

MINUTES OF THE FINANCIAL INSTITUTIONS.

The meeting was called to order by Chairperson Ray Cox at 3:30 p.m. on March 5, 2001 in Room 527-S of the Capitol.

All members were present except: Representative Bill McCreary

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

Conferees appearing before the committee: Steve Rarrick, Deputy Attorney General
Senator Janis Lee
Sharlee Mason, American Association of Retired People
Elwaine Pomeroy, Kansas Collectors Association and
Kansas Credit Attorneys Association

Others attending: See Attached

Chairman Cox presented the committee minutes for February 19 and February 28 to be reviewed by the end of the meeting.

Chairman Cox opened the hearing on **SB 58 - Consumer protection; prohibiting obtaining or submitting check without consent.**

Proponents:

Steve Rarrick, Deputy Attorney General, testified in favor of **SB 58**. The bill addresses a growing problem, that he sees in consumer protection, of people complaining that money is being taken out of their bank account without their authorization. In today's market, a person with your checking account number can do an electronic draft out of your account and the only way you would know is when you see it on your statement. Originally, the bill required written authorization. This was met with a great deal of concern, by legitimate businesses, with legitimate reasons, who are taking money out of consumers' accounts with their authorization. They were concerned that they would be subjected to some liability. The bill lists some exemptions and the written requirement was changed to language modeled after the slamming law. The burden of proving express authorization is on the supplier. They must have something that shows that the consumer said to take the money out of their account. He stated a concern with the wording for the second exemption on page one, line 18 thru 21. The bill also increases the penalties for violations. (**Attachment 1**)

Senator Janis Lee said that **SB 58** came about due to a situation in her family. She requested the legislation after discovering that a consumer signature wasn't required for a supplier to issue and receive payment from someone's bank account. **SB 58** in its current form has been thoroughly discussed and amended in the Senate. She is not thrilled about the current form of the bill, but believes that it has the potential to provide more protection than the current law does. (**Attachment 2**)

Sharlee Mason, American Association of Retired People, spoke in support of **SB 58**. They only support written authorization and **SB 58** because it starts off with authorization. (**Attachment 3**)

Elwaine Pomeroy, Kansas Collectors Association and Kansas Credit Attorneys Association, said they had concerns with the initial version of the bill. He thanked Senator Lee for her willingness to spend time and effort to reach a compromised version of the bill. They didn't get their amendment on in committee but it was

CONTINUATION SHEET

MINUTES OF THE FINANCIAL INSTITUTIONS at on March 5, 2001 in Room 527-S of the Capitol.

added on as a floor amendment. The wording of the floor amendment was patterned after the exemption in the telemarketing provisions. He said that all of the words in that amendment are not needed. He suggested an amendment that would strike the words "services rendered" and insert the word "or." They are interested in debt collection and he said that stopping after "existing debt" would satisfy their needs. (**Attachment 4**)

Chairman Cox asked Steve Rarrick for feedback concerning Mr. Pomeroy's proposed amendment. Steve said he'd probably be more comfortable if the wording was "or collection in connection with an existing debt" and the rest was deleted. He's stated that he wanted to clarify that he is not supporting the exemption but, if the committee decides to go with the exemption, that language would be much better than the present one. Chairman Cox asked Steve to get with Bruce Kinzie and prepare a balloon to change the language to that which would satisfy the interested parties.

Douglas Smith, Direct Marketing Association - Written testimony only (**Attachment 5**)

Chairman Cox closed the hearing on **SB 58** and said the committee would work it at a later time after a balloon has been prepared.

Chairman Cox said the committee would work the bills that were heard on February 28th.

SB 70 - Mortgages; entry of satisfaction thereof.

Representative Minor made a motion to pass SB 70 out favorably. Representative Humerickhouse seconded the motion. The motion carried.

SB 130 - Creation of limited purpose trust company.

Representative Gatewood made a motion to pass SB 130 out favorably. Representative Dreher seconded the motion. The motion passed.

SB 142 - Authorization of special orders by bank commissioner.

Representative Burroughs made a motion to amend the bill to include credit unions in the general definition of insured depository institutions, but to exclude them from the powers being granted to the Bank Commissioner. Representative Sharp seconded the motion. The motion to amend the bill failed.

