

MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS COMMITTEE

The meeting was called to order by Chairman Ray Cox at 3:30 P.M. on February 2, 2005 in Room 527-S of the Capitol.

All members were present except:

Jene Vickrey- excused

Committee staff present:

Melissa Calderwood, Kansas Legislative Research Department
Michele Alishahi, Kansas Legislative Research Department
Bruce Kinzie, Revisor of Statutes Office
Patti Magathan, Committee Secretary

Conferees appearing before the committee:

Judi Stork, Kansas Banking Commission
Ron Gaches, Security Finance & First Data Corporation
Doug Wareham, Kansas Bankers Association
Matt Goddard, Heartland Community Banking Association

Others attending:

See attached list.

Chairman Cox opened the meeting for Bill Introductions:

Judi Stork, Deputy Bank Commissioner, introduced a rewrite of the Money Transmitter Act which is supervised by the Banking Department. The bill changes focus from physical location to business done with a Kansas resident, would encompass internet funds transmission and stored value cards, increase bonding requirements for doing business, and increase oversight powers of the O.S.B.C. (**Attachment 1**)

Chairman Cox said that without objection the bill would be introduced.

Vice-Chairman Humerickhouse introduced a consumer protection bill which has to do with the amount of money which can be paid to a cemetery company for a monument. (**Attachment 2**)

Chairman Cox said that without objection the bill would be introduced.

Ron Gaches requested two bill introductions.

1. On behalf of Western Union, a wholly owned subsidiary of First DataCorp., Ron requested a bill which concerns money wire transfers. The traditional model is based on these arrangements being made at a walk-up window and handled in cash. Current law expressly prohibits charging a surcharge for credit card transaction which has become increasingly more common. This bill would expressly allow that a surcharge for credit card transactions may be charged. (**Attachment 3**)

2. This bill is requested by Security Finance, a consumer financial services firm, providing non-collateralized loans. They are requesting authorization to provide loans up to \$1500, for no longer than 18 months with a unique fee structure carve-out from current U.C.C.C.. Similar to that currently allowed for PayDay Loans. This company is a competitor of PayDay Loans. (**Attachment 4**)

Chairman Cox said that without objection the two bills would be introduced. The Chairman also stated that if these bills get printed they will be heard on February 9.

Rep. Grant introduced a bill on behalf of Rep. Flora. This bill is related to credit cards and consumer protection concerning receipts. This bill amends K.S.A. 2004, Supp. 50-669b. (**Attachment 5**)

Chairman Cox said that without objection the bill would be introduced.

Chairman Cox opened and closed hearings on **HB 2099 Credit unions: powers of the administrator.**

CONTINUATION SHEET

MINUTES OF THE House Financial Institutions Committee at 3:30 P.M. on February 2, 2005 in Room 527-S of the Capitol.

Chairman Cox opened hearing for **HB 2125** Mortgages on real property; entry of satisfaction; fees.

Doug Wareham appeared on behalf of the Kansas Banking Association. There are currently two separate statutes related to mortgage release fees paid to County Register of Deeds when a mortgage is paid off. This bill is a clarification of existing law by adding language specifically addressing mortgage release fees. **(Attachment 6)**

Representative Brunk asked how the fee would be collected. **Mr. Wareham** responded that the fee could either be collected during the application process or at the loan closing.

Rep. Faust-Goudeau asked the amount of the filing fee. **Mr. Wareham** replied that the existing filing fee of \$2.50 is currently being paid by the filing institution.

Matt Goddard, testified on behalf of the Heartland Community Bankers Association. Mr. Goddard stated that when the existing statute was modified it didn't expressly allow the institution to pass the filing fee on to the borrower, but it did remove the prohibition to pass the fee on to the borrower. Bill 2125 explicitly authorizes mortgage lenders to collect the fee for filing a mortgage release from a mortgator. **(Attachment 7)**

Chairman Cox closed the hearing on HB 2125.

Chairman Cox requested an update from Legislative Research on **HB 2097** Banks and trust companies, and **HB 2098** - Banks, granting of trust authority.

