Approved: March 14, 2000
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson Senator Don Steffes at 9:00 a.m. on March 9, 2000 in Room 234-N of the Capitol.

All members were present except:

Committee staff present: Dr. William Wolff, Legislative Research
Ken Wilke, Office of Revisor of Statutes
Nikki Feuerborn, Committee Secretary

Conferees appearing before the committee: Bill Sneed, Conseco Financial Services
Kevin Glendenning, Deputy Commissioner for Consumer Credit
George Barbee, Kansas Association of Financial Services
Kathleen Taylor Olsen, Kansas Bankers Association
Matt Goddard, Heartland Bankers Association

Others attending: (See Attached)

Copies of Attorney General Opinion No. 2000-15 regarding the deposit of public moneys, the designation and eligibility of depositories, and exemption from liability for loss by official depository were distributed to the Committee (Attachment 1). Chairman Steffes expressed his frustration at the ambiguity of the Opinion and his position to have it clarified.

Hearing and Action on HB 2675–UCCC, manufactured homes

Bill Sneed, Legislative Counsel for Conseco Financial Services, Inc., explained that the bill would allow prepaid finance charges to be applicable to manufactured housing in the same respect as such prepaid financing charges are available to traditional homes (Attachment 2). The ability to provide for prepaid finance charges is a way for the consumer to "buy down" the interest rate that the individual is utilizing for the financing of the home.

Kevin Glendenning, Deputy Commissioner for Consumer Credit, explained that this bill would set a cap on rates. Manufactured homes on foundations are taxed at the same rate as any other real estate.

Written testimony was submitted by Martha Neu Smith, Executive Director of Kansas Manufactured Housing Association (Attachment 3).

Senator Feleciano moved that the bill be reported favorably. Motion was seconded by Senator Praeger. Motion carried.

Hearing and Action on HB 2691–UCCC, regulation of rates

Kevin Glendenning, Deputy Commissioner for Consumer Credit, explained that this bill would allow consumers of small closed-end loans to have a blended rate thus offering potential consumer benefits (Attachment 4). Caps are set on rates and late fees and allowances are made for a grace period of late payments.

George Barbee, Kansas Association of Financial Services, explained the difference in the rates as being up to 36% for loans less than $860 and up to 21% for loans more than $860 (Attachment 5). He described the amendments as clarifying language and walked the Committee through the various sections.

Senator Biggs moved that the bill be reported favorably. Motion was seconded by Senator Clark. Motion carried.

Hearing and Action on HB 2677–Title insurance, deposits for real estate closings

Kathleen Taylor Olsen, Kansas Bankers Association, explained that the bill adds teller's check to the three types of "bank" checks that could be used as deposits for real estate closings in excess of $2,500 (Attachment 6). The other three types are cashier's checks, certified checks, or bank money orders.

Matt Goddard, Heartland Community Bankers Association, informed the Committee that leaving out teller's checks to the list of acceptable deposits in title insurance escrow accounts was an oversight when the reforming legislation was passed last year (Attachment 7).

Written testimony was received from Linda DeCoursey, Kansas Insurance Department (Attachment 8) and Roy Worthington, Chairman of the Legislative Committee of the Kansas Land Title Association (Attachment 9).

Senator Steffes moved that the bill be reported favorably and put on the Consent Calendar. Motion was seconded by Senator Becker. Motion carried.

SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE
GUEST LIST
DATE: 3/9/00

NAME	REPRESENTING
Bill Sneed	Conseco Financial
George Barbee	KAFS
Stan Parsons	Smoot & Associates
Kathy Olsen	Ks Bankers Assn.
Chuck Stones	" " "
R Kaude	Ks Land Title ass'n
Jennifer Gaw	Federico Consulting
Matt Goddard	HCBA

State of Kansas
Office of the Attorney General
120 S.W. 10th Avenue, 2ND FLOOR, TOPEKA, KANSAS 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

March 8, 2000

MAIN PHONE: (785) 296-2215
FAX: 296-6296

ATTORNEY GENERAL OPINION NO. 2000 - 15

The Honorable Don Steffes
State Senator, 35th District
State Capitol, Room 128-S
Topeka, Kansas 66612-1504

Re: Banks and Banking; Trust Companies--Banking Code; Deposit of Public Moneys--Designation of Depositories for Municipal and Quasi-municipal Funds; Duty of Public Officers; Eligible Depositories; Exemption from Liability for Loss by Official Depository

Synopsis: Local public officials may solicit and select out-of-state banks with local branches to serve as depositories for active public funds, but only after determining that the bids of Kansas banks, as defined in K.S.A. 1999 Supp. 9-1408, are not acceptable. K.S.A. 1999 Supp. 9-1401 does not direct the manner or timing of soliciting bids from either category of bank. Cited herein: K.S.A. 1999 Supp. 9-1401; 9-1408; 1997 SB 86.

