

MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS.

The meeting was called to order by Chairperson Ray Cox at 3:30 p.m. on February 6, 2002 in Room 527-S of the Capitol.

All members were present except: Representative Bob Tomlinson - excused

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

Conferees appearing before the committee: Chuck Stones, Kansas Bankers Association  
Judi Stork, Office of State Bank Commissioner  
Martha Neu Smith, Ks Manufactured Housing Assn.  
Bill Henry, Kansas Credit Union Association  
Sheila Walker, Division of Revenue  
Bill Henry, Kansas Credit Union Association  
Whitney Damron, Kansas Bar Association

Others attending:

Chairman Cox opened the floor for introduction of bills.

**Chuck Stones**, Kansas Bankers Association, requested that four pieces of legislation be introduced. The first item is a proposed amendment to **SB 58** dealing with unauthorized drafts. The amendment clarifies the intent. The second piece of legislation amends K.S.A. 79-1437f to incorporate a terminology change made at the Federal level. The third piece of legislation covers a very narrow exception to the balloon payment rule in order to allow banks to be competitive in the auto lease market. The fourth is a situation which involves the notification of a lien holder when a car is placed in storage. (Attachment 1)

Chairman Cox said that, without objection, the legislation would be introduced.

Chairman Cox opened the hearing on **HB 2694 - Trust companies, change of name.**

Proponent:

**Judi Stork**, Deputy Bank Commissioner, said the bill amends K.S.A. 9-2106, concerning trust companies. Last year when they reviewed the powers of the state banking board, many of the more routine functions were transferred to the commissioner. This included name changes for state banks. However, they overlooked the name change of trust companies. This bill corrects that omission. (Attachment 2)

Chairman Cox closed the hearing on **HB 2694** and opened the hearing on **HB 2695 - Banks and trust companies, board of directors, forfeiture of office.**

Proponent:

**Judi Stork**, Deputy Bank Commissioner, said the bill amends K.S.A. 9-1114 of the Banking Code. It covers qualifications of bank directors. The statute currently has a provision that says if you have a charged off indebtedness with the bank, you cannot continue to serve as a bank director. **HB2695** adds "or forgiven" to charged off indebtedness. (Attachment 3)

Chairman Cox closed the hearing on **HB2695** and asked for motions on the two bills..

Representative Grant made a motion to pass out **HB 2694** favorably and, since it is of a noncontroversial nature, place it on the consent calendar. Representative Dreher seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS at on February 6, 2002 in Room 527- of the Capitol.

Representative Grant made a motion to pass out **HB 2695** favorably and, since it is of a noncontroversial nature, place it on the consent calendar. Representative Dreher seconded the motion. The motion carried.

Chairman Cox opened the hearing on **HB 2723** - Manufactured homes and mobile homes; certificate of title.

Proponents:

**Martha Neu Smith**, Executive Director, Kansas Manufactured Housing Association, said **HB 2723** was drafted to correct a problem with obtaining title insurance for manufactured homes placed on permanent foundations. It was based on existing laws in Colorado and Washington. The bill provides a process for manufactured homes, that are placed on permanent foundations, to surrender their title to the state for elimination. It also establishes a process for re-issuance of the certificate of title if the home is moved and becomes personal property. She included one amendment to the bill, on page 2 line 36, the word "division" is crossed out and the words "County Treasurer" inserted. (Attachment 4)

Representative Boston asked if there was a fiscal note on the bill. The fiscal note stated that it could have a fiscal effect. Although the volume is unknown, there could be some shifts from personal property to real property tax rolls.

**Sheila Walker**, Director, Division of Vehicles, Department of Revenue, said her department has no opposition to the bill. In fact, she thinks the process for customers was streamlined and it also establishes uniformity for counties. (Attachment 5)

**Bill Henry**, Director of Governmental & Regulatory Affairs, Kansas Credit Union Association said his association supports **HB 2723**, with one reservation, which is section two. Section two basically reverses the certification process. His members, from the lending viewpoint, view the section as somewhat a way of mudding the title issue and see that there could be problems. (Attachment 6)

**Bill Yanek**, Director of Governmental Relations, Kansas Association of Realtors. - Written testimony only (Attachment 7)

