Approved: February 20, 2002
Date

MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS.

The meeting was called to order by Chairperson Ray Cox at 3:42 p.m. on February 13, 2002 in Room 527-S of the Capitol.

All members were present except: Representative Boston - Excused
Representative McCreary - Excused
Representative Vickrey - Excused

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

Conferees appearing before the committee: Kathy Olsen, Kansas Bankers Association
Chuck Stones, Kansas Bankers Association

Others attending: See Attached List

Chairman Cox opened the hearing on **HB 2807** - Consumer protection, method of payment authorization

Proponent:

Kathy Olsen, Kansas Bankers Association, reminded the committee that last year the legislature passed **SB 58**, now K.S.A.5-6,105, at the request of Senator Lee, in response to concerns that our state law didn't protect consumers enough with regards to unauthorized drafts. To ensure that the new law is not in conflict with a prevision in the UCC law, **HB 2807** makes a clarification in subsection (d). There is no intent to change UCC law or the duty of banks to pay checks that are properly payable, but rather to mesh UCC law with K.S.A.5-6,105 as it was intended to apply. She requested the committee act favorably on **HB 2807**. (Attachment 1)

Chairman Cox closed the hearing on **HB 2807** and opened the hearing on **HB 2812 - UCCC, balloon payment, exception**.

Proponent:

Chuck Stones, Kansas Bankers Association, said the UCCC states that the terms for refinancing the balloon part of a balloon payment loan can be "no less favorable to the consumer than the terms of the original transaction. **HB 2812** is a request for a very limited exception to the balloon payment rule to allow banks to compete in the auto lease/financing market. This exception is patterned after Iowa law and would allow the balloon payment to be renegotiated only when the loan is "secured solely by a certificate of title in a motor vehicle." He thanked the committee for their consideration and urged their support. (Attachment 2)

Chairman Cox closed the hearing on **HB 2812** and opened the hearing on **HB 2813** - Real estate sales validation questionnaires; use of.

Proponent:

Kathy Olsen, Kansas Bankers Association, **HB 2813** would amend K.S.A. 79-1437f concerning who has access to real estate sales validation questionnaires. Federal law changed the terminology with regard to what appraisals on loans below $250,000 are called, now referring to them as "evaluations." The change is to ensure that people making "evaluations" will continue to receive the questionnaires. (Attachment 3)

Chairman Cox closed the hearing on **HB 2813**.

Chairman Cox asked if there were any introduction of bills. There were none.

Meeting adjourned at 3:56 p.m.

Next meeting scheduled for Wednesday, February 20

HOUSE FINANCIAL INSTITUTIONS COMMITTEE GUEST LIST

DATE: February 13, 2002

NAME	REPRESENTING
Kathy Olsen	KBA
Chuck Stones	KBA
Kevin Glendening	OSBC
Steve Karrick	A.G.
Bill Henry	Ks Credit Union Assn
Robert Choromanski	KTLA

The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

February 13, 2002

To: Members of the House Financial Institutions Committee

From: Kathleen Taylor Olsen

Re: HB 2807: Unauthorized drafts

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today in support of **HB 2807** which is designed to clear up what we believe to be a conflict between this law – which was passed just last year in the 2001 Legislative Session – and a provision in the Uniform Commercial Code (UCC).

As most of you will recall, this legislation was passed in response to concerns that our state law did not sufficiently protect consumers who were solicited by telemarketers. Very briefly, K.S.A. 50-6,105 provides that a supplier must have a consumer's "express authorization" before the supplier may submit a check or draft for payment.

To refresh your memories, "express authorization" was defined to mean an express affirmative act by a consumer where the consumer clearly agrees to the payment in whatever form.

To further protect the consumer and the consumer's financial institution, subsection (d) was added to specifically allow a financial institution to decline to pay a check or draft that is submitted without proof of the consumer's express authorization. The testimony presented last year to this committee was that the drafter of this language intended to protect a financial institution that declined to pay a draft or check because there was no express authorization from its customer.

As often occurs, after the fact, we discovered that this provision is in conflict with an existing Uniform Commercial Code provision that states that a bank is liable to its customer if it dishonors an item that is properly payable (K.S.A. 84-4-402). Under the UCC, a bank would be liable for declining to pay a check or draft that is submitted without proof of the consumer's express authorization if the bank later found out the draft was indeed authorized by the customer.

In order to preserve the intention of the drafters of this bill, we would respectfully request that the Committee adopt the amendment we have proposed on line 36, amending subsection (d). It is not our intent to change UCC law or the duty of banks to pay checks that are properly payable, but rather to mesh UCC law with K.S.A. 50-6,105 as it was intended to apply.