* * *

Dear Senator Steffes:

As Chairman of the Senate Committee on Financial Institutions and Insurance, you request our opinion on whether local public officials may solicit, through requests for proposals, both banks with Kansas charters and banks with only a branch within the local unit of government to handle the active financial needs of the local unit. Additionally, you ask whether the local official would have acted in good faith if he or she designated as a "depository" a bank which had no main office in Kansas.

I.D.D
Attachment 1
3/9/00

The Act, which sets forth the criteria for depository institutions eligible to service active governmental and quasi-governmental accounts, is K.S.A. 1999 Supp. 9-1401, *et seq.* The portions of the Act relevant to your questions were amended in the 1997 legislative session. Prior to 1997, both state and national banks were eligible to serve as depositories for local government funds if such banks had an office in the same county as the governing body was located. In 1997, eligible depositories became termed simply "banks," along with other eligible financial institutions, but the term "banks," in a new definitions section, was defined as "any bank incorporated under the laws of this state, or organized under the laws of the United States *and* which has a main office in this state."[1] The term "main office" expressly excluded branches.[2]

A new subsection (c) was also added to K.S.A. 9-1401:

> "If eligible banks, savings and loan associations or savings banks under subsection (a) or (b) cannot or will not provide an acceptable bid, which shall include services, for the depositing of public funds under this section, then banks, savings and loan associations or savings banks organized under the laws of the United States or another state which do not have a main office in this state, may receive deposits of such municipal corporation or quasi-municipal corporation, if such banks, savings and loan associations or savings banks have been designated as official depositories under subsection (a), have branch offices in the county or counties in which all or part of such municipal corporation is located and the municipal corporation or quasi-municipal corporation can obtain satisfactory security therefor."

Subsection (a) was further amended in 1997 to include language permitting banks and other institutions without a main office in Kansas to be designated as depositories if the institutions had a branch in the same county as the depositing entity, "except that such banks, savings and loan associations or savings banks shall not be eligible to receive deposits except in accordance with subsection (c)."

The legislative history to the 1997 legislative session frequently reflects the tension between Kansas bankers, who wanted to keep public funds in Kansas banks, and representatives of the local units of government and non-state banks, who wanted flexibility in the law directing the deposit of public funds. The original 1997 Senate Bill No. 86 that passed favorably out of the Senate Committee on Financial Institutions and Insurance, permitted only state or national banks with "a main office in this state" to serve as depositories.[3] The Kansas League of Municipalities offered an unsuccessful amendment

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[1]L. 1997, Ch. 180, § 2 (emphasis added).

[2]*Id.*

[3]Minutes, Senate Committee on Financial Institutions and Insurance, January 26, 1997, Attachment 2.

that deleted the term "their main office" and substituted "an office."[4] No subsection "c" or definition section was included. On February 6, 1997, Senator Steffes reported that the subcommittee studying the bill reviewed amendments that would allow public funds to be placed in any bank in Kansas.[5] On February 17, 1997, the same Committee passed a motion to substitute the original bill with a new version of Senate Bill 86; now, a designated bank could have a "main or branch office" in the county where the local government was located. [6] On March 6, 1997, the Committee heard testimony from six proponents of the new bill and three opponents, with the same tension between the Kansas League and local governments in support and Kansas bankers and their associations opposing the substituted bill.[7] The next version of the bill, as amended by the House Committee of the Whole, deleted "or branch" from the definition of "banks." The final law, as stated above, attached K.S.A. 9-1401(c), which added the eligibility requirement, after a bank has been designated a depository. Apparently, this was the final compromise that was struck between the two opposing concepts; only a Kansas bank with a main office is defined as a "bank," but a bank not under the definition may be eligible for designation as a depository under certain circumstances. Nowhere in the legislative history was testimony or discussion recorded on the method of soliciting bids from banks.

