

MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS COMMITTEE

The meeting was called to order by Chairman Ray Cox at 3:30 p.m. on March 10, 2004 in Room 527-S of the Capitol.

All members were present except:

Representative Rob Boyer- excused
Representative Steve Brunk- excused

Committee staff present:

Bruce Kinzie, Revisor's Office
Bill Wolff Legislative Research Department
Maggie Breen, Secretary

Conferees appearing before the committee:

Senator Lana Oleen
Jarrod Forbes - Kansas Insurance Commissioner's Office
Chris Howe, Deputy Director of Purchasing
Kathy Olsen - Kansas Bankers Association
Matt Goddard - Heartland Community Bankers Association
Tom Whitaker - Kansas Motor Carriers Association
Bill Henry - Kansas Credit Union Association
Carmen Alldritt - Director of Vehicle Division
Jim Hall - American Council of Life Insurers

Others attending:

See Attached List.

Chairman Cox opened the hearing on SB 392 - Authorizing the committee on surety bonds and insurance to competitively negotiate certain contracts.

Proponents:

Senator Lana Oleen, Due to the senator being delayed, Chairman Cox read Senator Oleen's testimony (**Attachment 1**) He asked if anyone had more details. **Jarrod Forbes** - Kansas Insurance Commissioner's Office, said the Insurance Department was in support of the bill. They think open competition is better. The insurance industry would be more creative in the offering of coverage. (**Attachment 2**) **Chris Howe**, Deputy Director of Purchasing, said the insurance is approved by the surety bonds committee, this includes property insurance and vehicle insurance; its not health insurance. It is done by sealed bid and they would like the opportunity to include negotiated procurements in the procedure, giving them more flexibility. When **Senator Oleen** arrived, she added that in looking at tight budgets we try to find ways where we can tighten things up and this is an opportunity to do so. This summer she had an opportunity to work in a ten state region and look at not only higher education institutions but others and how they work with insurance and cost savings. That's what lead to the written only testimony on this bill (see attachments four through eight). While they are address to her, she wanted to share them with members of the committee.

Dr. Wolff advised that the language in the bill is almost identical to the language that exists for the State Employee Health Care Commission and their ability to negotiate rather than take sealed bids for health insurance contracts. The language in the bill exempts those kinds of transactions from the Kansas Open Meetings Act and from the purchasing statutes. One of the amendments in the bill makes sure this happens as intended.

Ks Dept of Adm.- Divisions of Facilities, Printing, and Purchases - Written Only (**Attachment 3**)

Doug Penner - Kansas Independent College Association - Written Only (**Attachment 4**)

Thomas Clayton - Johnson County Community College - Written Only (**Attachment 5**)

William. Payton - University of Missouri System - Written Only (**Attachment 6**)

Clair Williams - Northern Illinois University - Written Only (**Attachment 7**)

Roger Lowe - VP Adm & Finance, Wichita State University - Written Only (**Attachment 8**)

Reginald Robinson - Kansas Board of Regents - Written Only (**Attachment 9**)

CONTINUATION SHEET

MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS COMMITTEE at 3:30 p.m. on March 10, 2004 in Room 527-S of the Capitol.

Chairman Cox closed the hearing on SB 392 and opened the hearing on SB 379 - Asset forfeiture; notice to lienholder.

Proponents:

Kathy Olsen - Kansas Bankers Association, said the bill amends a section of the Kansas Asset Seizure and Forfeiture law. Specifically, the section that covers the procedures by which people are notified when some property has been seized pursuant to the act. Currently the law allows either the seizing agency or the plaintiff's attorney (usually the district or county attorney) to give the notice. In practice, having an option has led to indecision and confusion over who is supposed to give notice. This bill defines "notice of seizure for forfeiture" as a written statement by a **law enforcement agency** that property has been seized and may be proceeded against pursuant to the act, and sets forth what is to be included in the notice and sets the time frame to be within 30 days. (**Attachment 10**)

Matt Goddard - Heartland Community Bankers Association, said he was in agreement with Katy's testimony. Basically there are two areas of vagueness right now in current law, one is who has the responsibility for providing notification and the other is when that notification should be provided. The bill addresses and clarifies both of these. He asked for the committee's support. (**Attachment 11**)

Kyle Smith, KBI was in attendance and Chairman Cox asked him if he had anything to add. He said he was the chair of the committee that put together the asset forfeiture act and this seems like a reasonable logical extension and they have no objection whatsoever to it.

Chairman Cox closed the hearing on SB 379 and opened the hearing on Sub for SB 380 - Liens for wrecker and towing services; notice to lienholder.

Proponents:

Kathy Olsen - Kansas Bankers Association, said the issues in Sub for SB 380 are similar to those just discussed. In SB 379, we were addressing the notice of lienholders when something happens to property that they have a security interest in. In Sub for SB 380, we're addressing the issue where a vehicle has either been towed or has been abandoned. Current law provided that persons who tow vehicles can't even begin the process of notification until 45 days after the vehicle is towed. The bill streamlines the process and shorten the time period. It also eliminates different treatment of vehicles valued at less than \$1,000, making a uniform rule to be applied to all vehicles. In addition, the bill addresses the issue of when a vehicle has been abandoned. The same procedures of verification and notification will apply whether a vehicle has been towed or abandoned. Finally, they are asking for an amendment to 8-1102 that would provide the same notice procedures under the new DUI law. (**Attachment 12**)

Tom Whitaker - Kansas Motor Carriers Association, congratulated Rep. Goico for it being his special day - "MAR10 Day." He said his agency has basically become the litter control unit along the highways getting rid of abandoned cars. Very few of the vehicles are in the range that would affect the bankers association, the lienholder, but the uniformity helps the tow companies comply with the law. He did ask for one amendment to the bill. On page 4, line 35, following the word county, insert "or city." This will solve a publication problem in the city of Manhattan. He has no problem with the amendments proposed by KBA. (**Attachment 13**)

Matt Goddard - Heartland Community Bankers Association, said he supports the bill. It moves up the process for notifying the lienholder and getting rid of the possessed vehicle. This serves the best interests of everyone. He encouraged the support of the committee. (**Attachment 14**)

Bill Henry - Kansas Credit Union Association, said that Kathy did an excellent job of explaining how the uniformity works and his organization supports this measure. As you notice, now we have basically 5 different salutatory sections where you have the exact same period of notification - 30 days. That really clarifies a lot of issues not only in the towing area but also in the new DUI law. That notification process will be very helpful for the lienholder to be informed of what's going on in case that property is taken. (**Attachment 15**)

CONTINUATION SHEET

MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS COMMITTEE at 3:30 p.m. on March 10, 2004 in Room 527-S of the Capitol.

