

MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

The meeting was called to order by Chairperson Ruth Teichman at 9:30 a.m. on February 12, 2004 in Room 234-N of the Capitol.

All members were present.

Committee staff present:

Bill Wolff, Legislative Research
Ken Wilke, Office of the Revisor of Statutes
Nancy Shaughnessy, Committee Secretary

Conferees appearing before the committee:

Kathy Olson, Kansas Banker's Association
Matt Goddard, Heartland Community Banker's Association
Ron Gaches, KS. Assoc. Of Financial Services
Kevin Glendening, Kansas Banking Commission

Others attending:

See Attached List.

The Chair opened the hearing on **SB 379—Asset forfeiture, notice to lienholder** and introduced the first conferee, Kathy Olson.

Kathy Olson testified as a proponent of **SB 379** which amends a section of the Kansas asset seizure forfeiture act. (Attachment 1) The section being amended is sub-section D, which is the section which deals with procedures whereby notice is given to lienholders that property is being seized. The Commission's objective is to tighten and clarify the procedures.

Current law provides that either the seizing agency or the plaintiff's attorney, which is typically either the county attorney or the district attorney, can notify the lienholder. This has created some indecision and miscommunication. The Commission is proposing in the amendment that the seizing agency has the responsibility for sending the notice. Current law does not provide a time frame for when the notice is sent and the bankers are getting notices which are typically 45 to 90 days after the property has been seized and the seizing agency is getting ready to sell the property.

The Commission believes that by shortening that time period and getting the lienholder involved sooner, it not only benefits the lienholder in protecting their interest in the property, but also benefits the entire process. The seizing agency can start negotiating with the lienholder and many times they can avoid having to go to the expense of a forfeiture proceeding.

The Commission is proposing that all reasonable means be made to send the notice within thirty (30) days of seizing the property.

Senator Adkins inquired whether we had heard from law enforcement on this and whether it was something to which they would have no objections?

The Commission has been in contact with both the KBI and the County Sheriff's and they have no objection.

The Chair questioned what "reasonable" means meant and if there was any sort of consequences if that time line was not met? There is no punitive action in place if the time line is not met, but the amendment tightens the law considerably and is more beneficial than what is currently in place.

Matt Goddard testified as a proponent of **SB 379**. They support the bill because it assigns responsibility for a notifying agency and sets a time frame. (Attachment 2)

The Chair closed the hearing on **SB 379** and opened the hearing on **SB 391—Uniform Consumer Credit Code; providing for certain additional charges**.

Ron Gaches testified as a proponent on **SB 391**. He informed the Committee that there had been a hearing

CONTINUATION SHEET

MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE at 9:30 a.m. on February 12, 2004 in Room 234-N of the Capitol.

in the House the day before in Financial Institutions on a House counterpart bill to **SB 391**. It is the intention of the House Committee to work a substitute bill that incorporates an amendment that is attached to his submitted testimony. (Attachment 3) as well as an amendment that has been recommended by the Bank Commissioner's office. (Attachment 4)

The two amendments together sharpen the focus of the bill and clarify what it is intended to do.

There are two things they intend to do with the bill 1) authorize a fee for consumer authorized electronic transfers. The only way to notify a consumer under current law is restricted mail.2) Allow financial institutions an alternative option on providing "insufficient check" notice.

Currently, ten (\$10) dollars is the maximum fee which may be charged to consumers without providing them notice regarding an "insufficient fund check". Thirty (\$30) dollars may be charged if the consumer is notified by restricted mail.

The new bill proposed, **SB 391**, would allow the financial institution to provide written notice either on a monthly financial statement OR by restricted mail.

The Chair notified the Committee that she has informed Dr. Wolff and Kevin Glendening of the State Bank Commission that she does not intend to work this bill. It was presented for informational purposes. The Chair will wait until the House Bill comes over to the Committee and then it will be worked.

Senator Adkins said the bill proposals sound like "piling on" to him. He would like some kind of indication before the bill is worked that the fee is not "piling on." Senator Adkins would not wish to see it as a convenience center that becomes a profit center.

Ron Gaches replied that the Bank Commissioners's office had raised exactly the same concern. Kevin's amendment clarifies that the authorization for the fee occurs only for the "occasional" request by the consumer.

Kevin Glendening stated that he was there not to oppose or support anything but simply to clarify the amendment to the bill. When the issue was brought to the Commission, Kevin considered that it was in the realm of possibilities, if a consumer utilized an e-transfer of money for a payment, they conceivably could save some money on a late charge fee. In that context, there is some possibility the consumer could benefit. It would be up to the Committee to decide if that was equitable with what the bill requested.

Senator Adkins stated again his concern that this bill is for the convenience of the financial institutions rather than to the consumer.

The Chair closed the hearing on **SB 391** and stated that if there were no objections she would like to work **SB 379**.

