

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS.

The meeting was called to order by Chairperson Ray Cox at 3:30 p.m. on January 26, 2000 in Room 527-S of the Capitol.

All members were present except: Representative Carlos Mayans - Excused
Representative Melvin Minor - Excused

Committee staff present: Dr. Bill Wolff, Legislative Research
Bruce Kinzie, Office of Revisor
Maggie Breen, Committee Secretary

Conferees appearing before the committee: Denny Burgess, District Judges Association
George Barbee, Community Bankers Association and
Kansas Association of Financial Services
Representative Gerry Ray
Kathy Olsen, Kansas Bankers Association
Linda DeCoursey, Department of Insurance
Matthew Goddard, Heartland Community Bankers
Ron Gaches, Farm Credit Council, Inc.
Roy Worthington, Kansas Land Title Association
Matthew All, Department of Insurance
Chuck Stones, Kansas Bankers Association

Others attending: See attached

Chairman Cox opened the floor for bill introductions and recognized **Denny Burgess**, District Judges Association, who requested a bill that would raise the maximum monthly retirement benefits for judges from 70% to 80% of their final average salary, after 25 years of service as a judge. Chairman Cox said he had a request from an appeals court judge, who wants a little more clarification on designation of beneficiaries for KPERS retirement, that would work right into this proposed legislation. It was the consensus of the committee to introduce legislation covering both items.

Chairman Cox recognized **George Barbee**, Community Bankers Association, who requested that two bills be introduced. The first request was to amend the statute that has to do with the holding of land by banks. It grants them more time to dispose of property that had been held for bank use but found to not be needed. **(Attachment 1)** It was the consensus of the committee to introduce the legislation. His second request was a proposed amendment to K.S.A 9-805. The bill would require banks, when filing with the bank commissioner, to list only stockholders owning more than 5%. This would be in line with general corporations being required to list only stockholders that hold more than 5%, when submitting their annual report to the Secretary of State. **(Attachment 2)** It was the consensus of the committee to introduce the legislation.

Chairman Cox recognized **Representative Gerry Ray** who said she has learned, through working with the Consumer Protection Division of the Attorney General's Office, that someone can get your bank account number and withdraw funds from your account, without your authorization. She asked for introduction of legislation that would make this unlawful. It was the consensus of the committee to introduce this legislation.

Chairman Cox opened the hearing on:

HB 2677 - Title insurance, deposits for real estate closings:

CONTINUATION SHEET

MINUTES OF THE FINANCIAL INSTITUTION, Room 527-S Statehouse, at 3:30 p.m. on January 26, 2000.

Proponents:

Kathy Olsen, Kansas Bankers Association, said Sub SB 60, dealing with title insurance companies and the regulation of their escrow accounts, was passed last year by the legislature. One section of K.S.A. 40-1137(c) talks about “good funds” and provides that all funds, deposited for real estate closing in excess of \$2,500, must be in one of the forms suggested in the statute. Specifically, that section lists several types of bank checks. After the bill was passed, it came to KBA’s attention that teller’s checks were a type of check commonly used but not included in the statute. Even though the Insurance Commissioner’s office issued a letter stating that they would not be critical of any title insurance company using a teller’s check for depositing good funds, some title companies are not accepting teller’s checks because they’re not mentioned in the law. She requested the committee vote favorably on HB 2677. It simply adds the two words “teller’s checks” into the statute. (**Attachment 3**)

Linda DeCoursey, Kansas Insurance Department, said her department did not write the “good funds” portion of the law, however, they did not oppose it. The Kansas Insurance Department, Kansas Land Title Association, and Kansas Association of Realtors worked together on this bill. Her office agrees that it is appropriate to add teller’s checks to the bill. She thanked the committee for having the insight to pass Sub SB 60 last year. Because of this legislation, the Kansas Insurance Department was able to respond decisively to a situation occurring in Wichita whereby approximately \$1.4 million was discovered missing from a title agency. (**Attachment 4**)

Matthew Goddard, Heartland Community Bankers Association, said his organization is in favor of the legislation. (**Attachment 5**)

Ron Gaches, said Farm Credit Council, Inc., finds itself in a situation similar to the KBA. Following passage of the “good funds” bill, several title insurance agents asked their members throughout the state for some evidence that one of their financial instruments met the criteria identified in Sub SB 60. The Insurance Commissioner’s Office, after hearing an explanation of how the Farm Credit Council was a Federally chartered instrumentality, issued a letter opinion that clarified that the language that appears on page 2, line 10 of the bill, “funds received from government entities”, obviously was intended to include Farm Credit Council, since there was no evidence on the record that their lending practices were not to be included. Mr. Gaches asked the committee to amend the bill to insert “Federally chartered instrumentalities of the United States”. In addition to Farm Credit Council, it would pick up Freddy Mac, Fanny Mae, Sallie Mae, and other similarly situated organizations. Approval of the amendment will assure that the FCC associations like Production Credit Association and Farm Land Bank are included in HB 2677. (**Attachment 6**)

Representative Tomlinson moved to adopt the amendment to the bill. Representative Sharp seconded the motion. The motion carried.

Roy Worthington, Kansas Land Title Association, supports the addition of teller’s checks to the definition of good funds provided that such checks offer the same assurance of collected funds as cashier’s checks. Meaning they are not subject to being dishonored due to an insufficient account or a stop payment order. He urged the committee to protect the effectiveness of the present law by ensuring that funds deposited for real estate transactions are collected funds. (**Attachment 7**)

Kathy Olsen assured the committed that there cannot be a stop payment on a teller’s check, it is treated as cash equivalent under the Universal Commercial Code (UCC). Teller’s checks are defined in the code as a draft drawn by a bank on another bank or payable at or through another bank.

Karen France, Kansas Association of Realtors - Written testimony only. (**Attachment 8**)

Chairman Cox closed the hearing on HB2677 and opened the hearing on:

HB 2647 - Insurance; prohibiting financing of credit insurance in home loans

Proponent:

CONTINUATION SHEET

MINUTES OF THE FINANCIAL INSTITUTION, Room 527-S Statehouse, at 3:30 p.m. on January 26, 2000.

