be provided to the Insurance Commissioner as part of an application for a certificate of authority to operate in Kansas. The requirements for Medicare PSOs will be the same as those for Health Maintenance Organizations with one exception. Unlike HMOs, Medicare provider groups will not be required to set up procedures for enrollees to participate in the management of the organization. In addition, the Commissioner will be allowed to waive the statutory application requirements in cases where the PSO has complied with licensing standards set by regulatory agencies of other states or of the federal government.

Section 3 (License Application) - The Commissioner must approved a completed application for a Certificate of Authority within 60 days or inform the applicant of any additional information which will be required to process the application. The statute is also amended to allow the Commissioner to establish, by rule and regulation, solvency standards to Medicare Provider Organizations. This provision is necessary because any

solvency requirements set by the state can not conflict with federal requirements which are currently being developed.

Section 4 (Denials of License) - The Commissioner must notify Medicare PSOs if there is reasonable cause to deny, suspend or revoke a license. The provider sponsored organization will be given 15 days to request a hearing to contest the action taken by the Insurance Department.

Section 5 (Powers) - The provision sets out the powers granted to Medicare Provider Organizations. Provider groups are authorized to operate medical facilities, furnish health care services, contract for additional services and offer coverage outside of its service area.

Section 6 (Certificates of Coverage) - The statute outlines the information which must be included in certificate of coverage issued to Medicare enrollees. The provisions are the same as required for health maintenance organizations. The section also requires contracts between Medicare PSOs and any providers to include provisions which will hold the enrollee harmless if the provider group does not pay for all covered services. This language protects enrollees and assures that they will not have to pay for services above any required premiums, co-payments or deductibles.

Section 7 (Contracting Requirements) - The section allows Medicare Provider Organizations to offer services based on capitated payment arrangements.

Section 8 (Examinations) - The provision authorizes the Commissioner to examine the business operations and financial status of Medicare PSOs at once each three years. In addition, provider groups must have an on-site quality of care assessment every three years. The Commissioner is allowed to accept examination reports issued by other state or federal agencies.

Section 9 (Licensing Fees) - The section sets fees for license applications and for filing annual reports. The Medicare provider groups are exempted from premium taxes imposed on health maintenance organizations.

Section 10 (State Law Exemption) - Medicare Provider Groups are not subject to any other provisions in the Kansas Insurance Code.

Section 11 (Rules and Regulations) - The amendment repeals the requirement for the Insurance Department to publish a separate volume of all regulations which are applied to health maintenance organizations.

Section 12 (Federal Exemption) - The section allows Medicare provider groups to comply with any federal contracting requirements even if they conflict with the state act.

Section 13 (Financial Reporting) - Medicare PSOs are required to file annual financial reports with the Commissioner.

Section 14 (Responsibility of Officers and Directors) - The section provides that the officers and directors of Medicare Provider Organizations are personally liable for violations of the act.

Section 15 (Fiduciary Responsibilities) - Officers, directors and partners of Medicare Provider organizations with responsibility to invest funds on behalf of the PSO are responsible for the money in a fiduciary relationship with the provider group. Medicare PSOs are not subject to the same bonding requirements as applied to health maintenance organizations.

There are a number of amendments which will clarify the authority of the Insurance Department to regulate Medicare Provider Organizations which I have attached to my testimony. Senate Bill 439 will give the Commissioner the ability to properly license and govern the operations of provider groups which offer Medicare+Choice Plans. This regulation is allowed by the federal Balanced Budget Act which was passed last year.

I ask that the Committee approve this legislation subject to the attached amendments.

2-4

Kansas Insurance Department

Proposed Amendments - Senate Bill 439

(1.) [Page 2, Lines 3-4] Add "Medicare Provider Organization" to the definition of "grievance."

(j) "Grievance" means a written complaint submitted in accordance with the ~~health maintenance organization's~~ formal grievance procedure by or on behalf of the enrollee regarding any aspect of the health maintenance organization or the medicare provider organization relative to the enrollee.