Melissa Calderwood, Legislative Research reported that **HB 2097** concerns the exchange of certain examinations and reports in relation to banks and trust companies. Currently, the State Bank Commissioner is required to accept or provide reports of state banks and trust companies from the Federal Deposit Insurance Corporation (FDIC), The Federal Reserve Bank, or certified accountants or independent auditors who are insured by a private insurer. The bill would remove the requirement for the certified accountant and the independent auditors. The bill also provides for additions to the disclosure requirements for the State Bank Commissioner including trust company regulatory agencies, the Office of Thrift Supervision, and the Financial Crimes Enforcement Network (FinCEN).

Melissa Calderwood, Legislative Research, reported that HB2098 concerns the trust authority of banks. The bill provides that banks be allowed to act as trustees of both Medical Savings Accounts (MSAs) and Health Savings Accounts (HSAs) without a special permit, if investments are limited in time and savings are deposited in the bank. Under current law, banks are permitted to act as trustees, without a special permit, for Individual Retirement Accounts (IRAs) and 401 (k) trusts. The bill would be effective upon publication in the Kansas Register.

Neither bill would have a fiscal effect.

Chairman Cox said that the committee would work **HB 2097** Banks and trust companies, exchange of certain examinations.

Representative Burgess made a motion to amend the bill to strike the comma and add the word "or" to line 24 of the first page between the words "corporation" and "the". Representative O'Malley seconded the motion. The motion passed. Representative Grant made a motion to pass the bill as amended which was seconded by Representative Brunk. The motion passed.

Chairman Cox said the committee would work **HB 2098** - Banks, granting of trust authority.

Representative Burgess made a motion to pass the bill favorably. Second was made by Representative George. The motion passed.

CONTINUATION SHEET

MINUTES OF THE House Financial Institutions Committee at 3:30 P.M. on February 2, 2005 in Room 527-S of the Capitol.

Chairman Cox asked the Committee if they were prepared to work **HB 2125 - Mortgages on real property; entry of satisfaction; fees.**

Representative Dillmore made a motion to pass the bill favorably. Representative Thull seconded the motion. The motion passed.

Representative Grant made a motion that, without objection, minutes of the January 26 Committee Meeting be approved. Minutes were approved.

Chairman Cox asked Melissa Calderwood, Legislative Research, to prepare a report on interest rates and U.C.C.C. for the next meeting.

Representative Cox announced that the next meeting will be Monday, February 7, 2005 at 3:30 p.m. in Room 519-S. He stated that he had a larger room for the hearing on HB 2143 and HB 2145, and, if he did not get a larger crowd, he would never get a larger room again.

Meeting was adjourned.

Judi Stork

affect the validity of the remainder of this act or its applicability to other persons or circumstances. It shall be presumed conclusively that the legislature would have enacted the remainder of this act without the sentence, clause, provision or section held invalidly enacted or applied.

(b) This act shall be interpreted by the commissioner for the purpose of protecting, against financial loss, the citizens of this state who purchase money orders or who give money or control of their funds or credit into the custody of another person for transmission, regardless of whether the transmitter has any office, facility, agent or other physical presence in the state.

→ ~~*Discussion of changes in 9-508 through 9-513. General re-write of Money Transmitter Act. Looked at other states' laws (Texas and Pennsylvania) and incorporated portions of the Model Act for money transmission put together by NCCUSL, and the Model Act put together by the Money Transmitter Regulators Association.*~~

Highlights of changes include:

- clearly encompass internet funds transmission and stored value cards*
- change focus from brick and mortar locations to business done with KS citizens*
- increase bonding requirements for doing business*
- increase oversight powers of the OSBC*

HOUSE BILL NO. _____

By Representative Humerickhouse

AN ACT relating to cemetery companies; concerning cemetery monuments and monument companies.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) As used in this section:

(1) "Cemetery company" means any legal entity, including corporations, that owns or controls cemetery land or property;

(2) "monument" means any product used for identifying a grave site and cemetery memorials of types, including monuments, markers and vases;

(3) "monument company" means a facility that operates independently of a cemetery company and offers to sell monuments or monument services to the public for placement in a cemetery.

(b) No person authorized to sell grave space may tie the purchase of any grave space to the purchase of a monument from or through the seller of any other designated person or corporation.