Thank you and we respectfully ask that the Committee act favorable on **HB 2807**.

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84-4-402

Chapter 84.--UNIFORM COMMERCIAL CODE
PART 7.--REMEDIES
Part 4.--RELATIONSHIP BETWEENPAYOR BANK AND ITS CUSTOMER
Article 4.--BANK DEPOSITS ANDCOLLECTIONS

84-4-402. Bank's liability to customer for wrongful dishonor; time of determining insufficiency of account. (a) Except as otherwise provided in this Article, a payor bank wrongfully dishonors an item if it dishonors an item that is properly payable, but a bank may dishonor an item that would create an overdraft unless it has agreed to pay the overdraft.

(b) A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. Liability is limited to actual damages proved and may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.

(c) A payor bank's determination of the customer's account balance on which a decision to dishonor for insufficiency of available funds is based may be made at any time between the time the item is received by the payor bank and the time that the payor bank returns the item or gives notice in lieu of return, and no more than one determination need be made. If, at the election of the payor bank, a subsequent balance determination is made for the purpose of reevaluating the bank's decision to dishonor the item, the account balance at that time is determinative of whether a dishonor for insufficiency of available funds is wrongful.

History: L. 1965, ch. 564, § 228; L. 1991, ch. 296, § 102; Feb. 1, 1992.

The Kansas Bankers Association

2-13-02

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

RE: HB 2812

Mr. Chairman and Members of the Committee,

Thank you for the opportunity to appear before you today in support of HB 2812. The UCCC states that the terms for refinancing the balloon part of a balloon payment loan can be "no less favorable to the consumer than the terms of the original transaction."

The KBA has endorsed an auto lease look a like product that mimics a lease in every way and allows banks to compete in that market. It allows consumers to lower their payments on the automobile of their choice. However, technically, it appears on the books of the bank as a loan with a balloon payment.

The consumer has all the options of a lease. They can turn the car back in to the bank at the end of the original transaction, at no penalty, or they can buy the car at the set residual value. Under the current law, the bank would not be able to negotiate the terms of that second transaction to allow for current market conditions.

We are asking for a very limited exception to the balloon payment rule to allow banks to compete in the auto lease/financing market. Without this change bankers have told us that the product is less attractive and their ability to compete is hindered. The exemption we are asking for is patterned after Iowa law and would allow the balloon payment to be renegotiated only when the loan is "secured solely by a certificate of title in a motor vehicle." The new language in the bill also gives the administrator of the UCCC approval powers of the terms of these lease look a like programs in order for the balloon payment exemption to be effective.

We thank you for your consideration and we urge your support for HB 2812.

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The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

February 13, 2002

To: House Committee on Financial Institutions

From: Kathleen Taylor Olsen, Kansas Bankers Association

Re: HB 2813: Real Estate Sale Validation Questionnaires

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today in support of **HB 2813**, which would amend K.S.A. 79-1437f, concerning who has access to real estate sales validation questionnaires.

Real estate sales validation questionnaires must accompany each transfer of real estate or affidavit of equitable interest filed with the Register of Deeds. This form is completed by the grantor of the property and is held by the Register of Deeds for five years. The questionnaire contains such information as the identification and location of the property, the name and address of the purchaser, the sales price and date of sale, whether there are any liens on the property, the method of financing and whether any special assessments are levied.

Due to the sensitive nature of some of the information contained therein, K.S.A. 79-1437f limits who can have access to the questionnaire with a laundry list of those entitled to it. Subsection (f) provides that licensed or certified appraisers may have access to these questionnaires in preparation of appraisal reports. While federal law requires any appraisal conducted on real estate loans exceeding $250,000 to be done by a licensed or certified appraiser, appraisals for real estate loans less than $250,000 do not have to be conducted by a licensed or certified appraiser. Thus, subsection (e) provides that financial institutions conducting appraisals required by federal and state regulators may have access to this information.

This law was passed in 1991 and soon after, Federal law changed the terminology with regard to what appraisals on loans below $250,000 are called. The banking regulators refer to these as "evaluations", and although they are the equivalent of "appraisals" for all practical purposes, the different terminology prompted us to request a change in the statute as represented by the proposed bill. While it is a very technical change, it will prevent someone from challenging the ability of financial institutions to access this information for appraisalevaluation purposes down the road.

Thank you and we respectfully request that you act favorably on **HB 2813**.

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