**Whitney Damron**, Kansas Bar Association, said they favored the bill and handed out written testimony from Paul Davis. (Attachment 8)

Opponent:

**Chuck Stones**, Kansas Bankers Association, said his members are pleased with the current process. Most of his members say that there is no need for title insurance. The fact that you have a title would almost eliminate the need for title insurance. The owner and the lien holder are noted on the title. Title insurance is virtually unnecessary and is not required by most of the lenders that they have talked to. The lenders like the process, it's efficient and, most importantly, it's pretty clear. Yet, the only part his organization is officially opposing is section two of **HB 2723**. They feel a lender could get stuck in the conversion process. (Attachment 9)

Chairman Cox closed the hearing on **HB 2723**.

Representative Grant made a motion to approve the committee minutes for January 23<sup>rd</sup> as written. Representative Sharp seconded the motion. The motion carried.

Meeting adjourned at 4:32 p.m.

Next meeting is scheduled for Wednesday, February 13th.



Kansas Bankers Association – part 2

**Exception for Balloon payments** – The UCCC states that terms for re-financing the balloon part of a balloon payment loan can be no less favorable than the terms of the original loan. The KBA has endorsed an auto lease look alike product that mimics a lease in every way. However, technically, it is booked at the bank as a loan with a balloon payment. We are asking for a very limited exception to the balloon payment rule to allow banks to be competitive in the auto lease market. We have attempted to deal with the concerns of the UCCC administrator in the language of the bill, giving the Administrator approval authority over the terms of the product.

## Proposed Amendment to K.S.A. 16a-3-308

**16a-3-308. (UCCC) Balloon payments.** With respect to a consumer credit transaction, other than one pursuant to open end credit if any scheduled payment is more than twice as large as the average of earlier scheduled payments, the consumer has the right to refinance the amount of that payment at the time it is due without penalty. The terms of the refinancing shall be no less favorable to the consumer than the terms of the original transaction. These provisions do not apply to the extent that the payment schedule is adjusted to the seasonal or irregular income of the consumer or to a note secured by a real estate mortgage. Upon receiving prior approval from the administrator, these provisions would not apply to a consumer loan secured solely by a certificate of title in a motor vehicle.

STATE OF KANSAS  
BILL GRAVES  
GOVERNOR

Franklin W. Nelson  
*Bank Commissioner*

Judi M. Stork  
*Deputy Bank Commissioner*



Sonya L. Allen  
*General Counsel*

Kevin C. Glendening  
*Deputy Commissioner  
Consumer and Mortgage Lending*

OFFICE OF THE  
STATE BANK COMMISSIONER

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS

February 6, 2002

Mr. Chairman and Members of the Committee:

My name is Judi Stork. I am the Deputy Bank Commissioner with the Office of the State Bank Commissioner. I am here today to request your favorable consideration of HB 2694. This bill would amend K.S.A. 9-2106, concerning names of trust companies. As you may recall, last year, as part of a review of the powers of the state banking board, many of the more routine functions of the board were transferred to the commissioner. This included name changes for state banks. However, we overlooked changing the approval process for name changes of independent trust companies. This proposed amendment would allow the commissioner to approve trust company name changes, rather than requiring banking board approval. The banking board was consulted about this issue, and is supportive of this change.

Thank you. I would be happy to answer any questions.

**STATE OF KANSAS  
BILL GRAVES  
GOVERNOR**

**Franklin W. Nelson**  
*Bank Commissioner*

**Judi M. Stork**  
*Deputy Bank Commissioner*



**Sonya L. Allen**  
*General Counsel*

**Kevin C. Glendening**  
*Deputy Commissioner  
Consumer and Mortgage Lending*

**OFFICE OF THE  
STATE BANK COMMISSIONER**

**HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS**

February 6, 2002

Mr. Chairman and Members of the Committee:

My name is Judi Stork. I am the Deputy Bank Commissioner with the Office of the State Bank Commissioner. I am here today to request your favorable consideration of HB 2695. This bill would amend K.S.A. 9-1114 of the Banking Code. This statute governs the qualifications and election of the directors of state-chartered banks. The statute currently requires that a director forfeit their office if they become indebted to the bank on a charged off obligation. We would like to add the provision that they must also forfeit their position if their debt with the bank is forgiven by the bank. We have had instances where a director has had a debt at a bank that is going to be charged off, and the bank has inquired as to whether forgiveness of such debt would correct the violation, and therefore allow the director to retain his or her position as a director. Our office is of the opinion that the intent of the statute is to ensure that directors are held to a high standard with regard to their financial dealings. We do not envision that forgiveness of a charged off obligation follows the intent of the statute. In 1996, we addressed the issue of forgiveness of debt as to officers of the bank, in K.S.A. 9-1115. That statute now requires forfeiture of the officer's position if the officer has forgiven debt at the bank. We believe the same principles and rules should apply to both officers and directors, and would ask for your favorable consideration of this bill.

Thank you. I would be happy to answer any questions.

House Financial Institutions  
2-06-02  
Attachment 3





214 SW 6th St., Suite 206  
Topeka, KS 66603-3719  
785-357-5256  
785-357-5257 fax  
kmha1@mindspring.com

## **TESTIMONY BEFORE THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS**

**TO:** Chairman Cox and  
Members of the Committee

**FROM:** Martha Neu Smith, Executive Director

**DATE:** February 6, 2002

**RE:** HB 2723 – Manufactured Home Title Elimination/Re-issuance

Chairman Cox and Members of the Committee, my name is Martha Neu Smith and I am the Executive Director of Kansas Manufactured Housing Association (KMHA) and I appreciate the opportunity to comment. KMHA is a statewide trade association representing all facets of the manufactured housing industry (i.e. manufacturers, retailers, community owners, suppliers, finance, insurance and transport companies).

Over the past summer KMHA was notified of a problem with obtaining title insurance for manufactured homes placed on permanent foundations. After investigation, what we learned is, as of July 1, 2001, approximately half of the title insurance underwriters KMHA members had been using for their land/home projects were no longer issuing policies. The rationale we were told for their refusal to write was that Kansas law did not allow manufactured homes to surrender or eliminate their certificates of title when they are placed on permanent foundations. Consequently, since the home still had a certificate of title the title insurance underwriters considered them personal property. Title insurance insures the transfer of ownership of real estate not personal property.

To resolve this problem we worked with representatives from the title insurance industry, the Kansas Bankers Association, Kansas BAR Association and the Director of Vehicles. We based HB 2723 on existing laws from Colorado and Washington. HB 2723 provides a process for manufactured homes that are placed on permanent foundations to surrender their title to the state for elimination. It also establishes a process for re-issuance of the certificate of title if the home is moved and becomes personal property.

House Financial Institutions  
2-06-02  
Attachment 4



The elimination process starts on page one of the bill, line 28. After the homeowner completes an application for elimination they must provide an affidavit to the Division of Vehicles signed by all owners of the home along with all parties having a mortgage, lien or other security interest in the home. The affidavit must contain the following information (starts on pg. 1, line 38) date; name of all owners of the home; legal description of the real property the home is to be located on; description of the home; names of all parties holding a security interest or otherwise entitled to a lien or encumbrance; a statement that the owner or one of the owners of the home owns the real property; name and address of the lending agency to which the approved application may be delivered; certificate of title (if already titled) or manufacturer's statement of origin (if the home is new); a release of each secured party's security interest; and proof of payment of all taxes and fees.

When all requirements are met the Division approves the application for elimination and the approved application is then recorded at the register of deeds in the county in which the home is affixed to the real property. The manufactured home is now considered real property.

New Section two (pg. 2, line 31) provides the owner of a manufactured home who has had the title eliminated to go through a procedure to have the title re-issued if the home is to become personal property. The owner must make application to the County Treasurer (Amendment attached), provide an affidavit signed by all the owners of the real property and signed by all parties having a mortgage, lien or other security interest in the real property; proof of payment of all taxes and fees; certification by a title insurance agency listing the owners and all parties having a mortgage, lien or other security interest in the real property which has an effective date of no more than 30 days before the date of the application for the new title. Then, if all of the requirements are met, the Division approves the application and it is then recorded with the register of deeds in the county where the real property is located from which the home is to be removed. After that point, the manufactured home is no longer considered to be an improvement to the real estate and is now considered personal property. Concurrently the division issues a new certificate of title.