Matt D. All, Kansas Insurance Department, said the Insurance Commissioner feels that **HB 2647** is a simple straightforward solution to an unnecessary and potentially predatory lending and insurance practice. It bans the financing of consumer credit insurance premiums in consumer home loans, which is known as "packing". The practice lies at the intersection of two broader problems which are the overselling and overpricing of consumer credit insurance. These practices take place when the consumers are most vulnerable, at the closing of a consumer home loan. The National Association of Insurance Commissioners (NAIC) recommends that credit life insurance premiums be set so that insurers pay 60 cents in benefits for every dollar of premium collected. In Kansas the loss ratio for credit life insurance is sitting roughly at 30 cents on the dollar. At a recent NAIC meeting, one of the exhibits passed out showed an example of the abuses of the packing of credit insurance. It involved a Kansas consumer. **HB 2647** does not prohibit lenders from selling consumer credit insurance in conjunction with consumer home loans. But lenders would be banned from packing these premiums into consumer home loans that are secured by a consumer's home. (**Attachment 9**)

Opponents:

Chuck Stones, Kansas Bankers Association, said his organization is opposed to the bill. On the surface it seems to protect the consumer. However, it is the consumer who ends up being hurt, especially those who really need this product. He believes that **HB 2647** would effectively eliminate the issuance of credit life insurance on consumer home loans. Most credit life is sold in the form of a single premium. The consumer may either make the payment in a lump sum or finance it. Most choose to finance it, as they find a single payment cost prohibitive. It is very important to remember that credit life is voluntary. It is against the law for a lender to require the consumer to purchase credit life from them as a condition of making the loan. Also, at this very moment, KBA, and credit life insurance companies are in discussions with the Insurance Commissioner as to where those proper loss ratios should be, and how the rates can be adjusted to make them more acceptable. (**Attachment 10**)

George Barbee, Kansas Association of Financial Services, appeared in opposition to **HB 2647**. He stressed that single premium credit insurance is completely voluntary. It is not tied to the loan in any manner and disclosures must be made when making the loan. You cannot even talk about insurance until the loan has been approved. The insurance is to pay off the mortgage if the consumer dies, so that the borrower's family can keep the home after there has been a loss. Kansas law already requires full disclosure as well as refunds upon cancellation. Credit insurance is a legitimate and worthwhile financial service. It has been around for 70 years and addresses the problem of being under or non-insured. He urged the committee to report the bill unfavorably. (**Attachment 11**)

Matthew Goddard, Heartland Community Bankers Association, testified against **HB 2647**. Credit insurance remains a popular product among borrowers. The most attractive feature is that it repays the insured loan obligation and relieves survivors of any financial obligations or burden. Credit life is not for everyone. It is purchased voluntarily by borrowers. If someone is carrying enough life insurance to cover all necessary expenses upon a death, they probably do not need credit life and shouldn't have to buy it. Mr. Goddard gave an example of the cost of carrying credit life on a 7 year loan of roughly \$10,000. (**Attachment 12**)

Sue Anderson, Community Bankers Association - Written testimony only. (**Attachment 13**)

Chairman Cox closed the hearing on **HB 2647**.

Chairman Cox said he would entertain a motion on **HB 2677**. Representative Tomlinson made a motion to approve **HB 2677** as amended. Representative Sharp seconded the motion. The motion carried.

The meeting was adjourned at 5:02 p.m.

The next meeting is scheduled for February 2, 2000.

HOUSE FINANCIAL INSTITUTIONS COMMITTEE GUEST LIST

DATE: January 26, 2000

NAME	REPRESENTING
Bill Sneed	CONSECO FIN. CORP
Linda McCusker	KS Insurance Dept
MATT ALL	KID
Wendy Lee Smith	KS Reg. Housing Assn.
George Barbee	Barbee & Assoc's
Greg Taylor	Household Financial
Marc Hamann	KS Div. of the Budget
Carrie Donovan	KAIA
Kathy Olsen	KBA
Chuck Stones	KBA
Matthew Goddard	HCB A
Kevin Glendening	OSBC
Judi Stork	OSBC
Sonya Allen	OSBC
Ken Owen	Financial Ins. Group

KANSAS STATUTES

CHAPTER 9.--BANKS AND BANKING; TRUST COMPANIES
ARTICLE II.--BANKING CODE; POWERS

9-1102. **Holding of real estate and personal property; limitations.**

(a) Any bank or trust company may own, purchase, lease, hold, encumber or convey real property and certain personal property subject to the following:

(1) Own suitable building, furniture and fixtures, stock in a single trust company organized under the laws of the state of Kansas, and stock in a safe deposit company organized under the laws of the state of Kansas, and stock in a corporation organized under the laws of this state owning real estate all or a part of which is occupied or to be occupied by the bank or trust company;

(2) purchase, hold, encumber, and convey real estate or lease, as lessor or lessee, any building or buildings. Any real estate not necessary for the bank's or trust company's accommodation in the transaction of its business shall be disposed of or charged off its books by the bank or trust company not later than seven years after its ~~acquisition~~ intended use for banking purposes ends unless the state bank commissioner authorizes the bank or trust company to retain such real estate on its books for a period not to exceed an additional ~~two~~ three years;

(3) a bank's or trust company's total investment or ownership at all times in any one or more of the following shall not exceed 1/2 of its unimpaired capital stock, surplus, undivided profits and capital notes and debentures, and any such excess shall be removed from the bank's or trust company's books unless approval is granted by the state bank commissioner:

(A)The book value of real estate plus all encumbrances thereon;

(B)The book value of furniture and fixtures;

(C) the book -value of stock in a safe deposit company;

(D) the book value of stock in a trust company; or

(E)the book value of stock in a corporation organized under the laws of this state owning real estate occupied by the bank or trust company and advances to such corporation acquired or made after July 1, 1973. Except that any real estate not necessary for the accommodation of the bank's or trust company's business shall be disposed of or charged off its books according to paragraph (2).

House Financial Institutions
1-26-00
Attachment 1

(b) Any bank or trust company may acquire real estate in satisfaction of any debts due it and may purchase real estate in satisfaction of any debts due it, and may purchase real estate at judicial sales, but no bank or trust company shall bid at any judicial sale a larger amount than is necessary to protect its debts and costs. No real estate or interest in oil and gas leasehold acquired in the satisfaction of debts or upon judicial sales shall be carried as a book asset of the bank or trust company for more than 10 years. At the termination of the 10 years such real estate shall be charged off. The commissioner may grant an extension not to exceed four years, if in the commissioner's judgment it will be to the advantage of the bank or trust company to carry the real estate as an asset for such extended period. Any such extensions issued shall be reviewed by the commissioner on an annual basis.