Senator Adkins moved to report the bill out favorably. Senator Barnett seconds. Motion passes.

Meeting adjourned at 10:35 a.m.

Next meeting scheduled for Feb. 17th, 2004.

SENATE FINANCIAL INSTITUTIONS & INSURANCE

Date: 2-12-04

Name:

Representing:

~~Sam Johnson~~
Tom Cochran

KID
KPSA

Danny J. Vopat
Kevin Glendening

Office of the State Bank Commissioner

"

Dennis Groenbacher

Farm Bureau

Dan Murray

Federico Consulting



The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

February 12, 2004

To: Senate Committee on Financial Institutions and Insurance

From: Kathleen Taylor Olsen, Kansas Bankers Association

Re: SB 379: Asset Seizure and Notice to Lienholder

Madam 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.

Senate FI & I Committee

Meeting Date: 2-12-04

Attachment No.: 1

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: Senate Financial Institutions and Insurance Committee

From: Matthew Goddard
Heartland Community Bankers Association

Date: February 12, 2004

Re: Senate Bill No. 379

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

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 Senate Committee on Financial Institutions and Insurance recommend SB 379 favorable for passage.

Thank you.

Senate F I & I Committee

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SERVING FINANCIAL INSTITUTIONS IN COLORADO, KANSAS, NEBRASKA Attachment No.: 2



Gaches, Braden, Barbee & Associates

Governmental Affairs & Association Management

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**Senate Financial Institutions & Insurance Committee
Testimony of Kansas Financial Services Association
Regarding SB 391: Uniform Consumer Credit Code Changes
Submitted by Ron Gaches,
Gaches, Braden, Barbee & Associates
Thursday, February 12, 2004**

Thank you Senator Teichman and members of the Committee for this opportunity to appear on behalf of the Kansas Financial Services Association in support of SB 391.

SB 391 proposes to amend the Kansas Consumer Credit Code Chapter 16a in two ways.

First, the bill would allow for a modest fee to be charged by regulated lenders for executing an electronic payment through the use of automated clearing-house procedures on the borrower's checking account. Current law is very clear in limiting permissible fees to those specifically enumerated in the UCCC. As consumer-authorized electronic transfers have become more common, the added cost of executing these transactions warrant a small fee to recover their costs. We believe the authorization of the \$5 fee will fairly compensate lenders for a service increasingly in demand without being an undue burden on borrowers.

The second change in the bill is intended to authorize an alternative "written notice" option to the consumer prior to charging the consumer for an insufficient check penalty. Current law authorizes a maximum \$10 penalty may be charged for an insufficient check penalty without any notice to the consumer following the bad check, or a maximum \$30 penalty following notice to the consumer by registered mail.

We believe that notification by registered mail is an expensive and unnecessary step to inform the consumer of the imposition of an insufficient check penalty. Such penalties are commonplace in our society and consumer notices have become common and ubiquitous.

The original bill draft substituted a written notice in the monthly notice for the registered mail notice. However, we have learned that there are many UCCC lenders who don't send borrowers with a monthly notice, but rather, issue borrowers with a payment book that includes a payment coupon that is remitted each month with the payment.

I have attached for your consideration an amendment that addresses this issue by authorizing the lender to provide written notice on either the monthly statement or by sending the consumer notice through use of first class mail.

Thank you for consideration of our proposal. I'm available to answer questions from the committee.

Senate FI & I Committee

Meeting Date: 02-12-04

Attachment No.: 3

KAFS Testimony re: SB 391

Proposed amendment to SB 391:

KSA 2003 Supp. 16a-2-501 (e) (ii)

"Written notice" shall be presumed to have been given a drawer or maker of an insufficient check when notice is sent by first class ~~restricted-mail as defined by K.S.A. 60-103, and amendments thereto,~~ addressed to the person to be given notice of such person's address as it appears on the insufficient check or to such person's last known address or notice provided on a regular monthly statement if the statement provides clear notice of the insufficient check charge being assessed.

KSA 2003 Supp. 16a-2-501 (e) (iii) & (iv) would be restored to their original language



KANSAS

OFFICE OF THE STATE BANK COMMISSIONER
CLARENCE W. NORRIS, *Bank Commissioner*

KATHLEEN SEBELIUS, GOVERNOR

(4) A charge not exceeding \$5 per payment, if the borrower makes a *single installment* payment by authorizing a licensee *creditor*, verbally or in writing, to write a check or process a payment through use of the automated clearing house procedures on the borrower's checking account, *subject to the following limitations:*

(A) No charge shall be assessed if the creditor also collects a delinquency fee on the same installment; and

(B) No charge shall be assessed where the consumer has agreed in writing with the creditor to make all scheduled payments through the use of the automated clearinghouse procedures.

Senate F I & I Committee

Meeting Date: 7-12-04

Attachment No.: 4