Carmen Alldritt - Director of Vehicle Division, testified that they support the bill and the amendments presented. All concerned have been working together to make this thing work. This would result in a much lower storage cost to the lienholders or the owners when these vehicles are being towed. This is a win-win situation. **(Attachment 16)**

Chairman Cox questioned Carmen on the fiscal note. Carman said the expected cost on the fiscal note has been eliminated.

Chairman Cox closed the hearing on **Sub for SB 380** and opened the hearing on **SB 508 - Standard nonforfeiture law for individual deferred annuities**.

Proponents:

Jarrold Forbes - Kansas Insurance Commissioner's Office, said this bill changes the current nonforfeiture rates on individual annuities which are due to sunset in 2005. The main consumer friendly issue is we're changing the surrender rate from 35% maximum to a 12 ½% maximum. In exchange for that, it allows the industry to tie the companies to index the guarantee rate to the five-year treasury rate. It's the minimum that has to be guaranteed on these products. They are being allowed to fluctuate between 1% and 3% depending upon where the 5 year trend of the treasure rate is. This rate is the floor, any company has the right to offer a higher guaranteed rate. They believe this is responsible given the current insurance climate. **Attachment 17)**

Jim Hall - American Council of Life Insurers, said they support **SB 508**. It's basically a followup bill to last year's legislation. The Standard Nonforfeiture Law for Individual Deferred Annuities was created in mid 1970's and contained a minimum nonforfeiture rate of 3%. During 2001, the Federal Reserve Board had lowered short-term interest rates an historic eleven consecutive times in a single year. Short term rates fell below 2%. Last year Kansas lowered the 3% minimum rate down to 1.5 %. That was built in with a sunset until a more permanent solution was put into place. That permanent solution is what's before the committee today. Fifteen states have adopted this so far. **(Attachment 18)**

Chairman Cox closed the hearing on **SB 508** and said the committee would work the bills on Monday.

Representative Grant made a motion to approve the committee minutes of February 16 and February 18 as written. Representative Wilk second the motion. The motion carried.

The meeting adjourned at 4:03 p.m.

The next meeting is scheduled for Monday, March 15th.

HOUSE FINANCIAL INSTITUTIONS COMMITTEE GUEST LIST

DATE: March 10, 2004

NAME	REPRESENTING
Jim Hall	Amer. Council of Life Insurers
James Jones	KIP
Kirby Johnson	UPS
Tom Whitaker	Ks MOTOR CARRIERS ASSN.
Kathy Olsen	Ks Bankers Assn.
Joseph Windsor	Posenelli, Shelton, Welte
LARRY MAGILL	Ks. Assn of INS AGENTS
Bill SNEED	Am. Ins Life
Megan Edwards	intern, Nik DiMoro's office
Matt Goddard	HCSA
Chris Howe	DOFA - Purchases
Shari Weber	Community Bankers Association
Laundry Campbell	Intern
David Young	DOFA
Kyle Smith	KIBI
David Hanson	Ks Life Insur Assn
Christine Geber	Federico Consulting

State of Kansas

LANA OLEEN
SENATOR, 22ND DISTRICT
GEARY AND RILEY COUNTIES
(785) 296-2497



COMMITTEE ASSIGNMENTS
CHAIR: CONFIRMATION OVERSIGHT
STATE-TRIBAL RELATIONS
VICE CHAIR: ORGANIZATION, CALENDAR & RULES
MEMBER: STANDING & JOINT COMMITTEES

Majority Leader Kansas Senate

SENATE CHAMBER, STATE CAPITOL
TOPEKA, KANSAS 66612-1504

March 10, 2004

House Financial Institutions Committee Testimony on Senate Bill 392

Chairman Cox and Members of the Financial Institutions Committee:

I appreciate the opportunity to offer my testimony on the provisions of Senate Bill 392, as amended by the Senate Financial Institutions and Insurance Committee. During the 2003 interim, I was made aware of insurance opportunities which could save significant tax dollars on various contracts for state-related projects. A number of our sister states use negotiation strategies rather than the "sealed-bid" process.

Prior to introduction of this measure, I coordinated with the Kansas Department of Insurance, the Department of Administration, and the Kansas Board of Regents in drafting the legislation. All have been supportive of the legislation's provisions.

In these challenging fiscal times, we need to use smarter and more responsive strategies in the market place. Negotiation of contracts with a reasonable pool of companies and a three-year maximum assists us to be more competitive in securing the best value for tax payer dollars. There is a long-established precedent for negotiation of the state's health insurance and this legislation builds upon that precedent.

I request your favorable consideration and action on Senate Bill 392. Should I be able to provide additional information, please contact me.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lana Oleen".

Lana Oleen



Kansas Insurance Department

Sandy Praeger COMMISSIONER OF INSURANCE

COMMENTS
ON
SB 392—COMPETITIVE NEGOTIATIONS ON CERTAIN CONTRACTS
HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS
March 10, 2004

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to visit with you on behalf of the Kansas Insurance Department. Senate Bill 392 is an act authorizing the Committee on Surety Bonds and Insurance to negotiate with, and enter into contracts with insurers on behalf of the State of Kansas.

The Kansas Insurance Department supports this legislation, believing it provides the State the same opportunity available to private industry in having the ability to negotiate its coverage options. Continuing to accept the status quo is to force the State into contracting with the lowest bidding insurer. By negotiating the contracts, we believe the State will have better coverage close to, if not at the same rate.