Proposed amendment to 9-805

KANSAS STATUTES

CHAPTER 9.--BANKS AND BANKING; TRUST COMPANIES

9-805. List of stockholders; submission to commissioners

Every bank and every trust company shall keep a full and correct list of the names and addresses of all of its stockholders, and the number of shares owned by each, This list of stockholders shall be kept and maintained in the office where its business is transacted, and during the business hours of such bank or trust company, the same shall be subject to the inspection of all stockholders. The president or cashier of every bank and every trust company shall submit to the commissioner on or before the thirty-first day of January of each year a list of such stockholders owning at least 5% of the capital stock of the bank as of the first day of such calendar year, the correctness of which shall be verified under oath.

History.- L. 1947, ch. 102, § 8; L. 1975, ch. 44, § 6; July 1.

House Financial Institutions
1-26-00
Attachment 2



The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

January 26, 2000

TO: House Committee on Financial Institutions

FROM: Kathleen Taylor Olsen, Kansas Bankers Association

RE: HB 2677: Title Insurance and "Good Funds"

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before the committee in support of **HB 2677**, which amends K.S.A. 1999 Supp. 40-1137(c).

This statute was a part of a 1999 bill that dealt with title insurance companies and the regulation of escrow accounts (House Sub for SB 60). One very small part of that bill deals with what is commonly called "good funds" or "wet funds", as it provides that all funds deposited for real estate closings in excess of \$2,500 must be in one of the forms suggested in the statute. The subsection (c) then lists three types of "bank" checks: cashier's checks, certified checks or bank money orders.

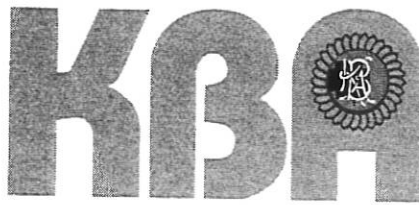
We later learned that another type of bank check had been commonly used. It is called a "teller's check" and is defined in the Uniform Commercial Code (UCC) as a draft drawn by a bank on another bank or payable at or through a bank (see UCC Section 84-3-104(h)). The UCC treats all of these bank checks the same.

We brought this to the attention of the Insurance Commissioner and her General Counsel issued a letter stating that they would not be critical of any title insurance company using a teller's check for depositing good funds. I have attached both our letter to the Insurance Commissioner and her Counsel's response, to my testimony. Even with knowledge of this letter, some title insurance companies are still not accepting teller's checks because they are not a type listed in the law.

As our letter to the Insurance Commissioner points out, in the eyes of the UCC, teller's checks are as reliable as are the other forms of "bank" checks. Given the arguments presented there, it is our belief that omitting "teller's checks" from the original bill last year was simply an oversight, and fortunately, one that is correctable.

Thank you for your attention to this matter and we hope you will consider favorable action on this bill.

House Financial Institutions
1-26-00
Attachment 3



August 23, 1999

The Honorable Kathleen Sebelius
Insurance Commissioner for the State of Kansas
420 SW 9th Street
Topeka, Kansas 66612

Re: SB 60

Dear Commissioner Sebelius:

The Kansas Bankers Association is a non-profit trade organization with 384 of the 389 banks in Kansas as its members. As full-service Kansas bankers, many different services are offered to a variety of people.

We are writing to you as it has come to our attention that one of the provisions contained in SB 60 (passed in the 1999 session) does not conform to current practices nor is it consistent with certain provisions of the Uniform Commercial Code. Since you have been given the authority to oversee compliance with this new law, we are asking for your help in the interpretation of this particular section.

The section of interest is New Section 10, subsection (c). This section is referred to as the "good funds" or "wet funds" section as it provides that all funds deposited for real estate closings which exceed \$2,500, are to be in one of the forms suggested there. Particularly in subsection (3), there are three different types of "bank" checks listed: cashier's checks, certified checks or bank money orders.

We have learned that many banks use another type of bank check called, "teller's checks". "Teller's checks" are defined in the Uniform Commercial Code (UCC), Section 84-3-104(h), as a draft drawn by a bank on another bank or payable at or through a bank. They differ from a "cashier's check" (see UCC Section 84-3-104(g)), in that there are typically two banks involved – one as the drawer and another as the drawee bank, whereas with a "cashier's check", the same bank is the drawer and drawee. "Certified checks" are defined in UCC Section 84-3-409(d), and involve a bank's "acceptance" of a check that is drawn on it.

The Revised UCC (passed in Kansas in 1991), treats certified checks, cashier's checks and teller's checks as the same. UCC Section 84-3-310(a) treats them as cash equivalents – so that if any one of the three is given in payment of an underlying obligation, the obligation is discharged, unless there is an agreement otherwise.

UCC Section 84-3-312(a) defines all three as a "check" for purposes of offering a person who loses such a "check" a means of getting a refund within a reasonable period of time without the expense of posting a bond and with full protection of the obligated bank.

The Honorable Kathleen Sebelius
August 20, 1999
Page Two

UCC Section 84-3-411 provides that any person using any of these three types of checks has no right to stop payment – meaning that paying with any one of these bank checks is almost as final as paying with cash.

SB 60 also mentions “bank money order”. A bank money order has the same properties as a cashier’s check (the bank is drawer and drawee), and is just one of the terms a bank might use for a “bank check” instead of the terms defined in the UCC. For example, many banks use the term, “official checks”. We would presume that as long as “official checks” have the properties of a cashier’s check, certified check or teller’s check, they would have the same rights and liabilities under the law.

With all of this in mind, we are asking if the intention is to prevent banks and their customers from using teller’s checks when complying with the provisions of New Section 10, subsection (c)(3) of SB 60? Considering how teller’s checks are treated under the UCC, it appears to have been an oversight by the drafters of the language.

We appreciate your time and attention to this matter. Please feel free to contact us if we can answer any questions or be of further help.