(c) Noncemetery persons and firms shall have the right to sell monuments and to perform or provide on cemetery property foundation, preparation and installation services for monuments. However, a cemetery company or any other entity owning and operating a cemetery may establish reasonable rules regarding the style and size of a monument or its foundation, provided such rules are applicable to all monuments from whatever source obtained and are enforced uniformly as to all monuments. Such rules shall be conspicuously posted and readily accessible to inspection and copy by interested persons.

(d) No person who is authorized to sell grave space and no cemetery company or other entity owning and operating a cemetery may:

(1) Require the payment of a setting or service charge, by whatever name known, from third party installers for the placement of a monument;

(2) refuse to provide care or maintenance for any portion of a gravesite on which a monument has been placed; or

(3) require waiver of liability with respect to damage

caused by cemetery employees or agents to a monument after installation, where the monument or installation service is not purchased from the person authorized to sell grave space or the cemetery company providing grave space or from or through any other person or corporation designated by the person authorized to sell grave space or the cemetery company providing grave space. No cemetery company may be held liable for the improper installation of a monument where the monument is not installed by the cemetery company or its agents.

(e) If any cemetery company violates the provisions of this section, the monument company may bring an action in any court of competent jurisdiction for damages sustained by such monument company as a consequence of the cemetery company's violation. The court may also award court costs and reasonable attorney fees to the prevailing party.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

PRELIMINARY

Bill proposal from First Data Corporation

Contact: Ron Gaches, 785-233-4512

Be It Enacted by the Legislature of the State of Kansas:

K.S.A. 9-510, Section 1, is amended by adding:

(1) Any person complying with the provisions of this Act may charge a different price for a transmission of money service based on the mode of transmission used in the transaction, so long as the price charged for a service paid for with a credit card is not greater than the price charged for such service if paid for with currency or other similar means accepted within the same mode of transmission.

Section 2. This act shall take effect July 1, 2005.

SUMMARY

Permitting the use of credit cards for money transmission services that occur over the phone or the Internet.

PRELIMINARY

Proposal from Security Finance
Contact: Ron Gaches at 785-233-4512

Be it enacted by the Legislature of the State of Kansas:

Section 1. Chapter 16a – Consumer Credit Code, Article 2 – Finance Charges and Related Provisions, Part 4 – Consumer Loans; Maximum Finance Charges Kansas Revised Statutes, is amended by adding section 16a-2-405 to read:

16a-2-405 Alternative charges for installment consumer loans not exceeding one thousand five hundred dollars.

A. With respect to a consumer loan having an amount financed of at least one hundred dollars but not more than one thousand five hundred dollars, a licensee may charge in lieu of the finance charges specified in K.S.A. 16a-2-401 and amendments thereto both of the following:

1. An acquisition charge for making the loan that does not exceed the lesser of ten per cent of the amount financed or seventy-five dollars.
2. A monthly installment account handling charge that does not exceed the following amounts:

<u>AMOUNT FINANCED</u>	<u>PER MONTH CHARGE</u>
\$100 UP TO \$300	\$12.50
More than \$300 up to \$500	15.00
More than \$500 up to \$750	17.50
More than \$750 up to \$1,000	20.00
More than \$1,000 up to \$1,250	22.50
More than \$1,250 up to \$1,500	25.00

B. The minimum term of any loan made under this section is four months. The maximum term of any loan made under this section is eighteen months and fifteen days. The first installment shall be due not less than fifteen days but not more than forty-five days after the loan is made. All loans shall be scheduled to be payable in substantially equal installments at equal periodic intervals.

C. On a loan subject to the alternative charges authorized by this section, no other finance or any other charge or fee is permitted except as specifically provided in this section and except for the delinquency charges under K.S.A. 16a-2-502, and amendment thereto, court costs under Section _____, Paragraph _____, reasonable attorney fees

under Section _____, Subsection _____, Paragraph _____, and the dishonored check service fee under K.S.A. 16a-2-501, and amendments thereto.

D. The Acquisition Charge authorized under this section shall be fully earned at the time the loan is made and is not subject to refund except that if the loan is prepaid in full, refinanced or consolidated within the first sixty days both of the following apply:

1. The first ten dollars of the Acquisition Charge shall be retained by the Lender.
2. The remainder shall be refunded at the rate of one-sixtieth of the Acquisition Charge per day beginning on the day after the date of prepayment, refinancing or consolidation and ending on the sixtieth day after the loan was made.