If an insurer knows the Committee must accept the lowest bid, they naturally lack the incentive to provide better coverage. On the other hand, with the insurer knowing the Committee has the authority to negotiate, the insurer will be more likely to be creative in offering better coverage for comparable rates.

The Kansas Insurance Department believes this is good legislation and urges your support. With that Mr. Chairman, I would be happy to stand for questions.

Jarrold Forbes
Legislative Liaison

House Financial Institutions
3-10-04
Attachment 2

Kansas Department of Administration

Howard Fricke, Secretary

1000 SW Jackson, Suite 500
Topeka, Kansas 66612-1268
(785) 296-3011

**House Financial Institutions Committee
S.B. 392 Authorizing Competitive Negotiations for Insurance**

**D. Keith Meyers, Director
Divisions of Facilities, Printing, and Purchases
Wednesday, March 10, 2004**

Thank you for this opportunity to provide written testimony in support of S.B. 392

Allowing the Committee on Surety Bonds and Insurance to utilize the services of the Division of Purchases and the negotiated procurement method to establish contracts for insurance would be beneficial to agencies responsible for paying insurance premiums. It is our belief that this approach would create greater flexibility in structuring the policies during negotiations and before awards in order to help vendors develop insurance policies that would represent the best possible value to the State of Kansas. We also believe this change would result in more competitive pricing for insurance coverage.

One concern regarding the bill is the provision requiring "not less than three firms or parties submitting proposals..." Due to the nature of the risk and coverage choices, it is not always possible to find three firms interested in bidding on insurance projects.

Consideration should also be given to providing additional flexibility to renegotiate or renew a contract due to market conditions and/or loss experience under the policy.

House Committee on Financial Institutions
Representative Cox, Chairman
Testimony on SB 392

Kansas Independent College Association
Doug Penner, President

The KICA supports SB 392 in light of the following considerations:

- As private institutions of higher education, our member colleges and universities are not regulated in their purchasing activities by state statute. However, our members do participate in the purchasing contracts available through the Midwest Higher Education Compact (MHEC). Because this bill would ease statutory barriers to public higher education institutions' use of MHEC programs, the Compact's ability to negotiate more attractive pricing would be improved by virtue of increased volume. Those reduced prices would be available to private institutions as well.
- Affordability and access are important goals of federal and Kansas state higher education policies. A number of state associations of private colleges, including the KICA, are actively involved in developing collaborative purchasing programs in support of those goals. In general, the competitive bidding and price negotiation process using consolidated volume through organizations like MHEC is an important tool in efforts to 1)control operating costs, 2)control tuition, board and rooms costs to Kansas students, and 3)improve the operating efficiency of Kansas colleges and universities. SB 392 helps promote affordability and access.

Johnson County Community College
12345 College Blvd.
Overland Park, Kansas 66210-1299
(913) 469-8500 www.jccc.net

February 9, 2004

Senator Lana Oleen
Office of the Majority Leader
Statehouse/Room Number: 356-E
300 SW 10th Avenue
Topeka, KS 66612

Dear Senator Oleen:

Though I am unable to personally attend the hearing for Senate Bill 392 I do appreciate your invitation to testify.

Since October 1, 2000, Johnson County Community College has elected to purchase its property insurance coverage through the Midwestern Higher Education Compact's (MHEC) Master Property Program. Previous to this date JCCC purchased its property insurance through our broker on the open market. Doing so put JCCC at risk to the whims of the insurance industry and we saw our property insurance rates increase over the years.

Our 2000 property renewal is an excellent example of the extensive increases. At that time our current insurance carrier was offering to renew our property insurance coverage with a 94% increase. JCCC's broker worked diligently to secure other quotes from other carriers, but partially due to the events of 9/11 three underwriters declined to offer a quote and another offered to provide the coverage but at an even greater increase. Fortunately, JCCC had another option in the form of the MHEC Master Property Program, which offered JCCC property insurance coverage with only a 28% increase.

MHEC's quote was not only the most reasonably priced, but the support and services they offered their customers were head and shoulders above anything else available to us. JCCC along with other member institutions receive:

- regular comprehensive property loss control surveys to help members better identify potential property risks;
- the opportunity to provide input as to the evolution of the MHEC Master Property Program;
- educational opportunities through the Annual Loss Control Workshop that addresses numerous issues unique to institutions of higher education;

- premium savings via the purchasing power of the 36 member institutions representing six of MHEC's 10 member states; and
- the opportunity to receive a dividend after accounting for any losses and expenses after a year.

For these reasons and more I would strongly support any state legislation that would make access to the MHEC Master Property Program more easily accessible to Kansas' institutions of higher education.

Best Regards,



Thomas D. Clayton,
Insurance & Risk Manager

CC: Dr. Charles Carlsen, JCCC President
Dr. Gerald W. Baird, JCCC Executive VP
Mr. Bob Van Crumb, JCCC Lobbyist
Mr. Larry Iszak, MHEC President



UNIVERSITY OF MISSOURI SYSTEM

Division of Management Services

Risk & Insurance Management

6 Clark Hall
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INTERNET ID: paytonw@umsystem.edu

February 11, 2004

Senator Lana Oleen
Office of the Majority Leader
Statehouse/Room Number 356-E
300 SW 10th Avenue
Topeka, KS 66612

RE: Midwestern Higher Education Compact (MHEC)

Dear Senator Oleen:

The University of Missouri has participated in several MHEC initiatives over the years. I have personally been involved with the Master Property Program since July 1994. I served as the Chair of the Oversight Committee of the program for nine years and continue to serve on the committee as representative for the State of Missouri.

When the University joined the program in 1994, we enjoyed a 15% reduction from our expiring rate (which had been promulgated in 1991). Three years later we enjoyed another 15% rate reduction. The events of 9/11 and subsequent market issues found us looking at significant increases, but the program still enjoyed a solid and competitive program.

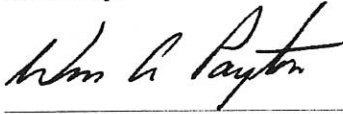
During the spring of 2003 the Master Property Program conducted a market search again and moved in tact to a new market at a savings over our renewal quote of some \$4 million. This translated into a \$500,000 savings for the University of Missouri and included improved coverage and limits.

