

Approved:

Date: 3-19-02

## MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson Sandy Praeger at 9:30 a.m. on March 14, 2002 in Room 234 N of the Capitol.

All members were present except:

Committee staff present: Dr. Bill Wolff, Kansas Legislative Research Department  
Ken Wilke, Office of the Revisor of Statutes  
JoAnn Bunten, Committee Secretary

Conferees appearing before the committee:

Larry Magill, Kansas Association of Insurance Agents  
Kathy Olsen, Kansas Bankers Association  
Chuck Stones, Kansas Bankers Association

Others attending: See attached list.

### **Introduction of Resolution**

Larry Magill, Kansas Association of Insurance Agents, requested introduction of a Senate Concurrent Resolution that would request the Kansas Commissioner of Insurance to study the use of insurance scoring reports within the insurance industry and the need for additional regulation, if any.

Senator Feleciano made a motion the Committee introduce the proposed Concurrent Resolution, seconded by Senator Teichman. The motion carried.

### **Hearing on HB 2807 - Consumer protection, method of payment authorization**

Kathy Olsen, Kansas Bankers Association, presented testimony to the Committee in support of **HB 2807** which concerns the Kansas Consumer Protection Act and relates to a bank's authority to refuse payment on a check. Ms. Olsen noted that this legislation is designed to clear up a conflict between legislation passed in the 2001 session and a provision in the Uniform Commercial Code as shown in her written testimony. (Attachment 1)

The State Bank Commissioner, Franklin Nelson, did not provide written testimony, but stated he did not have a problem with the bill.

There were no opponents to **HB 2807**.

### **Hearing on HB 2812 - UCCC, balloon payment, exceptions**

Chuck Stones, Kansas Bankers Association, testified before the Committee in support of **HB 2812** which amends one section of the Uniform Consumer Credit Code relating to balloon payments. The bill authorizes the Bank Commissioner to exempt transactions involving a consumer loan secured by a motor vehicle from the requirement that, upon refinancing a balloon payment, the terms of the refinancing can be no less favorable to the consumer than the terms of the original transaction. Mr. Stones noted that the exemption they 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 the lease look-a-like programs in order for the balloon payment exemption to be effective. (Attachment 2). Kevin Glendenning, Deputy Commissioner in the Office of the State Bank Commissioner, contributed to the discussion by noting such legislation could be done by rules and regulations. The Chair directed staff to draft a balloon of the bill which would provide such oversight subject to rules and regulations.

CONTINUATION SHEET

The Committee also discussed the need to protect the consumer from predatory loans as well as wanting conditions of the loan defined for the consumer's protection.

There were no opponents to the bill.

**Action on HB 2807**

Senator Teichman made a motion that the Committee recommend **HB 2807** favorable for passage, seconded by Senator Feleciano. The motion carried.

**Adjournment**

The meeting was adjourned at 10:00 a.m. The next meeting is scheduled for March 19, 2002.





March 14, 2002

To: Members of the Senate Financial Institutions & Insurance Committee

From: Kathleen Taylor Olsen, Kansas Bankers Association

Re: **HB 2807: Unauthorized drafts**

Madam Chair 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 favorably 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.

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The Kansas Bankers Association

3-14-02

TO: Senate Financial Institutions and Insurance Committee  
FROM: Chuck Stones, Senior Vice President

RE: HB 2812

Madam Chair 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.