(2.) [Page 4, Lines 28-34] Add "Medicare Provider Organization" to the requirements for information to be provided to the Commissioner as part of the application process.

(4) a sample or representative copy of any contract or agreement made or to be made between the health maintenance organization or medicare provider organization and any class of providers and a copy of any contract made or agreement made or to be made, excluding individual employment contracts or agreements, between third party administrators, marketing consultants or persons listed in subsection (3) and the health maintenance organization *or medicare provider organization.*

(3.) [Page 4, Line 37] Delete the "," after the words "in the case of a health maintenance organization." This change clarifies that the only application requirement which does not apply to Medicare PSOs is the specific provision which allows enrollees to participate in the business operations of an HMO.

(4.) [Page 5, Lines 12-13] Add "Medicare Provider Organization" to the requirement for financial information to be provided as part of the application process.

(B) A copy of the most recent unaudited financial statements of the health maintenance organization or medicare provider organization.

(5.) [Page 5, Lines 14-20] Add "Medicare Provider Organization to the requirements for financial information to be provided as part of the application process.

(C) financial projections in conformity with statutory accounting practices prescribed or otherwise permitted by the department of insurance of the state of domicile for a minimum of three years from the anticipated date of certification and on a monthly basis from the date of certification through one year. If the health maintenance organization or medicare provider organization is expected to incur a deficit, projections shall be made for each deficit year and for one year thereafter.

(6.) [Page 7, Lines 4-7] Add "Medicare Provider Organizations" to the requirements for the provision of health care services on a prepaid basis.

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(3) the health maintenance organization or medicare provider organization will effectively provide or arrange for the provision of basic health care services on a prepaid basis, through insurance or otherwise except to the extent of reasonable requirements for copayments and/or deductibles; and

(7.) [Page 11] Add a new subsection to K.S.A. 1997 Supp. 40-3209 which allows the Commissioner to authorize certificates of authority approved by the Department of Health and Human Services.

(f) in lieu of any of the requirements of subsection (a) of this section, the commissioner may accept certificates of coverage issued by a medicare provider organization in conformity with requirements imposed by any appropriate federal regulatory agency.

Testimony in support of Senate Bill No. 439
Financial Institutions and Insurance Committee
Hearing 9:00 A.M. February 18, 1998 Room 521
Senator Don Steffes, Chairman

Senator Steffes, I wish to thank you for this opportunity to speak with the Financial Institutions and Insurance Committee in support of Senate Bill No. 439. This bill is,I believe, of vital importance to the health and welfare of the people of Kansas.
I am Dr. Eloise Lynch, a member of the State Legislative Committee of AARP. As you know, our organization does expend a great deal of time and effort to inform ourselves on legislative issues of importance to the 340,000 Kansas members of AARP. One of the major concerns is that of health care. So I am here today to share with you our strong support of the inclusion of "medicare provider organizations" to the existing K.S.A. 1997 Supp. 40-3202.

We are very much in agreement with the definition of "Medicare provider organization" (pg. 3, lines 29-34). In addition, all insertions of this phrase throughout the bill seen appropriate and needed.
Concerning the applications for a certificate of authority line 37, pg. 4 is most necessary.
The inclusion of the procedure to be handled by the commissioner in cases involving other state or agency of the federal government (lines 13- 17,pg. 6) appears to be efficient and advantageous. It would seem most desirable to have such a reciprocal arrangement with all states as well as the federal government.
The deposit or solvency requirements for both a health maintenance organization and a medicare provider organization as stated in lines 8-13, page 7 provide a solid fiscal base.
Senate Bill No. 439 viewed as a whole appears to be comprehensive and well thought out. It clarifies and strengthens the structural framework for maintaining the health and general welfare of Kansans.

Thank you again for this opportunity to meet with you. If there are question I should be happy to try to answer. With me today is John Holmgren who has great expertise in this area and can provide information on this topic.