Representative Dreher made a motion to pass SB 142 out favorably. Representative Minor seconded the motion. The motion passed.

Chairman Cox requested a motion on the committee minutes.

Representative Grant made a motion to approve committee minutes for February 19 and February 28 as presented. Representative Sharp seconded the motion. Without objection, the motion carried.

The meeting adjourned at 4:12 p.m.

The date of the next meeting will be determined later.



CARLA J. STOVALL
ATTORNEY GENERAL

State of Kansas

Office of the Attorney General

CONSUMER PROTECTION/ANTITRUST DIVISION

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Testimony of
Steve Rarrick, Deputy Attorney General
Consumer Protection Division
Office of Attorney General Carla J. Stovall
Before the House Financial Institutions Committee
RE: SB 58
March 5, 2001

Chairperson Cox and Members of the Committee:

Thank you for the opportunity to appear before you this afternoon on behalf of Attorney General Carla J. Stovall to testify in support of SB 58. My name is Steve Rarrick and I am the Deputy Attorney General for Consumer Protection.

This bill addresses a growing problem of unauthorized withdrawals from consumers' checking and savings accounts. Many people are surprised when they learn that money can be removed from their financial institution accounts without their signature. Our office has received numerous complaints and inquiries from consumers who have (1) had money taken from their bank account without their knowledge or (2) inadvertently given their bank account number to a supplier and became worried the supplier could illegally access their account. This scenario is most prevalent in transactions involving telemarketing. Unscrupulous telemarketers have, after a persuasive sales pitch, convinced consumers to provide their checking account and bank routing numbers to the telemarketer. Then, with or without the consent of the consumer, the telemarketer has submitted a demand for payment to the consumer's financial institution.

Once money has been paid out by a financial institution, it is extremely difficult to recover it. Unlike credit cards, checking accounts do not have verification protections such as an expiration date to verify possession of the card. As a result, any unscrupulous person or business who obtains the checking account number is able to draw money from the consumer's account. Perhaps more importantly, checking accounts do not have the federal protection which provides a process for the consumer to contest payment of the bill. Once paid, the money is simply gone from the account. This can lead to unhappy relations between consumers and their financial institutions.

We have worked with industry to assure that the bill addresses this troubling practice. As amended by the Senate, the bill would prohibit suppliers from obtaining or submitting for payment a "check, draft, or other form of negotiable instrument or payment order drawn on a person's checking, savings, share or similar account without the consumer's express authorization." "Express authorization" means an express affirmative act by a consumer clearly agreeing to the payment. The

burden of proving the express authorization is on the supplier. This is the same standard adopted by the 1998 Legislature that a supplier must meet in changing a consumer's local or long distance carrier to avoid an unauthorized switch known as "slamming." It has been an effective deterrent to slamming, as we believe it would be to unauthorized withdrawals from consumer accounts. The bill also allows financial institutions to decline payment on such checks or drafts if no proof of the consumer's express authorization is submitted.

SB 58 contains exemptions for suppliers who obtain or submit payments for: (1) the continuation of existing and recurrent services; (2) services provided in connection with an existing debt or contract, payment or performance of which has not been completed at the time of such submission; (3) services provided by a public utility; and (4) services provided by a wireless carrier. While we do not necessarily support all of these exemptions, we are most concerned with the exemption for services provided in connection with an existing debt or contract, payment or performance of which has not been completed at the time of such submission. Because this was a Senate floor amendment, we have had no opportunity to hear any justification for this exemption.

However, the exemption appears to be aimed at debt collection. We do not understand why debt collectors should be exempt from being required to demonstrate they have obtained the express authorization from a consumer before withdrawing money from the consumer's accounts. Debt collectors, by the very nature of their work, often have access to a consumer's bank account number. There is an exemption from our telephone solicitations law for debt collectors, but the rationale for exempting debt collectors from our telephone solicitation law requirements is much different than exempting debt collectors from this law.