In addition we recently received a \$65,000 dividend and are scheduled to receive a dividend of over \$200,000 late in 2004.

The benefits of the program far exceed the premium savings. We have established a sense of community and have toiled hard as a group through some sensitive times and issues. While I hate to use cliché's, this program has been a win/win situation for the State of Missouri with our premium savings alone overshadowing the cost of the State to be a member of the compact.

Any legislation that will ease the way for Kansas institutions to consider MHEC would be a good thing.

Sincerely,



Wm. A. Payton
Director

c: Mr. Larry Issak, MHEC President



**NORTHERN ILLINOIS
UNIVERSITY**

February 12, 2004

The Honorable Lana Oleen
Office of the Majority Leader
Statehouse/Room Number: 356-E
300 SW 10th Avenue
Topeka, Kansas 66612

OFFICE OF UNIVERSITY LEGAL SERVICES
LOWDEN HALL 302
DEKALE, ILLINOIS 60115-2854
(815) 759-1774
FAX (815) 759-8686

Dear Senator Oleen:

I am writing to share with you the experience of Northern Illinois University's participation in the Midwestern Higher Education Commission's (MHEC) Master Property Program. Northern Illinois University, one of nine public universities in the State of Illinois, has, for a number of years, cooperatively purchased property and liability insurance through the Illinois Public Higher Education Cooperative (IPHEC).

All nine members of IPHEC chose to join the MHEC Master Property Program in July of 2002. The decision to join the MHEC program was made in the midst of the recent "hard" insurance market and was based on the stability of the program, the quality of the program's insurance coverage, competitive pricing, the potential for a dividend from the program's loss fund in the event losses were low for a given policy period, the level of service by the program administrator and the commitment of the members of the Master Property Program to risk management principles.

I hope this information is useful as the Senate considers Senate Bill 392.

Very truly yours,

Clair D. Williams
Risk Management Coordinator
Northern Illinois University

and IPHEC Co-representative to the
MHEC Master Property Program
Oversight Committee

copies: Kenneth L. Davidson, General Counsel, NIU
P. J. Kale, Dir., Risk Management, Univ. of Illinois
Mary Feilmeyer, Program and Communication Officer, MHEC
Thomas D. Clayton, Risk & Insurance Manager, Johnson County
Community College

House Financial Institutions
3-10-04
Attachment 7



WICHITA STATE UNIVERSITY

Office of the Vice President for Administration and Finance

March 8, 2004

The Honorable Ray Cox
Chair, House Financial Institutions Committee
State Capitol Room 431-N
10th and Jackson
Topeka, KS 66612

Dear Representative Cox:

Thank you for the opportunity to submit this letter in support of SB 392. My name is Roger D. Lowe, Vice President for Administration and Finance at Wichita State University. We have had a specific experience on bidding insurance that I think gives you a perfect example why SB 392 should be approved to permit competitive negotiation of insurance.

Historically WSU has bid the insurance coverage through the Division of Purchases on our revenue bonded housing/dormitory buildings and our athletic facilities with the understanding that the State would not replace our athletic facilities if they were damaged or destroyed. We followed that same procedure for the renewal for November 1, 2002, only to find that there was only one bidder and the premium increased from \$20,316 to \$159,586 or 685.5 percent. That led me to call the President of IMA of Kansas Inc. to see if they would be interested in giving us a bid for the coverage. I told him of the close time frame in that the coverage would expire on October 31, 2002. He said that they would be interested and that he would contact Travelers Insurance from Kansas City. Travelers came to my office and discussed our needs and toured the buildings that were to be insured. This was the first time that any insurance company had done so during my forty-one years in my capacity at the University. They wanted to know the condition of the buildings, whether there were sprinkler systems, etc. Shortly afterwards, IMA representatives came to the office to present their information and premium requirements. Their premium was \$84,123 less than the bid received by the State when comparing the same coverage. We did find during the review process that we did not have sufficient business income interruption loss coverage for our Athletic Corporation revenue, so we added that to our overall coverage, increasing the premium \$3,080.

I then called State Purchasing to ask for their authority to pay the housing/dormitory portion of the premium from the housing/dormitory funds that are deposited in the State Treasury with the balance being paid from the Athletic Corporation's local funds. They said they could not authorize such in that the insurance bid had to be a "sealed" bid according to statute. I then pursued the matter with the Attorney General's Office and they told me the same thing. So the decision that I had to make

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The Honorable Ray Cox
Chair, House Financial Institutions Committee
March 8, 2004
Page 2

was to lose \$84,000 or pay the entire premium from the Athletic Corporation's local funds. It would have cost the Athletic Corporation more money to have paid their portion of the State's bid than to pay the entire premium through the Athletic Corporation. That made the decision an easy one for me, in that we saved \$84,000 and received better advice and service than we have ever had working with a company from long distance.

I salute the members of the House Financial Institutions Committee for your leadership on this matter. The approval of the bill will be of benefit to all of the public universities under the Board of Regents and may also be helpful to other agencies.

Respectfully submitted,



Roger D. Lowe
Vice President for Administration and Finance



KANSAS BOARD OF REGENTS

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March 10, 2004

Representative Ray Cox
Chairman
House Financial Institutions Committee
State Capitol – Room 431-N
Topeka, KS 66612

Dear Chairman Cox:

Today your Committee will hear testimony on SB 392. As you know, this legislation permits the Committee on Surety Bonds and Insurance to negotiate contracts for insurance coverage and other services, rather than use the sealed-bid procedure.

The Board of Regents continues to advocate for new ways of doing business that will allow the state universities greater flexibility to manage their constrained resources. Passage of Senate Bill 392, which the Board of Regents supports, would represent a positive step in that direction.

Thank you for your consideration.

Sincerely,

Reginald Robinson ^{KP}
President & CEO



March 10, 2004

To: House Committee on Financial Institutions

From: Kathleen Taylor Olsen, Kansas Bankers Association

Re: SB 379: Asset Seizure and Notice to Lienholder

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you in support of **SB 379**, which amends a section of the Kansas Asset Seizure and Forfeiture law as it pertains to the notice given to lienholders upon seizure of property.