It initially appears that the Act is ambiguous when K.S.A. 1999 Supp. 9-1408, the new definition statute, is read in conjunction with K.S.A. 1999 Supp. 9-1401(a) and (c). That is, while "banks" must, by definition, have a main office in Kansas, the new language in K.S.A. 1999 Supp. 9-1401 refers to "banks" which "do not have a main office in this state." A common rule of statutory construction lends support; different provisions of an Act must be reconciled to make them consistent, harmonious and sensible and to give effect to the entire Act.[8] Giving effect to both statutes, the definition of "banks" will apply generally whenever the term is used in the Act. However, if the term is modified by language that alters or contravenes the definition, then the term "bank" must be read as modified by the additional language. Thus, throughout the Act, the term "banks" refers to those institutions with a main office in Kansas, except in K.S.A. 1999 Supp. 9-1401(a), where banks without main Kansas offices are only eligible to receive deposits as designated in (c).

In subsection (c), eligible banks are divided into two categories. *If* banks designated under subsection (a) "cannot or will not provide an acceptable bid" *then* banks without a main Kansas office may accept such deposits. Because statutory words are presumed to carry their common and ordinary meanings,[9] the words "if" and "then" denote, first, "on the

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[4] *Id.*

[5] Minutes, Senate Committee on Financial Institutions and Insurance, February 6, 1997.

[6] Minutes, Senate Committee on Financial Institutions and Insurance, February 17, 1997, Attachment 2.

[7] Minutes, Senate Committee on Financial Institutions and Insurance, March 6, 1997.

[8] *First Nat. Bank and Trust v. Miami County Co-op Assn.*, 257 Kan. 989, 1001 (1995)

[9] *Aves v. Shah*, 258 Kan. 506, 512 (1995).

condition that," and second, "as a necessary consequence."[10] Under the Act, therefore, the public officer must first determine that banks with main Kansas offices cannot or will not provide an acceptable bid. After that determination is made, the bids of banks without a main Kansas office may be reviewed if these banks have been designated under subsection (a) and are able to obtain security. The first condition must be met (*i.e.* no Kansas bank is eligible), before the consequence is affected (*i.e.* non-Kansas banks' bids may be reviewed). There is, however, no statutory language that directs the local public official on the manner or timing in which bids are to be solicited or obtained.

"Good faith" is a term most frequently used by public officials as a defense against private legal actions. At both the state and federal levels, however, the defense applies only where the public officer was acting within the scope of his or her authority[11] and the "conduct did not violate clearly established statutory or constitutional rights of which a reasonable person would have known."[12] Because "good faith" is not defined in the Act, it is our opinion such guidelines may be used to judge a local officer's actions in designating depository banks.

In conclusion, it is our opinion that there is no restriction or limitation under K.S.A. 9-1401 *et seq*. on when and how local units of government solicit Kansas banks with a main office in Kansas and non-Kansas banks with a branch located in the same county as the local unit. That is, requests for proposals may be issued either simultaneously or sequentially to the two categories of banks. It is also our opinion, however, that local officials must determine a bank's eligibility for serving as a depository for public funds by *first* finding that Kansas banks with main Kansas offices cannot or will not provide an acceptable bid *before* the official examines the bids of non-Kansas banks. It is finally our opinion that an official who recognizes and honors this statutory preference for Kansas banks would have acted in accordance with K.S.A. 9-1401 *et seq*, regardless of the timing used in issuing requests for proposals. If the official selects an eligible non-Kansas bank, a determination of good faith must be made on each individual case, looking at the whole of the official's conduct under the requirements of the law as set forth in the Act.

Very truly yours,

Carla J. Stovall

CARLA J. STOVALL
Attorney General of Kansas

Nancy L. Ulrich

Nancy L. Ulrich
Assistant Attorney General

CJS:JLM:NLU:jm

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[10]Websters Seventh New Collegiate Dictionary 414, 915 (1965).

[11]*Cook v. Topeka*, 232 Kan. 334, 344 (1982).

[12]*Alvarado v. City of Dodge City*, 10 Kan.App.2d 363, 370 (1985).