E. On the prepayment of a loan made pursuant to this section, the unearned portion of the installment account handling charge shall be refunded to the consumer.

The unearned portion of the installment handling charge that is refunded shall be calculated by multiplying the charge by a fraction in which the numerator is the number of days remaining in the loan term and the denominator is the original number of days contracted for in the loan term. If the refund amount is less than one dollar, the lender is not required to make a refund to the consumer.

F. The rates and charges permitted by this section shall not apply to PayDay loans specified in Section 16a-2-404.

G. A lender and related interest shall not have more than two loans made under this section outstanding to the same borrower at any one time.

H. Each loan agreement made under this section shall contain the following notice in at least 10 point bold face type: **NOTICE TO BORROWER: KANSAS LAW PROHIBITS THIS LENDER AND THEIR RELATED INTEREST FROM HAVING MORE THAN TWO LOANS OUTSTANDING TO YOU AT ANY ONE TIME. A LENDER CANNOT DIVIDE THE AMOUNT YOU WANT TO BORROW INTO MULTIPLE LOANS IN ORDER TO INCREASE THE FEES YOU PAY.**

I. The contract rate of any loan made under this section shall not be more than 3% per month of the loan proceeds after the maturity date.

J. In determining whether a consumer loan transaction made under the provisions of this section is unconscionable conduct under K.S.A. 16a-

5-108, and amendments thereto, consideration shall be given, among other factors, to:

1. The ability of the borrower to repay within the terms of the loan made under this section; or,
2. The original request of the borrower for amount and term of the loan are within the limitations under this section.

K. This Section shall be supplemental to and a part of the uniform consumer credit code.

HOUSE BILL NO. _____
By Representative Flora

Rep. Bob Grant

AN ACT relating to consumer protection; concerning credit card receipts; amending K.S.A. 2004 Supp. 50-669b and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2004 Supp. 50-669b is hereby amended to read as follows: 50-669b. (a) No supplier which accepts credit cards or debit cards shall print more than the last five digits of the credit card or debit card account number or print the credit card or debit card expiration date on a credit card or debit card receipt issued to the cardholder.

(b) This section shall apply only to receipts that are electronically printed and shall not apply to transactions in which the sole means of recording the credit card or debit card number is by handwriting or by an imprint or copy of the credit card or debit card.

(c) This section applies on July 1, 2003, to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions and is placed into service on or after July 1, 2003, and on July 1, 2004, to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions and is placed into service prior to July 1, 2003.

(d) Suppliers which accept credit cards or debit cards shall print the name of the business on a credit card or debit card receipt issued to the cardholder. The business name shall be the name as advertised, or if doing business under a name different than the advertised business name and the "doing business as" business name.

~~(d)~~ (e) Violation of this section shall be deemed an unconscionable act as defined by K.S.A. 50-627, and amendments thereto.

(e) (f) This section shall be part of and supplemental to the Kansas consumer protection act.

Sec. 2. K.S.A. 2004 Supp. 50-669b is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.



Date: February 2, 2005
To: House Financial Institutions Committee
From: Doug Wareham, Vice President-Government Affairs
Re: H.B. 2125

Mr. Chairman and members of the Committee, I am Doug Wareham appearing on behalf of the Kansas Bankers Association (KBA). KBA's membership includes 360 Kansas banks, which operate more than 1,300 banking facilities in 440 towns and cities across the state. KBA appreciates the opportunity to appear in support of H.B. 2125.

Currently there are two separate statutes that address mortgage release fees that are paid to Register of Deeds when a mortgage is paid off and a release of the mortgage is requested.

K.S.A. 16-207(d), which addresses interest rates and charges included in contracts & promises, clearly allows lenders to collect mortgage release fees from borrowers. The statute states the following:

"The lender may collect from the borrower: (1) The actual fees paid a public official or agency of the state, federal government, for filing, recording or releasing any instrument relating to a loan subject to provisions of this section.

In 1994, the legislature amended K.S.A. 58-2309(a) by striking statutory language that prohibited mortgagees (lenders) from requiring mortgagors (borrower) to pay mortgage release fees. While the 1994 amendments to K.S.A. 58-2309(a) were intended to allow lenders to assess borrowers for mortgage release fees, the absence of specific language in K.S.A. 58-2309(a) continues to cause confusion within the banking industry, title insurance industry and with borrowers. The amendment offered in H.B. 2125 will simply clarify the situation and alleviate confusion.