We are aware there is concern with New Section two; however, we know there will be situations where the eliminated title will need to be re-issued. For example, the homeowner that decides to sell the home that has had the title eliminated and the purchaser of that home places it in a manufactured home community. In the community, the home will not be on a permanent foundation and will not be on real estate owned by the homeowner. That home is now personal property.

We are not suggesting that the re-issuance process for these situations should be easy, in fact we don't feel it should be easy at all. To that end we have

included every safeguard suggested to us to help minimize the concern. However, as an Industry we know that a few of the homes with the eliminated titles will come off the foundations and without New Section Two there will not be a process in place for the seller of the home, the homebuyer, no notification/sign-off process for the lender and no process for the Division to re-issue a certificate of title.

We feel the number of requests for re-issuance will be minimal, while I cannot give you an exact number, I can tell you that the State of Washington who has had this law in place since 1989 had approximately 12 re-issued certificates of title last year. We feel the number in Kansas will also be minimal and with a process in place there will be less confusion for all parties.

Thank you for the opportunity to comment and please consider passage of HB 2723 with the attached amendment.

- 1 cluding model year, make, width, length and identification number;  
2 (E) the names of all parties holding a security interest or otherwise  
3 entitled to a lien or encumbrance in the manufactured home or mobile  
4 home;  
5 (F) a statement that the owner or one of the owners of the manufac-  
6 tured home or mobile home owns the real property where the manufac-  
7 tured home or mobile home is or will be located; and  
8 (G) the name and address of an owner, lending agency or other entity  
9 to which the approved application may be delivered;  
10 (2) the certificate of title for the manufactured home or for the mo-  
11 bile home issued pursuant to K.S.A. 58-4204, and amendments thereto,  
12 or in the case of a new manufactured home, the manufacturer's statement  
13 of origin;  
14 (3) where one or more parties have a security interest in the manu-  
15 factured home or mobile home, a release of each such secured party's  
16 security interest;  
17 (4) proof of payment of all applicable fees and taxes; and  
18 (5) any other information the division may reasonably require pur-  
19 suant to duly adopted rules and regulations.  
20 (c) The division shall approve the application for elimination of the  
21 title when all requirements of subsection (b) have been satisfied. After  
22 the application has been approved, the division shall deliver the approved  
23 application as directed by the application. The approved application shall  
24 be recorded in the office of the register of deeds of the county in which  
25 there is located the real property on which the manufactured home or  
26 mobile home is affixed. Upon such recording, the certificate of title shall  
27 be presumed to be eliminated. If a certificate of title previously has been  
28 issued for the manufactured home or mobile home pursuant to K.S.A.  
29 58-4204, and amendments thereto, the division also shall cancel such  
30 certificate of title.  
31 New Sec. 2. (a) In the event that a manufactured home or mobile  
32 home which is permanently affixed to real property and for which the  
33 certificate of title has been eliminated, as provided in section 1, and  
34 amendments thereto, is to be returned to the status of personal property  
35 and no longer affixed to real estate, the owner thereof shall make appli-  
36 cation to the ~~division~~ for a new certificate of title. Application for a cer-  
37 tificate of title shall be made in the manner prescribed by K.S.A. 58-4204,  
38 and amendments thereto, for obtaining a new certificate of title. In ad-  
39 dition, the owner shall provide:  
40 (1) An affidavit in the form prescribed by the division and signed by  
41 the owners of the real property from which the manufactured home or  
42 mobile home is being removed, and also signed by all parties having a  
43 mortgage, lien or other security interest in such real property, as evidence

County Treasurer

4-4

Sheila J. Walker, Director  
Division of Vehicles  
915 SW Harrison St.  
Topeka, KS 66626-0001



(785) 296-3601  
FAX (785) 291-3755  
Hearing Impaired TTY (785) 296-3909  
Internet Address: [www.ksrevenue.org/dmv](http://www.ksrevenue.org/dmv)

Division of Vehicles

MEMORANDUM

**TO:** Chairman Ray Cox  
Members of the House Financial Institutions Committee

**FROM:** Sheila J. Walker, Director of Vehicles *Sheila J. Walker*

**DATE:** February 6, 2002

**SUBJECT:** House Bill 2723 – Manufactured and Mobile Homes

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Mr. Chairman, members of the Committee, I am Sheila Walker, Director of the Kansas Division of Vehicles. Thank you for the opportunity to provide written testimony regarding House Bill 2723.