Respectfully,

James S. Maag
Executive Vice-President

Kathleen Taylor Olsen
Associate General Counsel



Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

September 8, 1999

James S. Maag
Executive Vice-President
KANSAS BANKERS ASSOCIATION
800 SW Jackson
Suite 1500
Topeka, Kansas 66612-1265

Re: SB 60, 1999 Legislature

Dear Jim:

Commissioner Sebelius has asked that I respond to your association's letter inquiring about the Commissioner's and KID's regulatory intent for certain provisions of SB 60 [Chap. 95, New Section 10(c) 1999 Session Laws of Kansas [K.S.A. 40-1137, 1999 Supp]]. Specifically you ask whether bank "teller's checks" and "official checks" will be considered in compliance with the available funds requirements imposed upon title insurance agents acting at real estate closings or as escrow agents.

The Kansas Insurance Department's role in enforcing this new legislation is limited to financial examination of title insurance agents who also act as escrow agents and provide real estate closing services. In reviewing the report of such an examination, KID would not remark negatively about a title insurance agent/closing officer/escrow agent accepting a federally insured bank's teller's check or official check.

Keep in mind that under the new statute, KID has no control over the business practices of real estate closing officers and escrow agents who are not title insurance agents; nor can it **require** a title insurance agent/closing officer/escrow agent to accept funds of any kind even though such funds might meet the new statutory definition of available funds.

The subject legislation was drafted and presented to the Legislature by the Kansas Land title Association, and their officers may be of help to you and your members in divining legislative intent.

Sincerely,

A handwritten signature in black ink, appearing to read "Margaret A. Gatewood". The signature is written in a cursive, flowing style.

Margaret A. Gatewood
Senior Counsel
Legal Division

cc Kathleen Taylor Olsen, Associate General Counsel, KBA

Enclosure(s)

cc:



Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

TO: House Committee on Financial Institutions
FROM: Linda De Coursey, Director of Government Affairs
RE: HB 2677 – Title Insurance, including “teller checks”
DATE: January 26, 2000

Mr. Chairman and members of the committee:

Thank you for the opportunity to present information on HB 2677. As you will recall, House Sub. For SB 60 passed last year that strengthened the ability of the Kansas Insurance Department to regulate the real estate settlement and closing activities of title insurers. The law requires escrow funds to be deposited in a bank account no later than the close of the next business day after receipt by the title insurance agent. These funds cannot be combined with any personal funds of the title insurance agent, nor can the funds be used to pay for any expenses other than as specified in the escrow agreement. The law also requires periodic audits by the title insurance agents of their business, and a copy to be provided to the Insurance Commissioner. The law also includes a tiered audit schedule, a tiered bond or irrevocable letter of credit provision and, also what types of funds that a title insurance agent may accept during a real estate closing (referred to as the “good funds” portion of the law).

Prior to the effective date of the law, the Kansas Insurance Department started receiving inquiries of how we would interpret certain portions of the law. We would respond to those inquiries that the Kansas Insurance Department’s only regulatory function is the review of financial exam reports of title insurance agencies submitted annually by the title insurers and licensing of title insurance agents. In this limited regulatory role, KID would not remark negatively about a title insurance agent/closing officer/escrow agent accepting a federally insured bank’s teller’s check or official check.

House Financial Institutions
1-26-00
Attachment 4

420 SW 9th Street
Topeka, Kansas 66612-1678

785 296-3071
Fax 785 296-2283
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Consumer Assistance Hotline
1 800 432-2484 (Toll Free)

The Kansas Insurance Department also would point out that we had no control over the business practices of real estate closing officers and escrow agents who are not title insurance agents; nor can KID require a title insurance agent/closing officer/escrow agent to accept funds of any kind even though such funds might meet the new statutory definition of available funds.

The Kansas Insurance Department did not write the “good funds” portion of the law, however, we did not oppose it. Three groups worked together on this bill: Kansas Insurance Department, Kansas Land Title Association, and Kansas Association of Realtors.

Mr. Chairman, if I may step back from the good funds issue at hand and report on the law as a whole, I have attached a copy of a recent press release regarding a situation occurring in Wichita whereby approximately \$1.4 million was discovered missing in from a title agency. Because of the passage of House Sub. For Senate Bill 60, the Insurance Department was able to respond decisively to this situation. Two sections of the law were extremely helpful: giving authority to the insurance commissioner to examine title insurance agency books and escrow accounts; and the bonding requirement. Because of these provisions those homebuyers and mortgage lenders, who entrusted this title company with their money, will be covered. The Commissioner extends her gratitude to you for your insights in passing this law.

Mr. Chairman, that concludes my remarks on HB 2766.



Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

For immediate release
Jan. 21, 2000

For more information:
Denney Clements
(785) 296-7822
Nicole Corcoran Basso
(785) 368-7163

**Sebelius reassures South Kansas Title Corp. customers that
escrow, mortgage account shortages will be covered**

WICHITA—About \$1.4 million in mortgage-closing and contract-for-deed escrow payments is missing from Wichita's South Kansas Title Corp., Kansas Insurance Commissioner Kathleen Sebelius announced today at a press conference in Wichita.

The commissioner added, however, that The First American Title Insurance Co. for which South Kansas Title sold title insurance policies as an agent, has already agreed to cover most of the losses.

"I want to reassure the homebuyers and mortgage lenders who entrusted South Kansas Title with their money that they have nothing to worry about," she said.

In a separate statement, First American officials said that the company "is working closely with the Kansas Insurance Department to determine the extent and nature of the alleged escrow shortages.

"The company wishes to assure its policyholders and the public that it will stand behind its contractual obligations, which include its policies of title insurance and insured closing letters."

Sebelius said that the South Kansas Title agent in question, Mike Dixon, agreed on Thursday to surrender his Kansas insurance license and has ceased doing business.

Sebelius said that Insurance Department investigators and attorneys were working in Wichita to determine the nature, cause and extent of the losses at South Kansas Title. Also involved in the investigation are law enforcement and First American staff members.

Sebelius said that the losses at South Kansas Title, the total of which has not yet been established, were incurred between 1995 and earlier this month. The Kansas Insurance Department earlier this month sent an examiner to Wichita to question company officials in response to a series of consumer complaints about problems at the title company, she said.

Some complainants, Sebelius added, alleged that the company was slow to pay its scheduled escrow and mortgage obligations; others said that banks had refused to honor checks written on the company's escrow and mortgage accounts because the funds in those accounts were insufficient to cover the checks.

Sebelius noted that the Insurance Department was able to respond decisively to the South Kansas Title situation because the 1999 Legislature had given her, as insurance commissioner, the authority examine title insurance agency books and escrow accounts.