The amendments we are suggesting appear in Subsection (d) of K.S.A. 60-4107. This subsection sets forth the procedures for giving notice to the person in possession of the property and any interest holder of record (lienholder). Currently, the law allows either the seizing agency or the plaintiff's attorney (usually the county or district attorney) to give the notice. In practice, having an option has led to indecision and confusion over who is actually supposed to give the notice.

K.S.A. 60-4102(h), defines "notice of seizure for forfeiture" as a written statement by a **law enforcement agency** that property has been seized and may be proceeded against pursuant to the act, and sets forth what is to be included in the notice.

In order to be consistent throughout the act, we would like to eliminate the confusion by clarifying that it is the seizing agency that will have the responsibility for sending notice to the person in possession of the property and the lienholder of record.

Adding to the indecision and confusion found in current law is the lack of a time period in which to give the notice. Current law does not prescribe a time by which the notice must be given. What typically happens is that the lienholder of record does not get notice unless and until the property is going to be sold in forfeiture. According to subsection (g) of this statute, the seizing agency has 45 days to forward a request to the county or district attorney for forfeiture. The county or district attorney has an additional 15 days to accept the case under subsection (i). Sometime after that, the lienholder will be notified by the county or district attorney that they have the property and intend to sell it. (See K.S.A. 60-4109(a)(3)(A)) As you can imagine, by this time, the property has possibly deteriorated and significant fees for towing and storage have been incurred.

SB 379
Page Two

It is our goal to streamline the process so that the lienholder is involved sooner. Our quick involvement will not only help our industry protect its security interests much better, but we believe it will also help to bring about a speedy resolution that will benefit the seizing agency and district or county attorney. Once the lienholder is notified of the seizure, that lienholder can begin working with the seizing agency to recover the collateral prior to the agency having to file a forfeiture proceeding. The act clearly contemplates that such settlements will often occur, and in fact, settlements are encouraged. (K.S.A. 60-4108(c)(4), allows the seizing agency to allow a lienholder to take custody of the property to maintain the property's value.)

In conclusion, we believe that providing certainty into this law benefits all interested parties. We would respectfully request that the Committee act favorably on **SB 379**.

To: House Financial Institutions Committee

From: Matthew Goddard
Heartland Community Bankers Association

Date: March 10, 2004

Re: Senate Bill No. 379

The Heartland Community Bankers Association appreciates the opportunity to express our support for Senate Bill 379 with the House Committee on Financial Institutions.

The bill makes two changes to the Asset Seizure and Forfeiture law that we believe will provide greater clarity to the asset forfeiture process. First, the bill gives responsibility for providing interest holders with notice of the seizure to the seizing agency. Current law places this responsibility on the seizing agency **or** the plaintiff's attorney. The "or" option fails to firmly delegate responsibility and opens the door to the possibility of miscommunication and a failure to provide the required notice. HCBA supports designating in statute a single entity to provide the notification.

The other change made by SB 379 is that it establishes a timeframe for the seizing agency to provide notice of the seizure. Current law does not include a deadline, but SB 379 creates a requirement that notice be provided within 30 days of seizing the property. HCBA believes that 30 days is a reasonable time period and should not create an undue burden on the seizing agency.

We respectfully request that the House Committee on Financial Institutions recommend SB 379 favorable for passage.

Thank you.



The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

March 10, 2004

To: House Committee on Financial Institutions

From: Kathleen Taylor Olsen, Kansas Bankers Association

Re: Sub for SB 380: Notice to Lienholders of Towed or Impounded Vehicles

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today in support of **Sub for SB 380**. This bill amends several sections of state law that describe the procedures for giving notice to the owners of vehicles and to lienholders when a vehicle has been towed or impounded.

Our goal in drafting **SB 380** was to provide a more timely notice to lienholders once a vehicle in which the lienholder had a security interest had been towed. Current law provides that a lienholder will get notice no sooner than 45 days after the vehicle is towed. The law requires towers to request from the Division of Motor Vehicles verification of the owner of the vehicle and any lienholders of record between 45 and 60 days after towing the vehicle. Once the verification is delivered to the tower, a notice to the owner and lienholder must be sent within 10 days.

We have been working with the towing industry to determine whether this time period could be shortened without unduly burdening their industry. In addition, we have worked with the towing industry and the Division of Motor Vehicles to see whether the turn-around time for the verification process could be shortened. (i.e., Once the verification of owner and lienholder is sent from the tower to the DMV and the DMV processes it and sends it back to the tower.)

We believe that **Sub for SB 380** accomplishes these goals without unduly burdening any party involved. The bill provides that the tower must send the verification to the DMV within 30 days of towing the vehicle. This will get the whole notification process started sooner – in some cases by as much as 30 days sooner. Once the verification is returned to the tower, the notification provisions in current law remain the same. While there is nothing we can do statutorily to shorten the turn-around time for the verification to be processed, we have had positive conversations with the Director of the DMV in that direction.

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3-10-04
Attachment 12

Sub for SB 380

Page Two

The bill also address the treatment of vehicles valued at less than \$1,000. Current law treats these vehicles differently from all other towed vehicles. As the interested parties discussed these provisions, we all agree that there should be one, uniform rule to be applied to all vehicles. This prevents the towing agencies from having to try to determine a vehicle's "value", and makes the whole system more reliable by providing one rule to be applied in all cases.

It is with uniformity in mind that the bill also address the situation where a vehicle has been abandoned on a highway or public property and the vehicle is then impounded. These procedures appear in K.S.A. 8-1102, and it is our request that the same verification and notification to the owner and any lienholder be applied in these circumstances. Current law does require notice to the owner and lienholder, but there is no time period within which to give the notice. Our amendments are designed so that the entire process mirror that being suggested for vehicles that are towed.

The idea of uniformity in all situations where a vehicle is either towed or impounded has also prompted the KBA to request an amendment today. There is yet another situation where a person's vehicle may be impounded or towed and which does not address notice to the owner and lienholder. With the amendments that are attached to this testimony, we are proposing that should a court ever order a person's vehicle impounded under the new Kansas DUI law, the same notice provisions found in K.S.A. 8-1102 would apply.