Senate F.D.I
Attachment 3
2/18/98

STATE OF KANSAS
BILL GRAVES
GOVERNOR

W. Newton Male
Bank Commissioner

Judi M. Stork
Deputy Commissioner

Kevin C. Glendening
Assistant Deputy Commissioner

William D. Grant, Jr.
General Counsel

Ruth E. Glover
Administrative Officer

OFFICE OF THE
STATE BANK COMMISSIONER

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

FEBRUARY 17, 1998

Good Morning, Mr. Chairman and members of the committee. I am W. Newton Male, Bank Commissioner for the state of Kansas.

Senator Steffes asked me to appear before the committee today to give you information regarding K.S.A. 9-1715, the wildcard statute, as well as speak to the issuance of Special Order 1995-6, which has caused a considerable amount of discussion recently. I welcome this opportunity to provide each of you with factual information and enhance your understanding of the wildcard statute. Our office has for many years assisted this committee by providing information on pertinent topics. We think this relationship is good and we want to continue to maintain a strong working relationship with this committee. In this regard, before I begin speaking about the wildcard statute, I want to comment on our initial decision to keep the list of banks with investment subsidiaries confidential. The department's General Counsel carefully reviewed and researched the department's confidentiality statute. He also analyzed the effect releasing any department data would have on future requests for other information. He reached the opinion the list of banks with subsidiaries was confidential pursuant to K.S.A. 9-1712. Utilizing his opinion, I decided not to release the list of banks with subsidiaries. I did so not to stonewall Senators Steffes and Feleciano but instead because if the statute was unclear, I wanted to err on the side of conservatism. The relationship we maintain with our state chartered banks is based on the fact that information obtained by this agency is held strictly confidential. Because of this fact, the banks are willing to freely provide information critical to this office in the supervision and regulation of the state chartered banks. This open communication is good for the consumers of banking we are charged with safeguarding. Once the Attorney

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eral provided an opinion that the release of the bank names would not violate the department's confidentiality statute, we promptly released the list of banks who have investment subsidiaries.

Now, the wildcard statute. There is a bill before you today, Senate Bill 574, which proposes to repeal the provisions contained in K.S.A. 9-1715. This statute is commonly known as the wildcard statute. The whole intent of the statute is to authorize the bank commissioner to protect the competitive parity of state chartered banks with their national counterparts. If the Comptroller of the Currency allows a national bank to pursue a certain banking activity, and a state chartered bank does not have the same power, there can be a competitive inequality. If this inequality exists and is brought to the attention of the bank commissioner, a Special Order granting parity to state chartered banks can be issued. A very good example of how this works can be seen in Special Order 1997-2. You all remember our recent considerations of the interstate branching issue and Congress' Riegle-Neal Act. The law stated that effective June 1, 1997, interstate BRANCHING would occur on a nationwide basis unless each state passed their own law to stop such action. The federal law allowed the states more than two years to make this decision. The Kansas legislature took no action in either of these two years regarding the interstate branching issue. As a result of this inaction, on June 1, 1997 Kansas national banks were allowed nationwide branching but Kansas state chartered banks were NOT allowed this opportunity. Because of the existence of the wildcard statute, our agency possessed the authority to rectify what otherwise would have been an enormous competitive disadvantage for our state banks. In fact, I would assert that a large majority of the legislators were willing to forego any action on the subject in reliance on the fact this inequity would be resolved by our issuance of a Special Order. They knew that if no legislative action was taken, a Special Order would be issued to allow state chartered banks the same ability to branch. And in June of 1997, I issued Special Order 1997-2 to restore parity between state and national banks. The legislature relied on the power in 9-1715 and knew the important function this statute provides.