The law, which took effect July 1, 1999, also required title insurance agents to buy bonds of up to \$100,000. In Dixon's case, she said, a \$100,000 bond purchased in 1999 was in effect.

"The bonding requirement is an especially good thing," Sebelius said, "because it provides a secure source of funding to pay claims that First American doesn't have an obligation to cover."

She expressed appreciation for the Sedgwick County legislative delegation, whose bipartisan efforts helped pushed the bill containing her new title insurance authority through the 1999 Legislature. Sebelius first proposed the bill in 1998, after the collapse of Wichita's Realty Title Co exposed weaknesses in the title insurance and escrow regulatory law then in effect.

"The improvements in the law are one big reason why homebuyers and lenders shouldn't lose any money," she said.

She added that South Kansas Title customers wanting more information about the status of their accounts could call First American's on-site representative in Wichita, David Wood, at 1-316-293-1627. They can also call the Kansas Insurance Department toll-free at 1-800-432-2484 and ask for Marty Hazen.



Matthew S. Goddard, Vice President

700 S. Kansas Ave., Suite 512
Topeka, Kansas 66603
(785) 232-8215

To: House Committee on Financial Institutions

From: Matthew Goddard
Heartland Community Bankers Association

Date: January 26, 2000

Re: House Bill 2677

The Heartland Community Bankers Association appreciates the opportunity to appear before the House Committee on Financial Institutions to express our support for **House Bill 2677**.

When House Substitute for SB 60 was passed last year to reform the title insurance escrow account business, it required that all funds deposited for real estate closings which exceed \$2,500 be in one of several specified forms. As stated in KSA 1999 Supp. 40-1137(c), those included "cashier's checks, certified checks or bank money orders issued by a federally insured financial institution and unconditionally held by the title insurance agent."

Shortly after enactment of the bill, it came to our attention that some financial institutions do not offer money orders, cashier's checks or certified checks. Instead they offer teller's checks. While the difference between the payment methods is almost negligible, the term "teller's checks" is not listed as being acceptable in the law.

In September, the Insurance Department said they "would not remark negatively" about a title insurance agent accepting a teller's check from a federally insured financial institution. It is our understanding, however, that some title insurance agents still will not accept teller's checks because the law does not specifically allow it. House Bill 2677 simply adds teller's checks to the existing statute.

We respectfully request that the House Committee on Financial Institutions recommend HB 2677 favorable for passage.

Thank you.

House Financial Institutions
1-26-00
Attachment 5

Session of 2000

HOUSE BILL No. 2677
By Committee on Financial Institutions
1-20

10 AN ACT relating to insurance; concerning title insurance; amending
11 K.S.A. 1999 Supp. 40-1137 and repealing the existing section.

12

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

14 Section 1. K.S.A. 1999 Supp. 40-1137 is hereby amended to read as
15 follows: 40-1137. A title insurance agent may operate as an escrow, set-
16 tlement or closing agent, provided that:

17 (a) All funds deposited with the title insurance agent in connection
18 with an escrow, settlement or closing shall be submitted for collection to,
19 invested in or deposited in a separate fiduciary trust account or accounts
20 in a qualified financial institution no later than the close of the next busi-
21 ness day, in accordance with the following requirements:

22 (1) The funds shall be the property of the person or persons entitled
23 to them under the provisions of the escrow, settlement or closing agree-
24 ment and shall be segregated for each depository by escrow, settlement
25 or closing in the records of the title insurance agent in a manner that
26 permits the funds to be identified on an individual basis;

27 (2) the funds shall be applied only in accordance with the terms of
28 the individual instructions or agreements under which the funds were
29 accepted; and

30 (3) an agent shall not retain any interest on any money held in an
31 interest-bearing account without the written consent of all parties to the
32 transaction.

33 (b) Funds held in an escrow account shall be disbursed only:

34 (1) Pursuant to written authorization of buyer and seller;

35 (2) pursuant to a court order; or

36 (3) when a transaction is closed according to the agreement of the
37 parties.

38 (c) A title insurance agent shall not commingle the agent's personal
39 funds or other moneys with escrow funds. In addition, the agent shall not
40 use escrow funds to pay or to indemnify against the debts of the agent or
41 of any other party. The escrow funds shall be used only to fulfill the terms
42 of the individual escrow and none of the funds shall be utilized until the
43 necessary conditions of the escrow have been met. All funds deposited

House Financial Institutions
1-26-00
Attachment 6

1 for real estate closings, including closings involving refinances of existing
2 mortgage loans, which exceed \$2,500 shall be in one of the following
3 forms:

- 4 (1) Lawful money of the United States;
5 (2) wire transfers such that the funds are unconditionally received by
6 the title insurance agent or the agent's depository;
7 (3) cashier's checks, certified checks, *teller's checks* or bank money
8 orders issued by a federally insured financial institution and uncondition-
9 ally held by the title insurance agent;
10 (4) funds received from governmental entities, or drawn on an escrow
11 account of a real estate broker licensed in the state or drawn on an escrow
12 account of a title insurer or title insurance agent licensed to do business
13 in the state; or
14 (5) other negotiable instruments which have been on deposit in the
15 escrow account at least 10 days.

16 (d) Each title insurance agent shall have an audit made of its escrow,
17 settlement and closing deposit accounts, conducted by a certified public
18 accountant or by a title insurer for which the title insurance agent has a
19 licensing agreement, according to the following schedule. Audits shall be
20 considered current if dated within the 12 months prior to submission of
21 the audit as required herein. The title insurance agent shall provide a
22 copy of the audit report to the commissioner and to each title insurance
23 company which it represents within 160 days after the close of the cal-
24 endar year for which an audit is required. Title insurance agents who are
25 attorneys and who issue title insurance policies as part of their legal rep-
26 resentation of clients are exempt from the requirements of this subsec-
27 tion. However, the title insurer, at its expense, may conduct or cause to
28 be conducted an annual audit of the escrow, settlement and closing ac-
29 counts of the attorney. Attorneys who are exclusively in the business of
30 title insurance are not exempt from the requirements of this subsection.
31 Audits shall be required as follows:

- 32 (1) Annual audit required in counties having a population of 40,001
33 and over;
34 (2) biennial audit required in counties having a population of 20,001
35 - 40,000; and
36 (3) triennial audit required in counties having a population of 20,000
37 or under.