In conclusion, we have tried to create a uniform system of notification procedures that all persons who tow vehicles could rely upon, and upon which all owners and lienholders would be timely notified. The KBA respectfully requests that the Committee act favorably on **Sub for SB 380**.

1 payment of the expenses of the impoundment and sale, shall be paid into
2 the fund of the public agency which is used by it for the construction or
3 maintenance of highways.

4 (b) Any person who abandons and leaves a vehicle on real property,
5 other than public property or property open to use by the public, which
6 is not owned or leased by such person or by the owner or lessee of such
7 vehicle shall be guilty of criminal trespass, as defined by K.S.A. 21-3721,
8 and amendments thereto, and upon request of the owner or occupant of
9 such real property, the public agency in whose jurisdiction such property
10 is situated may remove and dispose of such vehicle in the manner pro-
11 vided in subsection (a), except that the provisions of subsection (a) re-
12 quiring that a motor vehicle be abandoned for a period of time in excess
13 of 48 hours prior to its removal shall not be applicable to abandoned
14 vehicles which are subject to the provisions of this subsection. Any person
15 removing such vehicle from the real property at the request of such public
16 agency shall have a possessory lien on such vehicle for the costs incurred
17 in removing, towing and storing such vehicle.

18 (c) Whenever any motor vehicle has been left unattended for more
19 than 48 hours or when any unattended motor vehicle interferes with
20 public highway operations, any law enforcement officer is hereby au-
21 thorized to move such vehicle or cause to have the vehicle moved as
22 provided in K.S.A. 8-1103 *et seq.*, and amendments thereto.

23 ~~Sec. 2. K.S.A. 8-1103 is hereby amended to read as follows: 8-1103.~~
24 (a) Whenever any person providing wrecker or towing service, as defined
25 by law, while lawfully in possession of a vehicle, at the direction of a law
26 enforcement officer or the owner, renders any service to the owner
27 thereof by the recovery, transportation, protection, storage or safekeeping
28 thereof, a first and prior lien on the vehicle is hereby created in favor of
29 such person rendering such service and the lien shall amount to the full
30 amount and value of the service rendered. The lien may be foreclosed in
31 the manner provided in this act. If the name of the owner of the vehicle
32 is known to the person in possession of such vehicle, then within 15 days,
33 notice shall be given to the owner that the vehicle is being held subject
34 to satisfaction of the lien. Any vehicle remaining in the possession of a
35 person providing wrecker or towing service for a period of 60 30 days
36 after such wrecker or towing service was provided may be sold to pay the
37 reasonable or agreed charges for such recovery, transportation, protec-
38 tion, storage or safekeeping of such vehicle and personal property therein,
39 the costs of such sale, the costs of notice to the owner of the vehicle and
40 publication as required by this act, ~~except that any such vehicle and per-~~
41 ~~sonal property of a total value of less than \$1,000 may be sold at any time,~~
42 after giving the notices required by this act, unless a court order has been
43 issued to hold such vehicle for the purpose of a criminal investigation or

(d) The notice provisions of this section shall apply to any motor vehicle which has been impounded as provided in K.S.A. 8-1567, and amendments thereto.

LEGISLATIVE TESTIMONY
by the
Kansas Motor Carriers Association

Presented before the
House Financial Institutions Committee
Representative Ray Cox, Chairman
Wednesday, March 10, 2004

**MR. CHAIRMAN AND MEMBERS OF THE
HOUSE FINANCIAL INSTITUTIONS COMMITTEE:**

I am Tom Whitaker, executive director of the Kansas Motor Carriers Association. I appear here this afternoon representing our more than 1,200 member companies and specifically our 78 member towing companies. KMCA supports Substitute for SB 380. The bill amends K.S.A. 8-1103 and 8-1104, requiring that a tow operator request verification of the owner and any lienholders within in 30-days of taking possession of a vehicle

The Towing and Recovery Lien Law was placed into law during the 1987 Session of the Kansas Legislature. The law was in response to a Kansas Court of Appeals case. The case was, Hartford Insurance Company v. Overland Body Tow, Inc., 11Kan.App. 373 (1986).

In that case, law enforcement authorities directed a tow operator to tow a car which had been stopped, resulting in the arrest of the driver. The tow operator towed the car to his place of business and stored it. Eventually the insurance company, which had taken title to the car, demanded that the tow operator release the car. The tow operator demanded payment of its towing and storage charges, and refused to deliver the car until such charges were paid.

The insurance company sued the tow operator for possession of the car, and lost the case at the District Court level. Upon appeal to the Kansas Court of Appeals, the District Court decision was reversed, and the Court of Appeals held that a lien relationship was not created between the owner of the car and the tow operator, as law enforcement authorities, and not the owner, had directed the tow operator to take possession of the vehicle.

The Towing and Recovery Lien law corrected that problem. The law specifically established a lien when a vehicle tow is requested by the owner or law enforcement if such vehicle is towed by a lawfully registered towing company. Further, Kansas law spells out notification and publication requirements before a vehicle may be sold.

Currently, K.S.A. 8-1104 requires the towing company, for vehicles with a value of less than \$1,000, to request from the Division of Vehicles within 60-days verification of the last registered owner and any lienholders. For vehicles with a value of \$1,000 or more, the request is required to be made between the 45th and the 60th day. The tow operator is required to send by certified mail notice within 10-days after receipt of the information from the Division of Vehicles notice that the vehicle will be sold if payment is not received.

The Kansas Bankers Association approached KMCA to shorten the time that tow operators are required to verify the last registered owner and any lienholders and send notice to such owners or lienholders. This could reduce the possible storage costs for the vehicle. The 30 day requirement is workable for the towing industry and the banking industry. Making the 30-day verification requirement apply to all vehicles, regardless of value, will eliminate confusion or missed deadlines for the towing companies.

Adiitonally, we request that the Committee amend Substitute for SB 380 on page 4, line 35, following the word county, by inserting "or city." This amendment will solve a publication problem in the city of Manhattan. Manhattan Wrecker Service is located in the city of Manhattan, but in Pottawatomie County. The requested amendment will allow Manhattan Wrecker Service to publish their sale in the Manhattan Mercury instead of in the Wamego newspaper.