The ability to issue a Special Order was first given to the Commissioner in 1967. Since that time 31 orders have been issued and 24 remain outstanding. As you can see, on the average, one Order per year is issued. The way the wildcard statute generally works is the Office of the State Bank Commissioner is approached by a bank or their attorney or accounting firm. This individual expresses to the agency that competitive inequality exists because a national bank has a certain power which a state bank does not have. They submit information to the agency to show the law or regulation which grants the national bank the authority and they provide data to show why a competitive inequality exists. Our

e closely reviews the material, determines that the OCC allows the activity, and issues an Order only after making a determination that state chartered banks will be disadvantaged if such Order is not issued. Recently a state chartered bank requested permission to pursue a certain activity. They said they were competitively disadvantaged. However, after reviewing their request we found that while national banks had the authority to pursue the activity, we were unable to make a determination that the disparity amounted to a competitive disadvantage and did not issue an Order.

Currently, 44 states have the wildcard authority. In four of these states, there is automatic implementation. This means, if the national banks have the power to pursue an activity, state banks automatically have the same power.

We have been told by several bankers that the elimination of the wildcard statute would prompt them to immediately switch to a national charter. You may discount these statements. However, if a bank has even the perception they will be unable to pursue an activity they could otherwise conduct if they were a national bank, with today's ease of charter conversion and competitive banking environment climate, we anticipate many will choose that alternative. The OCC has a 30 day turn around on conversion applications for any bank rated 1 or 2. As 282 banks out of 287 state chartered banks are now rated 1 or 2, you can see the quick conversion time frame affects 98% of our banks. In the absence of the wildcard statute, if a bank had to wait from mid April to mid January (nine months) for the legislature to return to grant parity, it would truly place the state chartered banks at a disadvantage. The conversion of some of our larger state banks could result in a significant reduction in the assessment fees collected by our agency. While the department would in turn reduce some expenses, the overall loss of revenue would likely prompt higher assessments to the remaining banks; assessment levels that could force the remaining banks to choose a national charter.

You may be asking yourself why competitive equality is so important. Why is the dual banking system important? Why is the maintenance of a state charter important? Three-fourths of the banks in Kansas fall under the state's jurisdiction. These banks serve many citizens of Kansas. They are the consumers who should be served well. As the commissioner, and as legislators, the goal is to look out for Kansas consumers. We do that in the banking department. You do that through the legislature. However, if you have no state chartered banks, there is no need for regulation by the legislature. All the banking issues in Kansas will be dictated by one individual, the Comptroller of the Currency in Washington D.C. In this scenario the legislature would have no say over what banks in Kansas do. Is this best for Kansas?

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ı. .ng both state and national banks promotes competition, thereby benefitting the consumers of banking. I am sure each of you have heard complaints about certain institutions trying to eliminate customers which don't meet the bank's "profile". Is this serving the consumer? National banks also pay higher assessments for their regulation; something that must be passed on to consumers. I might add that national bank assessments have declined in the last several years due largely to state banking departments. The Comptroller has attempted to attract state banks interested in conversion and has lowered their fees to do so. However, their fees still remain almost twice as high in some cases. We also feel consumers have better access to the state regulator than to a national agency. It is beneficial to consumers to have someone to call in Topeka versus Washington DC. This may sound like an advertisement for the banking department but we do operate a top banking agency at low assessment costs while being responsive to the consumers and the banks we regulate.