38 (e) The commissioner may promulgate rules and regulations setting
39 forth the standards of the audit and the form of audit report required.

40 (f) If the title insurance agent is appointed by two or more title in-
41 surers and maintains fiduciary trust accounts in connection with providing
42 escrow and closing settlement services, the title insurance agent shall
43 allow each title insurer reasonable access to the accounts and any or all

1 of the supporting account information in order to ascertain the safety and
2 security of the funds held by the title insurance agent.

3 (g) Nothing in this section is intended to amend, alter or supersede
4 other laws of this state or the United States, regarding an escrow holder's
5 duties and obligations.

6 Sec. 2. K.S.A. 1999 Supp. 40-1137 is hereby repealed.

7 Sec. 3. This act shall take effect and be in force from and after its
8 publication in the statute book.

KANSAS LAND TITLE ASSOCIATION
434 N. MAIN
WICHITA, KS 67202

TO: House Committee on Financial Institutions

RE: House Bill 2677

House Substitute for Senate Bill 60 was passed by the 1999 legislature to enact a comprehensive body of law for the effective regulation and supervision of title insurance agencies engaged in settlement and closing of real estate transactions. An integral part of the new law is a provision commonly called a "good funds law" which requires that funds exceeding \$2,500.00 deposited for real estate transactions be collected funds. The law requires that such funds be in one of the following forms:

1. lawful money of the United States of America;
2. wire transfers;
3. cashier's check, certified funds, or bank money orders;
4. funds received from governmental entities or drawn on the escrow account of a licensed real estate broker or title insurer or title insurance agent;

Funds in any other form must have been on deposit for at least 10 days before the funds are considered collected funds.

The purpose of the "good funds law" is to ensure that title insurance agencies have collected funds to disburse and to reduce the risk that funds deposited for a real estate transaction will turn out to be uncollectable, after the title insurance agency has disbursed the funds as part of the real estate transaction. Such uncollected funds can create a loss for the consumer and for the title insurance agency.

Due to speed at which real estate transactions must occur in today's marketplace, title insurance agencies do not have the luxury of waiting for checks to clear a bank prior to disbursement. The title insurance agency must be assured that funds deposited are collected funds.

Cashier's checks are checks that a bank draws on itself and are subject to the reserve requirements of the bank. "Teller's checks" are checks issued by a bank that are drawn on or payable through or at another bank and are not subject to the reserve requirements of the bank.

The Kansas Land Title Association supports the addition of "teller's checks" to the definition of "good funds" provided that such checks provide the same assurance of collected funds as cashier's checks and are not subject to being dishonored due to an insufficient account or a stop payment order.

The Kansas Land Title Association requests that the committee protect the effectiveness of the present law to ensure that funds deposited for real estate transactions are collected funds.

Sincerely,

Roy Worthington
Chairman, Legislative Committee

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Attachment 7



Kansas Association of REALTORS®

3644 S.W. BURLINGAME ROAD • TOPEKA, KANSAS 66611-2098
TELEPHONE 785/267-3610 • 1-800-366-0069
FAX 785/267-1867



TO: HOUSE TAXATION COMMITTEE
FROM: KAREN FRANCE, DIRECTOR OF GOVERNMENTAL RELATIONS *KLF*
DATE: JANUARY 26, 2000
SUBJECT: HB 2677, GOOD FUNDS

Thank you for the opportunity to provide written testimony. The Kansas Association of REALTORS® supports HB 2677.

Since the title escrow bill went into effect last summer, many of our members have reported that various title companies have given a variety of interpretations to the good funds provision of this statute. While the Department of Insurance has provided various letter opinions in order to assist those involved in these transactions, we believe this bill offers important technical clean-up language to clarify the legislative intent behind the law.

We respectfully urge your support of this legislation.

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Attachment 8

Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

To: House Committee on Financial Institutions
From: Matthew D. All, Counselor to the Commissioner, Kansas Insurance Department
Re: HB 2647—Financing Consumer Credit Insurance in Consumer Home Loans
Date: January 25, 2000

Mr. Chairman and Members of the Committee:

Thank you for allowing me to be here today to discuss HB 2647.

HB 2647 is a simple, straightforward solution to an unnecessary and potentially predatory lending and insurance practice. HB 2647 bans the financing of consumer credit insurance premiums in consumer home loans. This practice, also known as “packing,” lies at the intersection of two broader problems: predatory lending practices and the overselling and overpricing of consumer credit insurance.

The commissioner, in her capacity as an officer of the National Association of Insurance Commissioners (NAIC), has received a great deal of information on these broader problems, and on packing in particular. She has learned that certain lenders engage in unscrupulous, predatory lending practices, particularly in consumer home loans, where consumers are often most vulnerable. These practices have names like “flipping,”¹ “equity stripping,”² and “packing,” which is what HB 2647 seeks to ban.

¹ The practice of inducing a borrower into signing several successive loans where each refinances the previous loan

These practices, among others, have harmed thousands of consumers across the country—sometimes costing these consumers their homes.

The commissioner has also learned, both from national sources and her own investigation here in Kansas, that consumer credit insurance is too often oversold and overpriced. The NAIC recommends that credit life insurance premiums be set so that insurers pay 60 cents in benefits for every dollar of premium collected. Credit life insurers, however, seldom even approach that loss ratio, and in Kansas the loss ratio for credit life insurance is at approximately half of that figure—sitting at roughly 30 cents on the dollar.

The practice that HB 2647 seeks to ban—the packing of credit insurance in consumer home loans—foists these practices on consumers when they are at their most vulnerable: in the closing of a consumer home loan. When a lender includes a credit insurance premium in a consumer home loan closing and packs it into the loan, consumers feel acutely the effects of time pressure, the complexity of the transaction and the insurance policy, and the simple desire to not spoil the deal. Too often, we have learned, these effects cause consumers to enter deals and agree to credit insurance policies that are overpriced at best, and rip-offs at worst. Because this practice can endanger consumers' ownership of their homes and because it is unnecessary, the commissioner has decided that it is unacceptable in Kansas, and that the best approach is to ban it altogether.