KMCA supports Substitute for SB 380. We appreciate the opportunity to appear before you and would be pleased to respond to any questions you may have.

Kansas Motor Carriers Association
PO Box 1673
Topeka, KS 66601
785-267-1641

To: House Financial Institutions Committee

From: Matthew Goddard
Heartland Community Bankers Association

Date: March 10, 2004

Re: Substitute for Senate Bill No. 380

The Heartland Community Bankers Association appreciates the opportunity to express our support for Substitute for Senate Bill 380 with the House Committee on Financial Institutions.

Substitute for Senate Bill 380 reduces the various timeframes involved with a wrecker or towing service providing notice to a lienholder that they hold and intend to sell a vehicle in which the lienholder has a security interest. Under current law, a wrecker or towing service must wait between 45 and 60 days after taking possession of a vehicle to ask the Division of Vehicles for owner and lienholder information. Substitute for SB 380 changes that wait to no more than 30 days. The sooner a lienholder learns of the vehicle's status, the sooner it can take action to protect its security interest.

The bill also reduces from 60 to 30 days the amount of time a wrecker or towing service must wait to sell a vehicle that is in their possession. The substitute bill does not change the current requirement that notice of any sale be provided to the registered owner and any lienholder within 10 days after receipt of verification of their identities from the Division of Vehicles.

Finally, Substitute for SB 380 also amends existing law so that the same timeframes and process will apply to all vehicles regardless of whether they are abandoned or their value. Current law treats vehicles abandoned on public roads and impounded by a public agency and vehicles valued under \$1,000 differently from other vehicles. This bill will create a uniform standard.

We respectfully request that the House Committee on Financial Institutions recommend Substitute for SB 380 favorable for passage.

Thank you.



KANSAS CREDIT UNION ASSOCIATION

Testimony on Substitute for SB 380
March 10, 2004

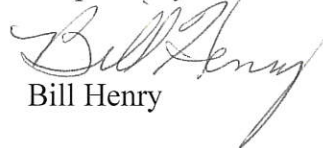
Chairman Cox, members of the committee, I am Bill Henry, Director of Governmental and Regulatory Affairs for the Kansas Credit Union Association. Today I appear in support of Substitute for SB 380.

Credit unions operating throughout the state have had difficulty with recovering vehicles which their member owners have lost due to impoundment by towing companies. In fact, in some cases the towing fees and storage costs may be more than the value of the vehicle on which the credit union holds a lien.

With the notices set out in SB 380 the lien holder now has the opportunity to act to pay the necessary towing and storage fees and return the vehicle to the member who needs the car to travel to his or her work place and allows the individual to pay back the fees the credit union paid to release the vehicle.

In addition this bill provides for some much needed uniformity in notices in terms of time frame in these statutory sections.

Respectfully Submitted,


Bill Henry

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K A N S A S

JOAN WAGNON, SECRETARY

DEPARTMENT OF REVENUE
DIVISION OF VEHICLES

KATHLEEN SEBELIUS, GOVERNOR

Testimony on Sub for SB380
to
The House Committee on Financial Institutions

by Carmen Alldritt
Director of Vehicles
Department of Revenue

March 10, 2004

Chairman Cox and Members of the Committee:

The Division of Vehicles supports Substitute for Senate Bill 380. The Division has been working with the Kansas Bankers Association and through them the towing industry to shorten the timeframe of notification and streamline the verification of the owner/ lienholder. With the verification amendments, the Division's revenue issues are resolved. This would also bring some amount of revenue to various County Treasurers offices throughout the state.

Current process requires verification application be mailed directly to the state. This bill allows the tower to make application for verification directly at the County Treasurers office. If the Treasurer is unable to supply the information, the request is sent with the Treasurer's daily report and received within a few days at the Division of Vehicles. Upon receipt we are able to verify the request and it is mailed directly back to the customer. This procedure tightens the timeframe considerably, allowing the tower to make a more timely notification to the owner/lienholder, resulting in lower storage cost to the owner/lienholder.

It's not every day we can be involved in a win/win situation. With the committees favorable action on Substitute for Senate Bill 380 this would be the case. Thank you for the opportunity to speak with you today and I would be happy to address any specific questions you may have.



Kansas Insurance Department

Sandy Praeger COMMISSIONER OF INSURANCE

COMMENTS
ON
SB 508—NONFORFEITURE RATES
HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS
March 10, 2004

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to visit with you on behalf of the Kansas Insurance Department. This legislation would apply to companies offering individual deferred annuities. It would lower the current maximum surrender rate from 35% to 12.5%. In addition, this legislation would also allow companies to index the guarantee rate to the five-year treasury rate.

We believe these changes are appropriate and necessary. The current nonforfeiture rates are due to sunset on June 30, 2005. We believe this bill is responsible given the current insurance climate and we urge you to support this legislation.

Attached to my testimony is a letter of further explanation from our actuary Larry Bruning. With that Mr. Chairman, I would be happy to answer any questions you may have.

Jarrod Forbes
Legislative Liaison



Kansas Insurance Department

Sandy Praeger COMMISSIONER OF INSURANCE

Memorandum

To: House Financial Institutions Committee

From: Larry J. Bruning, FSA, MAAA & Chief Actuary
Kansas Insurance Department

Re: SB 508 Standard Non-forfeiture Law for Individual Deferred Annuities

Date: March 10, 2004

My name is Larry Bruning and I am the Chief Actuary of the Kansas Insurance Department. I would like to thank the committee for allowing the Department to appear and comment on the proposed legislation SB 508.

SB 508 is a new law that sets forth the standards of non-forfeiture for Individual Deferred Annuities. The law would replace the existing standard non-forfeiture law for individual deferred annuities, K.S.A. 40-428a, effective July 1, 2006. Once enacted SB 508 would allow companies to file new or re-file existing individual deferred annuity policy forms on a form by form basis to comply with the new law. After July 1, 2006, all individual deferred annuity policy forms sold in the state of Kansas must comply with SB 508.