If passed, House Bill 2723 will class manufactured and mobile homes, permanently affixed to real property, as real property instead of personal property. The bill allows for the elimination of a certificate of title on a manufactured or mobile home if the home is permanently affixed to real property. Further, the bill requires the re-issue of a certificate of title if the home is returned to the status of personal property and is no longer affixed to real estate.

Currently, all manufactured or mobile homes are considered personal property and are taxed and titled as such, even if the home is affixed to real property such as a basement. The customer is required to hold a title for the home and a deed for the land. Should the customer want to sell his property, he must provide both documents even though the home may be affixed to the land.

The department sees the adoption of HB 2723 as a means to streamline the process for customers, as well as to establish uniformity for counties as they process customers' purchases and sales.

The department processes approximately 1,300 such titles per year. Implementation of HB 2723 would require a minimal amount of new forms, procedures and training.

Thank you again for allowing me to provide written testimony on this bill.



KANSAS CREDIT UNION ASSOCIATION

TESTIMONY ON HB 2723 FOR THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS, FEBRUARY 6, 2002

Chairman Cox, Members of the committee I am Bill Henry, Director of Governmental & Regulatory Affairs for the Kansas Credit Union Association. I appear before you today in support of HB 2723.

The bill provides for a clarification process where a mobile or manufactured home is placed on real property it can be classified as real property.

Several states have similar legislation now in effect and the Credit Union Association's 117 members support this legislation with one reservation.

New Section 2 allows for the reversal of this certification process and the return of this type of property to personal property status. Our credit union lending committees question the necessity of this section and believe it muddies the intent of the bill which we believe is to clarify how personal property becomes real property in the area of mobile and manufactured housing.

We believe eliminating new section 2 simplifies the process for the lending community and urge the committee to consider this action.

I would be pleased to respond to any questions the committee may have.

Respectfully Submitted,

A handwritten signature in blue ink that reads "Bill Henry".

Bill Henry

650 S. Westdale Drive  
Suite 100  
Wichita, Kansas  
67209-2570  
1-800-362-2076  
Tel 316-942-7965  
Fax 316-206-2203

Topeka Office  
816 SW Topeka Blvd.  
Topeka, Kansas  
66612-1635  
1-888-482-5282  
Tel 785-232-2446  
Fax 785-232-2730

House Financial Institutions  
2-06-02  
Attachment 6





TO: HOUSE FINANCIAL INSTITUTIONS COMMITTEE  
FROM: BILL YANEK, KAR DIRECTOR OF GOVERNMENTAL RELATIONS  
DATE: FEBRUARY 6, 2002  
SUBJECT: HB 2723 MANUFACTURED HOMES AND MOBILE HOMES;  
CERTIFICATION OF TITLES

Thank you for the opportunity to present written testimony regarding HB 2723. The Kansas Association of REALTORS® supports the concepts in this proposal. We believe that the State of Kansas needs a process that allows manufactured or mobile homes permanently affixed to real property to eliminate certificates of title issued pursuant to K.S.A. 58-4204.

Once a mobile or manufactured home becomes permanently affixed to real property, that home becomes real estate. However, in Kansas the real estate owner still must title the real property pursuant to K.S.A. 58-4204, which is a title evidencing the ownership of a manufactured or mobile home.

Title companies are reluctant, and in some cases adamantly against issuing a title insurance policy on real estate subject to a manufactured or mobile home certificate of title. Without a title insurance policy, selling or buying the property via any type of financing is problematic.

KAR believes that the steps outlined in sections (b) (1) (A) – (G) eliminates the manufactured or mobile home title in a comprehensive and complete way, and eliminates any risk that a title or financing company may incur by dealing with the property as real estate rather than a manufactured or mobile home titled pursuant to K.S.A. 58-4204.

We respectfully request your favorable consideration of this legislation.