Now I would like to make a few brief comments about the issuance of Special Order 1995-6. Our department issued Special Order 1995-6 pursuant to the statute and strictly followed the procedural guidelines established in the statute. Notification was made to the legislature. There were no attempts by our department to hide the issuance of this Order. Contacts were made with the department of revenue at the time of the Order's issuance. Additionally, last February, Senators Feleciano and Clark questioned me regarding a February 6, 1997 report from the Legislative Research Department. This report showed a decline in the collection of taxes from Financial Institutions for Fiscal Year 1997. I contacted the Legislative Research Department and spoke with Alan Conroy. I acquired cursory information regarding the taxing of financial institutions and orally provided that information to the Senators. I also asked Mr. Conroy if he had any theories as to why the amount of financial institution taxes had dropped. It was my understanding he would explore the issue and provide the result to the Senators. The banking department has as its primary responsibility the supervision and regulation of banks. While we are concerned with any impact the fulfillment of our job duties will have on other areas of state government, taxation issues are not within our purview. We made notification to the appropriate people at the time the Order was issued. There were no conflicts of interest. Commissioner Dunnick issued the Order as he was required to do under the wildcard statute. It was determined an inequity existed that would significantly impact the state chartered banks and parity was restored. I did not repeal Special Order 1995-6 when I took office over a month later just as I did not repeal seven other Orders Commissioner Dunnick issued during his term in office. The economic disparity that justified issuance of Special Order 1995-6 existed when I took office, and continues to exist today. I would be remiss to revoke an authorized Order under present conditions.

repealing this statute would be an overreaction. While the banking department has no desire to repeat the negative allegations leveled against us while we performed our duties competently and according to statute, removal of this power goes too far. The banking department takes objection to anything that would significantly impede the ability of state chartered banks to remain competitive, or threatens the dual banking system in Kansas.

Thank you Senators for your attention today. I would be happy to stand for questions.

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TESTIMONY

BY DARYL BECKER

THE STATE BANK OF MERIDEN

BEFORE

THE SENATE FINANCIAL INSTITUTIONS

COMMITTEE

REGARDING

SENATE BILL 574

Senate F & I
Attachment 5
2/18/98

May I introduce myself, I am Daryl Becker, President of The State Bank of Meriden, Meriden, Kansas. Meriden is located just Northeast of Topeka twelve miles. I have been with our bank thirty eight years, thirty two of which I have been President.

I am here to visit with you about Senate Bill 574, the elimination of the bank commissioners Wild Card Statute. An absolute necessity for state chartered banks. First, lets not mix Senate Bill 541, which would eliminate the advantages of an investment subsidary for government securities, and the Wild Card Statute.

Our bank does not have an investment subsidary and we are only fifty percent loaned out. We may form one in the future if the legislature indicates that the tax advantage will remain. We made the assumption that the legislature would tax credit unions long before they eliminated the tax advantage of investment subsidiaries owned by banks.

Is this a reason to eliminate the Wild Card Statute? Definitely not. The Commissioner used this statute to allow state banks to do the same thing national banks were previously granted the power to do. This is the reason the statute was placed on the books. That is part of his job, to grant parity to the dual banking system. He would not have been fulfilling his responsibilities as commissioner had he not granted state banks the same power.

If this bill is passed, you will be taking away an advantage to remain a state chartered bank. Historically, the statute has been used about once a year by the commissioner. If state banks have to wait until the legislature meets each year, hoping to get a bill passed to grant them the same powers as national banks were given by the OCC, a grave disadvantage will occur. Can you imagine the advertising advantage this will give national banks during this period? At least if I were a national bank and were granted a new power by my primary regulator, I would use it to my best advantage against my competitors.

Many of the states have automatic Wild Card statutes. If this committee wants to simplify the system, pass a bill in Kansas that states, if a national bank has a power, a state bank will automatically have the same. Why put this extra notification on the commissioner?

We are already loosing state banks because of mergers and acquisitions. The acquirers have been predominately national banks. Lets not give them an additional advantage to switch. Parity is the only way to insure the viability of the dual banking system in our state.

You all know how fast our financial system is changing. New products and services, new delivery systems. Technology is moving us faster than ever before. If we are not allowed to keep up, we will either switch regulators or die. I do not think anyone wants to see Kansas without a balance of both state and national banks.

Our present system has worked for many, many years. The Wild Card Statute has kept state banks competitive and an equal leader in bringing financial services to our state.

Let me leave you with one thought. "If it ain't broke, don't fix it."

Thank you very much for allowing me to speak with you today. I appreciate the opportunity.

Daryl Becker, President
The State Bank of Meriden
Meriden, Kansas