POLSINELLI
WHITE
VARDEMAN &
SHALTON

Memorandum

TO: The Honorable Don Steffes, Chairman
Senate Financial Institutions and Insurance Committee

FROM: William W. Sneed, Legislative Counsel
Conseco Financial Services, Inc.

RE: H.B. 2675

DATE: March 9, 2000

Mr. Chairman, Members of the Committee: My name is Bill Sneed and I represent Conseco Financial Services, Inc., a major provider of financial services throughout the United States. One area in which my client is actively involved deals with the financing of manufactured housing. We appreciate that your Committee agreed to hear this testimony in favor of the bill. Also, please be advised that this bill passed the House 120-3.

During the 1999 legislative session, the Kansas Legislature made major changes to the Uniform Commercial Credit Code ("UCCC"). The ultimate result of K.S.A. 16a-2-201 and 16a-2-401(a) has placed a serious curtailment on our ability to provide financing to Kansas citizens for the purchase of manufactured homes. It is our intent that H.B. 2675 will allow pre-paid finance charges to be applicable to manufactured housing in the same respect as such prepaid financing charges are available to traditional homes.

Manufactured homes currently represent approximately one out of four new single-family housing starts. Manufactured homes, unlike site-built homes, are constructed in a factory environment and then shipped via highway to retail locations across the country. Once

purchased, the home is the delivered to the homeowner's site and installed on an appropriate foundation system. Once sited, the vast majority of manufactured homes are never transported again. At present, over 19,000,000 Americans live in approximately 9,000,000 manufactured homes.

Today's manufactured housing fulfills a vital need that grows more critical every day—the need for affordable, well-built housing. It provides not only an affordable place to live, but also the opportunity of home ownership for millions of Americans (and Kansans) who might not otherwise have the financial means to own a home. It is this particular point that has caused us to request the introduction, and your favorable consideration, of H.B. 2675.

In its simplest terms, the ability to provide for pre-paid finance charges is a way for the consumer to "buy down" the interest rate that the individual is utilizing for the financing of the home. The vast majority of consumers who purchase manufactured homes are more concerned about the monthly payment, and as such, the ability to use pre-paid finance charges is of critical importance.

Our proposed changes would simply allow the pre-paid finance laws currently on the books that apply to on-site housing to apply to manufactured homes. We contend that this proposal is in the best interests of the Kansas consumer and will continue to provide a valuable mechanism for Kansas citizens to purchase first-time homes.

Unfortunately, in my haste in drafting the amendments that we presented to the House Committee, we have discovered that the proposed changes did not accomplish this goal, and would most likely create more problems that are currently being faced by the industry. After working with the State Bank Commissioner, the outcome was the amendments that are currently in H.B. 2675.

We appreciate the opportunity to present this testimony. We respectfully request your Committee's favorable consideration of the proposed H.B.2675. Please let me know if you have any questions or comments.

Respectfully submitted,

William W. Sneed

Attachment

KANSAS MANUFACTURED HOUSING ASSOCIATION

214 SW 6th St., Suite 206
Topeka, KS 66603-3719
785-357-5256
785-357-5257 fax
kmha@cjnetworks.com

TESTIMONY BEFORE THE

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

TO: Senator Don Steffes, Chairman
And Members of the Committee

FROM: Martha Neu Smith, Executive Director
Kansas Manufactured Housing Association

DATE: March 9, 2000

RE: House Bill 2675 – An Act amending the uniform consumer credit code; relating to the sale of manufactured homes

Mr. Chairman and Members of the Committee, my name is Martha Neu Smith and I am the executive director for the Kansas Manufactured Housing Association (KMHA) a statewide trade association representing all facets of the manufactured housing industry.

Conseco Financial Servicing Corporation formerly known as Green Tree is one of KMHA's members and one of the top lenders in the State of Kansas for manufactured home loans. Conseco authored HB 2675 in an effort to keep them competitive in the Kansas manufactured home market.

KMHA supports HB 2675 and I respectfully ask the Senate Committee on Financial Institutions and Insurance to support HB 2675.

Thank you for your consideration.