Furthermore, this exemption as drafted would appear to exempt suppliers from the provisions of this law even if the supplier failed to fully perform on the existing contract, since it exempts suppliers of services "provided in connection with existing debt or contract, payment or performance of which has not been completed at the time of such submission." Read literally, this exemption may exclude most consumer contracts, in that it broadly refers to services provided in connection with an existing debt or contract. We would strongly urge this Committee to delete this exemption, or at the very least require some justification for the amendment and narrow the language of this exemption.

In Section 2 of the bill, K.S.A. 50-636, the civil penalties provision of the Kansas Consumer Protection Act (KCPA), is being amended to increase penalties for all violations of the Act from "not more than \$5,000" to \$10,000 per violation. There are situations when a supplier's actions are so egregious that a ceiling of \$5,000 is not adequate. Expanding the range to \$10,000 would allow a court to impose greater penalties in appropriate cases involving especially offensive violations. In addition, the amount of penalties that can be imposed against a supplier who willfully violates a court order would increase from \$10,000 per violation to \$20,000. This provision is important to deter repeat offenders.

Section 3 of the bill amends K.S.A. 17-1773, which is the penalties provision of the Charitable Organizations and Solicitations Act. That Act provides for registration, disclosures and prohibitions of those soliciting for a charitable purpose. The amendment increases civil penalties from "not more than \$2,000" to \$10,000 per violation and the penalty pursued after violation of a court order from \$10,000 to \$20,000. This amendment was offered by Senator Derek Schmidt to make potential penalties for violations of the Charitable Organizations and Solicitations Act equal to potential penalties under the KCPA. At one time, potential penalties under both acts were \$2,000.

This bill was supported by Sedgwick County Attorney Nola Foulston, and it is my understanding that she supports the bill as amended.

On behalf of Attorney General Stovall, I urge your favorable consideration of SB 58, with the deletion of the exemption for existing debts or contracts. I would be happy to answer any questions of the chair or the members. Thank you.

SENATOR JANIS K. LEE
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 LONG TERM CARE TASK FORCE

Mister Chairman and Committee Members

I very much appreciate this opportunity to testify on SB 58.

SB 58 came about because of a situation in my family which brought to our attention the fact that no consumer signature is required for a supplier to issue and receive payment for a draft, check, or other form of negotiable instrument drawn on that consumer's checking, savings, or similar account in a bank.

My brother and I assist an elderly aunt and uncle of our's with their personal financial matters because they have no children. This past fall and insurance company attempted to sell my aunt a supplemental health insurance policy. After some conversation she indicated that she was not interested in the product. To her surprise there was a debit on her next bank statement for \$85 + from that insurance company. She contacted the bank and they sent hers forms for her to sign to stop the automatic payment for which the insurance company had sent a draft.

When we discussed the situation with the bank, we were dumbfounded to discover that no signatures were required for a draft to be taken from a person's checking account. The bank further explained that several years ago they were required to have signed documents from their customers before an automatic withdrawal draft could be taken out of their bank account. However, that requirement is no longer in effect.

Because of our experiences helping our elderly parents and now our elderly relatives, we are very aware of how vulnerable senior citizens can become. It is also evident that senior citizens are quite often the prime target for unscrupulous individuals and businesses. Not requiring a signature before a withdrawal can be made from a person's bank account certainly makes this segment of our population, as well as anyone who does not examine their bank statement on a regular basis, even more vulnerable.

SB 58 in it's current form has been thoroughly discussed and amended in the Senate process. While I am not thrilled with the current form of the bill, I believe that it has the potential to provide more protection than does current law. The bill definitely provides the Attorney General's Consumer Protection division with the opportunity to have more "clout" when dealing with violators of the consumer protection acts.

However, ultimately as legislators we must ask ourselves whether we are more interested in providing reasonable protection for the innocent consumer or in listening to those who desire no changes and thus leave open the opportunity for some to take advantage of the unsuspecting public.



in Kansas

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March 5, 2001

Good afternoon Chairman Cox and Members of the House Committee on Financial Institutions. My name is Sharlee Mason and I am a volunteer member of the AARP State Legislative Committee. The AARP State Legislative Committee represents the views of our more than 350,000 members in the state of Kansas. I am also a member of our Capital City Task Force, which is the lobbying arm of the AARP State Legislative Committee. Thank you for this opportunity to speak in *support* of Senate Bill 58.