Those of us who attended the most recent meeting of the NAIC heard a presentation on this very subject. And we were chagrined to find that one of the exhibits

² The practice of extending a loan to a borrower based upon the equity in the borrower's home rather than upon the borrower's ability to repay.

passed out as an example of the abuses of the packing of credit insurance involved a Kansas consumer. This person, from Horton, Kansas, entered into a consumer home loan at a high interest rate. The loan of roughly \$56,000 included a credit life premium of \$11,800 and a credit accident and health premium of \$1317.42. These premiums, which were packed into the loan, no doubt raised this Kansan's monthly payments steeply. What's worse, the term of the credit life policy was for 120 months and the term of the credit accident and health policy was 36 months—for a loan whose payments lasted 180 months. And the credit life policy benefit amount was \$100,000—for a loan of less than \$60,000. All of this, in a loan that was secured by this Kansan's home. This sort of abuse should not be allowed to happen.

It is important to note that HB 2647 does not prohibit lenders from selling consumer credit insurance in conjunction with consumer home loans. Lenders would still be free to sell the policies, calculate them on a monthly basis, and collect the premiums. But lenders would be banned from packing these premiums into consumer home loans that are secured by a consumer's home.

HB 2647 is a simple, common sense approach based on the much broader North Carolina statute passed last year to combat a wide array of predatory lending practices. We urge you to pass it. Thank you.

Kansas Bankers Association

800 SW Jackson, Suite 1500

Topeka, KS 66612

785-232-3444 Fax - 785-232-3484 kbacs@ink.org

1/25/00

TO: House Financial Institutions Committee

FROM: Chuck Stones

RE: HB 2647

Mr. Chairman and Members of the Committee:

Thank you for allowing me the opportunity to appear before you today. The Kansas Bankers Association is opposed to the provisions of HB 2647.

This is one of those issues that, on its face, appears to be protective of the consumer. However, as is often the case, it is the consumer that ends up being hurt especially consumers that need a particular product or service.

We believe HB 2647 would effectively eliminate the issuance of credit life insurance on consumer home loans. Most of the credit life sold is in the form of a single premium that the consumer may pay as a lump sum or finance. However, as you would expect, most, if not all consumers choose to finance the premium since a single premium would be cost prohibitive. One of the advantages of issuing and financing single premium credit life is that the policy will never lapse due to a missed payment.

Credit Life provides a consumer with the opportunity to purchase life insurance in specific amounts and for specific purposes. Most credit life purchasers are underinsured or have no insurance at all. In fact, a 1998 study showed that 25% of all homebuyers did not have life insurance. And many more probably don't have adequate coverage.

It also allows those people whom, for whatever reason, cannot purchase life insurance to be able to purchase life insurance to protect their families for their major purchases. Credit life has very little, if any, underwriting requirements. People with medical conditions or are aging, can still get credit life at the same rate as everybody else. This is a very important consideration in a state such as Kansas where, in the rural areas especially, the population is aging. These people will probably not be able to purchase insurance in the event that HB 2647 would pass. This issue is also important when you consider the product affected by this bill. While we don't have any hard statistics to back this up, my guess is that consumer home loans are more prevalent among people in the 40 – 65 age range. These people would fall under the category described above.

It is very important to remember that credit life is voluntary. It is against the law for a lender to require the consumer to purchase credit life from them as a condition of making the loan.

In conclusion, we would say that the notion that credit life is a protection for the lender is true but not stating the whole case. True, the credit life does pay off the loan. But what happens to the families of the uninsured or under-insured person who does not have credit life to protect that investment. The families would be in the dilemma of trying to figure out how the stay in their house.

We believe HB 2647 would cause this scenario to happen more often than it currently does and we urge its defeat.

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Kansas Association of Financial Services

George Barbee, Executive Director

Jayhawk Tower, 700 SW Jackson, Suite 702

Topeka, KS 66603-3758

785/233-0555

Fax: 785/357-6629

Statement to:
House Committee on Financial Institutions
House Bill 2647
Wednesday, January 26, 2000

Mr. Chairman and members of the Committee, my name is George Barbee appearing today on behalf of the Kansas Association of Financial Services. KAFS is a group of nationwide mortgage lenders who own insurance companies. These companies write credit insurance. We are opposed to HB 2647 and appear today to explain why.

Single premium credit insurance is a completely voluntary and popular insurance product whose premiums are financed as part of mortgage loan transactions. The insurance pays off the mortgage if the consumer dies so that the borrower's family can keep their home after a loss. Kansas law already requires full disclosure and refunds upon cancellation.

Kansas law completely governs single premium credit insurance rates. In fact, the Department is currently investigating rates with a view toward adjusting rates for this popular product – ironic when you consider that the same Department is now attempting to make this product illegal. When credit insurance rates are compared with standard insurance rates, credit insurance is actually cheaper for consumers over the age of 50. This is true because credit insurance is not underwritten, it does not require health exams, and the rates are the same for 18 year olds as they are for 64 year olds. Needless to say, financing single premium credit insurance makes sense for many uninsured borrowers over age 50. Unfortunately, we are not allowed to write credit insurance for borrowers over age 65, but that situation is also under discussion with the Department and the age may be adjusted upward.

As a result of legislative amendments last year, the Insurance Department cannot show a large number of consumer complaints about single premium credit insurance. In fact, the examples the Department is using were mostly addressed last year when the Legislature substantially modernized Kansas mortgage lending laws and greatly increased consumer protections. Even more legislation is being proposed this year for licensure that would further regulate mortgage lender activity, and we support those measures.

But, even supposing that the Department is correct – selling insurance only on a monthly premium basis creates more problems for consumers.

A typical situation for our customers is the following: A mortgage customer gets sick and falls behind on the monthly payments then dies from the sickness. If you require us to sell insurance only on a monthly basis, then this customer's insurance would lapse as soon as the customer misses a payment! Single premium insurance lasts for the entire term of the loan regardless of whether a couple of payments are missed. Life insurance is intended to be there for the family when someone dies, but the Insurance Department wants us to sell an insurance product that won't be there when it's needed!

We've been focusing on credit insurance but this legislation prohibits any insurance that is sold and financed on single premium basis. The prohibition applies to standard term life insurance sold by licensed agents as part of a mortgage loan transaction. Many consumers do not have the resources to buy insurance, but they do have the credit to buy insurance when they take out a loan – many people address all of their financial needs at once. This bill makes financing any insurance premium illegal.