785.267.3610  
VOICE

800.366.0069  
TOLL FREE

785.267.1867  
FAX

House Financial Institutions  
2-06-02  
Attachment 7



**KANSAS BAR  
ASSOCIATION**

1200 SW Harrison St.  
P.O. Box 1037  
Topeka, Kansas 66601-1037  
Telephone (785) 234-5696  
FAX (785) 234-3813  
www.ksbar.org

**LEGISLATIVE TESTIMONY**

February 6, 2002

TO: CHAIRMAN RAY COX AND MEMBERS OF THE  
HOUSE FINANCIAL INSTITUTIONS COMMITTEE

FROM: PAUL DAVIS, KBA LEGISLATIVE COUNSEL  
WHITNEY DAMRON, KBA LOBBYIST

RE: HOUSE BILL 2723

Chairman Cox and Members of the Committee:

The Kansas Bar Association appears today as a conceptual supporter of House Bill 2723. Members of the KBA Real Estate, Probate & Trust Law Section have reviewed this issue and believe that this bill addresses a serious marketplace problem for Kansas consumers.

Under current law, manufactured homes are not treated as an improvement to real estate for title insurance purposes. The result of this is a curtailing in the availability of many individuals to obtain financing of construction loans on "land/home" transactions. The land/home construction loan is evidenced by a promissory note with a fairly short maturity, typical of construction loans. The lender's collateral is the land, the infrastructure improvements to the land, and the manufactured home. The lender records its mortgage to perfect its lien in the real estate and procures title insurance to verify that the lien has first priority. Because the residence is a "manufactured home", the lender perfects its security interest by compliance with K.S.A. 58-4204. Well-advised lenders file the notice of security interest authorized under K.S.A. 58-4204(e), which perfects the security interest. When issued, the certificate of title lists the lender as the lienholder.

However, there is a problem. Title insurers take exception to the manufactured home. Apparently, their reasoning is that they insure title to real estate, not title to personal property. With some justification, they take the position that the manufactured home is personalty, not an improvement to real estate. One consequence of this is that the permanent lender cannot obtain title insurance for the full amount of the loan. If the permanent lender cannot obtain this title insurance coverage, it will not make a permanent loan. The result is that the construction lender cannot be paid off by the long-term loan.



This bill remedies this difficult situation by adding a statutory procedure whereby a manufactured home may become real estate for ownership and security interest purposes. Since in fact manufactured homes are permanently attached to real estate in much the same way as a modular home is attached, it ought to be regarded as real estate.

We are aware that the Kansas Bankers Association may have an issue with regard to the reinstatement provision addressed in New Section 2. We understand the concerns of the Bankers with regard to this issue, but we do not have a formal position as to whether this section should be amended.

Therefore, we urge your favorable consideration of House Bill 2723.



## The Kansas Bankers Association

TO: House Financial Institutions Committee  
FROM: Chuck Stones, Senior Vice President

RE: HB 2723

Mr. Chairman and Members of the Committee,

The Kansas Bankers Association appreciates the opportunity to appear before you today concerning HB 2723. While we are not opposed to the majority of the bill, the lenders we have spoken with wonder if the whole bill isn't fixing a problem that does not exist. Banks involved in lending to the manufactured housing market like the current statutes and procedures. They are very easy, efficient, and most important clear. The proposed legislation appears to insert a level uncertainty that seems unnecessary.

That being said, we will only officially oppose New Section 2 of the bill. We concede the possibility that the availability of title insurance would be beneficial in the event of using the secondary market for manufactured housing loans. However, New Section 2 adds a new wrinkle to the process. After being permanently affixed to a foundation, surrendering the title and becoming real property, the manufactured housing industry wants the ability to reverse the process and re-issue the title and become personal property again. This would appear to be having their cake and eating it too.

We believe this has the potential to become confusing and the possibility exists for a secured lender to be left without notice and unable to properly file the necessary paperwork to continue to be properly secured. In addition to that confusion is the confusion and possible problems with disclosures. Consumer credit and real estate lending each have their own rules, regulations and disclosure requirements. Banks will rightly ask, "Which rules are we responsible for complying with?" I'm afraid the answer might be, "both", since the loan is made as a consumer transaction and then converted to real estate.

We firmly believe that once the owner of a manufactured home decides to convert the house to real property and all the conversion paperwork has been completed, they should not be able to re-convert at will. They simply need to make up their mind. We have been told that this re-conversion process happens very infrequently, which would indicate that the process is unnecessary. Combined with the potential for a lender to lose its security, we urge you to remove New Section 2 from HB 2723.