To provide you with added assurance that H.B. 2125 is simply a clarification of existing law, I have attached a copy of an Attorney General Opinion, which substantiates the fact that banks are presently allowed to assess borrowers for mortgage release fees. Comments near the bottom of page 4 of the opinion state:

"we (Attorney General) opine that the 1994 amendments to K.S.A. 1993 Supp. 58-2309(a) allow lenders to require mortgagors to pay the \$5.00 filing fee, to be forwarded to the county register of deeds, to release that individual's mortgage."

Once again, thank you for the opportunity to appear in support of H.B. 2125 and I would be happy to stand for questions.

House Financial Institutions
February 2, 2005
Attachment 6

28-115

Chapter 28.--FEES AND SALARIES

Article 1.--FEES IN ALL COUNTIES AND SALARIES IN CERTAIN COUNTIES

28-115. Fees of register of deeds; monthly billing to internal revenue service; standards for documents to be filed; disposition of fees. (a) The register of deeds of each county shall charge and collect the following fees:

For recording deeds, mortgages or other instruments of writing, for first page, not to exceed legal size page--8 1/2" x 14"	\$6.00
For second page and each additional page or fraction thereof.....	2.00
Recording town plats, for each page.....	20.00
Recording release or assignment of real estate mortgage.....	5.00
Certificate, certifying any instrument on record.....	1.00
Acknowledgment of a signature.....	50
For filing notices of tax liens under the internal revenue laws of the United States.....	5.00
For filing releases of tax liens, certificates of discharge, under the internal revenue laws of the United States or the revenue laws of the state of Kansas	5.00
For filing liens for materials and services under K.S.A. 58-201, and amendments thereto.....	5.00

(b) In addition to the fees required to be charged and collected pursuant to subsection (a), the register of deeds shall charge and collect an additional fee of \$2 per page for recording:

- (1) The first page of any deeds, mortgages or other instruments of writing, not to exceed legal size--8 1/2" x 14";
- (2) the second page and each additional page or fraction of any deeds, mortgages or instruments of writing; and
- (3) a release or assignment of real estate mortgage.

Any fees collected pursuant to this subsection shall be paid by the register of deeds to the county treasurer. The county treasurer shall deposit such funds in the register of deeds technology fund as provided by K.S.A. 2003 Supp. 28-115a, and amendments thereto.

(c) For any filing or service provided for in the uniform commercial code, the amount therein provided, shall be charged and collected. No fee shall be charged or collected for any filing made by the department of revenue as required under the provisions of the Kansas inheritance tax act, and amendments thereto.

(d) If the name or names of the signer or signers or any notary public to any instrument to be recorded are not plainly typed or printed under the signatures affixed to the instrument, the register of deeds shall charge and collect a fee of \$1 in addition to all other fees provided in this section.

(e) If sufficient space is not provided for the necessary recording information and certification on a document, such recording information shall be placed on an added sheet and such sheet shall be counted as a page. The document shall be of sufficient legibility so as to produce a clear and legible reproduction thereof. If a document is judged not to be of sufficient legibility so as to produce a clear and legible reproduction, such document shall be accompanied by an exact copy thereof which shall be of sufficient legibility so as to produce a clear and legible reproduction thereof and which shall be recorded contemporaneously with the document and shall be counted as additional pages. The register of deeds may reject any document which is not of sufficient legibility so as to produce a clear and legible reproduction thereof.

(f) Any document which was filed on or after January 1, 1989, which was of a size print or type smaller than 8-point type but which otherwise was properly filed shall be deemed to be validly filed.

(g) All fees required to be collected pursuant to this section, except those charged for the filing of liens and releases of tax liens under the internal revenue laws of the United States, shall be due and payable before the register of deeds shall be required to do the work. If the register of deeds fails to collect any of the fees provided in this section, the amount of the fees at the end of each quarter shall be deducted from the register's salary.

(h) Except as otherwise provided by subsection (b), all fees required to be collected pursuant to this section shall be paid by the register of deeds to the county treasurer and deposited into the general fund of the county.