You may wonder where the idea for HB 2647 came from. I am told that this language is identical to language that is heavily favored by activists in other states. This bill is part of a nationwide push to kill credit insurance not by a single stroke, but by 1000 paper cuts. Credit insurance is a legitimate and worthwhile financial service. The product has been around for over 70 years, and it addresses the problem of under- or non-insurance in many sectors of our population. It is my belief, and a belief common among many, that it is an individual's responsibility to carry adequate insurance, so ask yourself this question: Will HB 2647 increase or decrease insurance coverage? I think you know the answer.

Mr. Chairman, thank you for the opportunity to address this bill as we urge you to report it unfavorably.



Matthew S. Goddard, Vice President

700 S. Kansas Ave., Suite 512
Topeka, Kansas 66603
(785) 232-8215

To: House Committee on Financial Institutions

From: Matthew Goddard
Heartland Community Bankers Association

Date: January 26, 2000

Re: House Bill 2647

The Heartland Community Bankers Association appreciates the opportunity to appear before the House Committee on Financial Institutions to express our opposition to **House Bill 2647**.

House Bill 2647 prohibits any creditor in a consumer home loan from financing, directly or indirectly, credit insurance premiums. The prohibition also extends to any other life, health, disability or unemployment insurance premiums. For purposes of the legislation, a consumer home loan is essentially a second mortgage under the Uniform Consumer Credit Code. The bill's prohibition does not extend to loans where the insurance premium is calculated and paid on a monthly basis.

Although credit insurance is often maligned by critics, it remains a popular product among borrowers. The most attractive feature of credit life is that it repays the insured loan obligation and relieves survivors of any financial obligation or burden. Like other insurance products, credit life, health, disability and unemployment products offer borrowers and their families **protection** in the event something unfortunate happens.

Credit life is not for everyone. If someone is carrying enough life insurance to cover burial expenses, payoff his or her debts and provide in the future for a surviving family, that individual probably does not need credit life. Others may have different circumstances that make credit life unnecessary and if that's the case, they shouldn't buy it. Credit life is a product that is purchased **voluntarily** by borrowers. Federal regulations prohibit loan approval from being conditional on the purchase of credit life, health, accident, disability or other credit-related insurance.

Health and disability coverage can also benefit borrowers. While most employees would be protected if a disabling accident happened in the workplace, credit disability protects against injuries suffered at work and elsewhere. If a borrower becomes disabled and is suddenly unable to work, disability coverage pays the monthly loan payments. The loan would not become a financial burden on the borrower's family who most likely now faces new medical bills.

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The net effect of HB 2647 is that consumers who wish to purchase credit life insurance or a related product will have to pay the premium up-front at the time the loan is closed. We fail to see how this is advantageous to consumers. An example from an actual loan by one of our member institutions:

A customer borrows \$10,188.88 at 9.75 percent for seven years or 84 months. To obtain credit life protection for that amount, the premium would be \$946.11. The amount of the premium is then added to the base loan amount of \$10,188.88. The total loan amount, including the credit life premium, becomes \$11,134.99. Over the life of the loan, the borrower would pay back \$15,407.28. Without credit life, the payments would have totaled \$14,097.72. The monthly payment with credit life protection would be \$183.42 versus \$167.83 without it.

Referencing the above example, over seven years credit life would cost the customer a grand total of \$1309.56 or about \$187.08 a year. If HB 2647 were already law, that same customer would have been required to pay \$946.11 in one lump sum when the loan was written in order to obtain credit life coverage. For a Kansan who lives from paycheck to paycheck, financing the premium makes much more sense than the proposed legislation. Remember that the asset they are protecting is their home.

In testimony and publications, Commissioner Sebelius has referred to "predatory" practices and the like when discussing credit life. Unfortunately, this is a classic example of throwing the baby out with the bath water. The Insurance Department's apparent solution to protecting Kansans from predatory practices, like selling coverage for the total payment amount rather than the actual loan amount, is to make credit life and related insurance products too expensive for the average Kansan to afford.

While credit insurance products may not be a wise investment for every borrower, the consumer has the option saying "no" to coverage. Like most insurance, consumers hope it's something they won't have to use. Under present law, credit insurance is something they can afford. With passage of HB 2647, however, they may not be able to afford the protection insurance gives them and their assets, in this case their home.

We respectfully request that the House Committee on Financial Institutions recommend HB 2647 unfavorable for passage.

Thank you.



Directed By The Members We Serve

To: The House Committee on Financial Institutions

From: J. Sue Anderson, Executive Director

Date: January 26, 2000

Re: Opposition to House Bill 2647

On behalf of the membership of the Community Bankers Association of Kansas, thank you for the opportunity to comment on House Bill 2647.

Single premium insurance products are designed to offer protection to consumers. Taking out a loan can be a large financial responsibility, especially for young families. One type of insurance, Credit Life Insurance, when purchased in connection with a home loan provides protection for remaining loved ones who must continue to make loan payments. The insurance provides payment of the mortgage enabling the remaining family members the ability to keep their home.

Credit insurance has been in use for a long time. It is especially a benefit to those who want to protect their assets should an untimely death prevent repayment of a loan. The borrowers decision to purchase this type of single premium credit insurance is completely voluntary. The consumer weighs the benefits against their own financial situation and makes the decision. Credit insurance is not underwritten and it does not require a health exam. The rates are the same regardless of age.

To the best of our knowledge, most bank customers appreciate the opportunity to purchase credit life insurance and include it at the time they take out a home loan. The price, which is governed by Kansas law, is reasonable for the type of protection it provides. We are not aware of any mass abuses nor excessive complaints to the Insurance Department regarding this type of product.

In our opinion, this HB 2647 would take away the very protection offered by this type of insurance. Currently, with single premium insurance, the insurance coverage lasts for the entire term of the loan. In this way, should a late or missed payment or two occur somewhere along the way, the insurance protection remains in force. As we understand this Bill, that would not be the case.

House Bill 2647 proposes to sell insurance only on a monthly premium basis. We believes this creates multiple problems for the consumer. If a borrower can only purchase insurance on a monthly basis, then the first time the customer misses a payment, regardless of the reason, then his coverage would lapse. If that customer should die during that time, (heart attack, automobile accident, etc.) there is no insurance coverage. This is has exactly the opposite effect of what life insurance is meant to provide for the family when someone dies.

Again, we thank you for the opportunity to comment on this bill. The Community Bankers Association respectfully requests you report this bill unfavorably.

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Attachment 13