SB 508 benefits Kansans in that it raises the minimum standards of non-forfeiture that insurance

Companies must provide by reducing the expense load that companies may charge on flexible premium deferred annuities. Currently K.S.A 40-428a allows an expense load of 35% of the gross premium deposited with a company within the first policy year. SB 508 allows an expense load of 12.5% of gross premium deposited with a company in any policy year.

SB 508 also benefits insurance companies by allowing the minimum guaranteed interest rate, at which the net premium deposits must be accumulated, to be tied to the Five Year Constant Maturity Treasury Rate (5 Year CMT) as reported by the Federal Reserve. The minimum guaranteed interest rate that the company must credit can vary between 1.0% and 3.0% based on the 5 Year CMT. In no event can the rate guaranteed be less than 1.0% or more than 3.0%.

K.S.A. 40-428a required the insurance company to credit a minimum guaranteed interest rate of 3.0%. Because of the effects of the events of 9/11, this legislative body amended K.S.A. 40-428a, and lowered the minimum guaranteed interest rate from 3.0% to 1.5% for all annuity contracts issued on or after July 1, 2002 and before July 1, 2005. On and after July 1, 2005, if a company has not re-filed its annuity contracts to comply with SB 508, the guaranteed interest rate will revert back to 3.0%.

These are the substantive changes to K.S.A 40-428a that are made by SB 508.

Again, I want to thank you for allowing the department to appear before you today and comment on the proposed legislation.



JAMES D. HALL
SENIOR COUNSEL & DIRECTOR
CENTRAL STATES REGION
jameshall@ACLI.com

March 9, 2004

The Honorable Ray Cox
Chair, House Financial Institutions Committee
State Capitol
300 Southwest 10th Street
Topeka, KS 66612

Re: **S. B. 508**

Dear Representative Cox:

This letter is written on behalf of the American Council of Life Insurers ("ACLI"), a national trade association of 368 life insurance companies whose assets approximate 70% of the life insurance business written in the United States. Three hundred two ACLI members are licensed to do business in Kansas, accounting for 73 percent of the ordinary life insurance in force in the state. Thank you for the opportunity to offer comments in support of S. B. 508.

General Overview

The Standard Nonforfeiture Law for Individual Deferred Annuities was created in the mid 1970's and originally contained a minimum nonforfeiture rate of 3%. By the end of 2001, this mandate had become incompatible with actual market rates. During 2001, the Federal Reserve Board had lowered short-term interest rates an historic eleven consecutive times in a single year. Short-term rates fell below 2%.

Realizing that a change was needed to address the situation, the National Association of Insurance Commissioners (NAIC) took action in early 2002. The NAIC recognized that continuing to force a 3% minimum interest rate would likely result in either of two scenarios: (1) Unrealistic financial demands and resultant financial stress upon insurers; and/or (2) The withdrawal of various annuity products which were no longer financially prudent to offer, resulting in loss of important consumer choice.

The NAIC endorsed a two part state legislative action:

First, an immediate, interim reduction of the minimum nonforfeiture interest rate from 3% to 1.5%; while

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Second, regulatory actuaries worked with insurers and other interested parties to create a long-term solution that would revise the entire annuity nonforfeiture law, resulting in annuity interest rates that could respond to actual market fluctuations.

Individual states' broad support resulted in 29 jurisdictions passing laws lowering the minimum interest rate from 3% to 1.5% during 2002 and 2003.

In March 2003, the NAIC approved the revised model nonforfeiture law, which provides for reasonable minimum nonforfeiture interest rates by balancing companies' need for financial relief in times of low interest rates with protection of the consumer through an appropriate minimum rate guarantee. The long-term solution provides for the minimum interest rate to be determined using the five-year Constant Maturity Treasury Rate reported by the Federal Reserve, less 125 basis points. In addition, the new model law establishes a maximum mandatory interest rate of 3% and a minimum mandatory interest rate of 1%.

The new model interest rates are an index-based solution that has already been adopted in 15 states.

In addition to implementing a more responsive minimum guarantee, the revised model law further protects consumers by **reducing** both the allowable expense percentages and maximum annual policy fees available to the insurer.

The New Nonforfeiture Law with the Index is Important Because:

- It improves the ability of insurers to match their contractual promises to available investment opportunities, which, in turn, promotes the availability of a wide range of benefit designs. The 3% mandate caused some insurers to withdraw certain popular product features from their portfolio. In particular, some companies withdrew the fixed sub account from their variable annuity offerings. The fixed sub account offers consumers protection from stock market turbulence. Some companies also withdrew short-term products from the marketplace. This further limited the ability of consumers to safely place their money during the stock market downturn.
- The index design results in the 3% minimum being retained in all but low interest rate environments. At the same time, the new required nonforfeiture benefit is based on a calculation of 87.5 % of first year considerations – an increase from the old 65% for fixed and flexible consideration contracts. This is an important consumer benefit. This ensures that a consumer will receive back more of their initial deposit should they terminate the contract early.

The Honorable Ray Cox
March 9, 2004
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- This index design is a “durable solution” in that if market rates rise, the minimum requirement will return back up 3%, the rate that has been in place since 1970s. Of course, the mandatory minimum rate does not prevent insurers from offering higher rates to customers once the economy and earnings rates have improved.
- Adoption of the new Model law across the states ensures uniformity. The index language applies the same methodology to all fixed rate deferred annuities and adds a provision dealing with equity-indexed annuities. It provides for a consistent set of rules among all the adopting jurisdictions. This is an important consideration for insurers faced with the daunting task of implementing and tracking benefits across 51 jurisdictions. Efficient/uniform laws help lower costs of products available to consumers.

More and more Americans are being called on to fund their own retirements. Annuities are an important part of that retirement planning. It is important that a broad array of annuity products remain widely available to assist consumers in reaching their retirement goals.

We thank the Committee for the opportunity to comment on SB 508 and we urge the committee to report the bill favorably.

Sincerely,

A handwritten signature in cursive script that reads "James D. Hall". The signature is written in black ink and is positioned above the printed name.

James D. Hall