Senate Financial Institutions & Insurance
Date 3/9
Attachment 3

KANSAS

BILL GRAVES
GOVERNOR

Franklin W. Nelson
Bank Commissioner

Sonya L. Allen
General Counsel

Judi M. Stork
Deputy Bank Commissioner

Kevin C. Glendening
Deputy Commissioner
Consumer and Mortgage

OFFICE OF THE
STATE BANK COMMISSIONER

HB 2691 / March 9, 2000

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

Mr. Chairman and Members of the Committee:

My name is Kevin Glendening. I am the Deputy Commissioner for Consumer and Mortgage Lending within the Office of the State Bank Commissioner. In that capacity, I am also the Administrator of the Kansas Uniform Consumer Credit Code.

House Bill 2691

Mr. Chairman, with your permission I will briefly describe the proposed amendments and then answer any questions the committee may have.

On page 2, line 4 we have struck the words "the greater of". The appraisal information described in this section is to be used in connection with the high LTV disclosure added to the law last year. It was the intent to allow the lender to use either county tax assessor records or a certified appraisal for this purpose. However the existing wording implies both documents must be obtained. The amendment clarifies the lender has an option to obtain either one.

Page 2, line 37 reflects the proper rate of 61 to 90 days. This matches the intended benchmark figure which is the same used in the K.S.A. 16-207 usury rate calculation.

Page 8, lines 24 and 28 clarifies that license application fees for supervised lenders are nonrefundable and that the licenses are nonassignable.

The proposed amendment on page 10, beginning on line 19 addresses the "blended rate" concept on non real estate closed-end consumer loans. Last year's amendment to the Code simplified the rate structure from four potential rates down to two. Shortly after the law was passed last year several industry representatives expressed concern that the new language could be interpreted as eliminating the blended rate concept, something that has been in place for perhaps twenty years or more. As a result, with a more restrictive rate lenders might be less inclined to offer the small consumer loans to which this section applies. In my discussions with former Acting Consumer Credit Commissioner David Brandt, he indicated that

Senate Financial Institutions & Insurance
Date 3/9/00
Attachment 4

it was not his intention to eliminate the blended rate concept in the language he offered last session. Therefore, I agreed to offer the amendment contained in this bill, which would clarify that the blended rate concept continues to be valid. If permitting the blended rate structure to continue provides the necessary incentive for lenders to offer small closed-end consumer loans, arguably it may provide some potential consumer benefits. Credit extended in this form does have a cap on rates and late fees, and does allow for a grace period for late payments. This is in contrast to what would be the most likely alternative form of credit for small consumer loans, a lender credit card. A lender credit card has no cap on rates or fees, and no grace period. These terms are set by whatever the parties agree.

Last year, the legislature made a number of substantial revisions to the Uniform Consumer Credit Code. The law in place today contains enhanced enforcement powers for the Administrator, and a good balance of enhanced consumer protection and flexibility for lenders. The proposed amendments contained in House Bill 2691 are minimal compared to those of last year, and can for the most part be described as clean up language. The limited number of amendments was an intentional decision, simply because I do not believe a sufficient amount of time has elapsed to allow for the full implementation of the numerous changes made to the Code last year. There are other areas where I feel future amendments will be warranted to improve and/or fine tune consumer protections. However, at this point in time, I don't believe the soup has had sufficient time to cook if you will, and I urge the committee to proceed cautiously when considering any possible amendments to the Code this year beyond those which I've identified in this bill.

Mr. Chairman, I am happy to answer any questions from the Committee.

Statement to:
Senate Committee on Financial Institutions and Insurance
House Bill 2691
Thursday, March 9, 2000

Mr. Chairman and members of the Committee, my name is George Barbee, and I am appearing today on behalf of the Kansas Association of Financial Services. KAFS membership is made up of rather large financial service companies, such as Household Finance, Norwest, Associates, American General, and others. These companies are engaged in making consumer credit loans under the statutes, rules, and regulations of the Uniform Consumer Credit Code (UCCC).

House Bill 2691 is a result of sweeping changes and new regulations made to the UCCC in 1999. The changes were so comprehensive that it is not surprising that some adjustments have to be made this year as a follow-up to last year's action.

I direct your attention to page 2, line 2, regarding the definition for appraised value. The language adopted last year read 'the greater of' the two following defined appraisals: one being the appraisal value of the real estate, as reflected in the most recent records of the tax assessor of the county; and the other being the fair market value of the real estate, as reflected in a written appraisal of the real estate performed by a Kansas licensed or certified appraiser within the past 12 months. The language 'the greater of' could be interpreted to mean you would be required to obtain both of these pieces of information, appraisal A and appraisal B. By eliminating the words 'the greater of' in line 3 then you could use either appraisal A or appraisal B.