Telemarketing fraud and other forms of fraud victimize people of all ages, ethnic groups, educational backgrounds and income levels. Unfortunately, unscrupulous telemarketers and other suppliers continue to sell inferior merchandise, fail to deliver goods and levy fraudulent charges. Older Americans are often the victims of these unscrupulous practices.

AARP supports access to consumer's bank, savings, trust, stock or bond accounts by a supplier only after receipt of written consent by the consumer. Fraudulent telemarketers, for example, use verbal authorization to access the consumer's account before the consumer has the opportunity to adequately consider the high-pressure telephone sale. The FTC Rule permits access to consumer accounts with "verifiable authorization". One form of verifiable authorization includes verbal consent from consumers that is supposed to be tape-recorded by the telemarketer. The telemarketer must maintain the tape and upon request from the consumer's bank make the tape available. However, banks are under no obligation to request the tape prior to making payment to the telemarketer. Once the bank makes the payment to a fraudulent telemarketer, the consumer's money is lost.

Therefore, AARP only *supports* written authorization and Senate Bill 58.

Thank you again for this opportunity. I stand ready to answer questions.



REMARKS CONCERNING SENATE BILL 58
HOUSE FINANCIAL INSTITUTIONS COMMITTEE

MARCH 5, 2001

Thank you for giving me the opportunity to appear before you on behalf of the Kansas Collectors Association, Inc., which is an association of collection agencies in Kansas, and Kansas Credit Attorneys Association, which is a state-wide organization of attorneys whose practice includes considerable collection work.

Our groups had concerns about the wording of this bill as it was originally introduced. We wish to thank the principal proponent of this bill, Sen. Lee, for her willingness to spend extra time and effort to reach a compromised version of the bill. Although she is not a member of the Senate Committee On Financial Institutions And Insurance, Sen. Lee devoted much time and effort in meeting with interested parties concerning this bill to arrive at a compromised version that everyone could support. We applaud Sen. Lee for her efforts in that regard.

The Senate Committee amended the bill to meet the concerns of some of those groups which otherwise would oppose the bill. Sen. Lee, in a further effort to arrive at a compromised version which would be acceptable to all parties, offered a floor amendment. That floor amendment was aimed in part at answering the concerns of our groups concerning this legislation.

However, there was some confusion because some of the groups concerned with this legislation wanted to be sure that their efforts to provide "services rendered" would be exempt in certain specified instances.

The groups I represent want to be sure that their efforts to collect debts would also be exempt from the provisions of this legislation. Our groups would not be rendering additional "services" at the time they attempt to collect debt obligations created by the prior purchase of goods or services.

We therefore respectfully request that this committee on page 1, lines 18 and 19, strike the words "services provided" and replace those two words with the single word "or".

Elwaine F. Pomeroy
For Kansas Collectors Association, Inc.
And Kansas Credit Attorneys Association

**Testimony Before the
House Financial Institutions Committee**

By

The Direct Marketing Association

Senate Bill No. 58

Chairman Cox and Members of the Committee:

Thank you for the opportunity to present testimony on Senate Bill No. 58. The Direct Marketing Association (DMA) is the oldest and largest national trade association, serving the direct marketing industry since 1917, with over 4700 members.

The Direct Marketing Association supports Senate Bill No. 58 and urges this Committee to recommend the legislation favorable for passage.

Senate Bill No. 58, in its present form, is the result negotiation and compromise. The DMA opposed the original version of the Senate Bill No. 58 and after several meetings and much discussion the interested parties were able to arrive at language satisfactory, which is what you have before you today.

We support the increase in penalties for violations of the Consumer Protection Act. It sends a clear message to fraudulent businesses that Kansas will no longer tolerate their abusive business practices.

We also believe that placing the burden on the business for proving “express authorization” of questionable transactions is an appropriate measure and keeps business responsible to their customers.

Thank you again for the opportunity to provide testimony in support of Senate Bill No. 58. I am sorry that I was unable to present these remarks in person.

Douglas E. Smith
Direct Marketing Association