The next change you will find on page 10, line 19, of the bill. This section, 3 (2), refers to closed end loans. Last year, rates were deregulated for consumer credit and credit cards, which means most UCCC loans have no limit on interest rates so that the market competition sets the rates. However, the Committee felt that closed end loans should be calculated according to an actuarial method, not to exceed (a) 36% per annum on any such loan in the amount of $860 or less and (b) 21% per annum on any such loan in an amount which exceeds $860. It was found that the second part was confusing and an administrative memo was obtained from the UCCC Commissioner. The new language: (a) 36% per annum on the portion of the unpaid balance which is $860 or less, and (b) 21% per annum on the portion of the unpaid balance that exceeds $860, reflects the results of that administrative memo. This amendment simply restores some language that was deleted last year to clarify intent of the section.

Mr. Chairman, KAFS supports these amendments proposed by the Deputy Commissioner of Consumer Credit and would urge you to act favorably on House Bill 2691.

Thank you for the opportunity to appear today in support of this bill, and I would be glad to stand for questions should there be any.

The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

March 9, 2000

TO: Senate Committee on Financial Institutions and Insurance

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 subsection (c) of this statute. Subsection (c) among other things, lists three types of "bank" checks that could be used: cashier's checks, certified checks or bank money orders.

After the bill passed, we 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 these specific checks 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 **HB 2677**.

800 SW Jackson Suite 1500 • Topeka, Kansas 66612-1265 • (785) 2
email kbaoffice@ink.org

Senate Financial Institutions & Insurance
Date 3/9/00
Attachment 6

The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

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.

800 SW Jackson Suite 1500 • Topeka, Kansas 66612-1265 • (785) 232-3444 FAX (785) 232-3484
email kbaoffice@ink.org

6-2

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.

420 SW 9th Street
Topeka, Kansas 66612-1678

785 296-3071
Fax 785 296-2283

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

6-4

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,

Margaret A. Gatewood
Senior Counsel
Legal Division

cc Kathleen Taylor Olsen, Associate General Counsel, KBA

Enclosure(s)

cc:

HEARTLAND COMMUNITY BANKERS ASSOCIATION

Matthew S. Goddard, Vice President

700 S. Kansas Ave., Suite 512
Topeka, Kansas 66603
Office (785) 232-8215 • Fax (785) 232-9320
mgoddard@hcbankers.com

To: Senate Committee on Financial Institutions and Insurance

From: Matthew Goddard
Heartland Community Bankers Association

Date: March 9, 2000

Re: House Bill 2677

The Heartland Community Bankers Association appreciates the opportunity to appear before the Senate Financial Institutions and Insurance Committee 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. The House Financial Institutions Committee also amended the bill to include funds received from federally chartered instrumentalities of the United States as acceptable funds.

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

Thank you.

Senate Financial Institutions & Insurance
Date 2/9/2000
Attachment 7

Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

TO: Senate Committee on Financial Institutions and Insurance

FROM: Linda De Coursey, Director of Government Affairs

RE: HB 2677 – Title Insurance, including "teller checks"

DATE: March 9, 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 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 (KID) started receiving inquiries of how we would interpret certain portions of the law, and particularly those portions relating to the "good funds". Responding to those inquiries, we would state 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.

Senate Financial Institutions & Insurance
Date 3/9/2000
Attachment 8

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We would also point out that the Kansas Insurance Department 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 would like to focus on a situation occurring in January in Wichita whereby approximately $2 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.

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

TO: Senate Committee on Financial Institutions and Insurance

RE: House Bill 2677

The Kansas Land Title Association supports House Bill 2677 as amended by the House Committee on Financial Institutions.

The addition of **"teller's checks"** and funds received from **"federally chartered instrumentalities of the United States"** to the current law does not weaken the purpose of the current law which is to ensure that title insurance agencies have collected funds to disburse as part of the real estate transaction.

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. Uncollected funds can create a loss for the consumer and for the title insurance agency.

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

Roy Worthington
Chairman, Legislative Committee

Senate Financial Institutions & Insurance
Date 3/9/2000
Attachment 9