History: L. 1913, ch. 197, § 15; R.S. 1923, 28-115; L. 1949, ch. 260, § 4; L. 1955, ch. 214, § 1; L. 1959, ch. 184, § 1; L. 1965, ch. 564, § 401; L. 1967, ch. 215, § 1; L. 1970, ch. 148, § 1; L. 1973, ch. 174, § 1; L. 1976, ch. 194, § 1; L. 1979, ch. 316, § 13; L. 1983, ch. 129, § 1; L. 1988, ch. 125, § 1; L. 1989, ch. 114, § 1; L. 2002, ch. 98, § 1; July 1.



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

October 27, 1994

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
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ATTORNEY GENERAL OPINION NO. 94- 143

The Honorable Vernon W. Correll
State Representative, 7th District
P.O. Box 214
Oswego, KS 67356

FILE COPY

Re: Personal and Real Property -- Mortgages of Real
Property -- Entry of Satisfaction of Mortgage

Synopsis: Pursuant to K.S.A. 1993 Supp. 58-2309a, as
amended by L. 1994, ch. 250, § 1, a mortgagee may
charge a mortgagor a \$5.00 fee for filing of a
release of that individual's mortgage. Cited
herein: K.S.A. 16-207(d)(1); K.S.A. 28-115; K.S.A.
1993 Supp. 58-2309a, as amended by L. 1994,
ch. 250 § 1; Gen. Stat. 1909, § 5202, repealed
by L. 1971, ch. 189, §2.

* * *

Dear Representative Correll:

You request our opinion regarding the effect of the 1994
changes to K.S.A. 1993 Supp. 58-2309a. Specifically, you
ask if the amendments enacted in house bill no. 2654 permit
financial institutions to charge a fee for preparing a
mortgage release. You indicate that some financial
institutions are charging up to \$150.00 for preparing the
release of a mortgage.

Prior to the 1994 amendments, K.S.A. 1993 Supp. 58-2309a
provided as follows:

"(a) When the indebtedness secured by a recorded mortgage is paid . . . the mortgagee . . . shall enter satisfaction or cause satisfaction of such mortgage to be entered of record forthwith, paying the required fee without charge to the mortgagor or the mortgagor's assigns."
Id. (Emphasis added).

In 1994, the legislature amended the statute by deleting the portion underlined above. L. 1994, ch. 250, § 1. It is not clear from the statute what effect this change has upon a mortgagee's ability to charge a fee for preparation of releasing a mortgage. To determine what the legislature intended, it is proper to look at the circumstances attending the passage of the statute, the purpose to be accomplished and effect the statute may have under various constructions. West v. Collins. 251 Kan. 657 (1992).

When the amendment was first proposed, the intent was to strike the "language prohibiting a mortgagee from charging the mortgagor a fee for releasing the mortgage." Minutes, House Committee on Financial Institutions and Insurance, January 26, 1994. The purpose of this change was stated by the director of research for the Kansas Bankers Association (KBA), Chuck Stones. Mr. Stones stated that the language of K.S.A. 58-2309a conflicts with K.S.A. 16-207(d). Id. He went on to say that:

"Striking the language from 58-209a [sic.] will allow the mortgage release to be governed by 16-207 similar to other promissory notes, and will eliminate the confusion created by the conflict between these two statutes." Minutes, Attachment 2, House Committee on Financial Institutions and Insurance, January 26, 1994.

The language of K.S.A. 16-207, to which Mr. Stones refers, provides:

"The lender may collect from the borrower: (1) The actual fees paid a public official or agency of the state, or federal government, for filing recording or releasing any instrument

relating to a loan subject to the provisions of this section;"
K.S.A. 16-207(d).

We agree that these statutes appeared to be in conflict prior to the amendment. K.S.A. 1993 Supp. 58-2309a prohibited mortgagees from requiring the mortgagors to pay the fee required to release a mortgage, whereas K.S.A. 16-207(d)(1) permits a lender to charge a fee to the borrower, if they choose to do so.

The next issue that must be addressed is determining exactly what "fee" is being discussed. It is not clear from the language of K.S.A. 1993 Supp. 58-2309a what "fee" is being referred to, nor is it clear from the amendment. L. 1994, ch. 250, § 1. To discern what fee the legislature was referring to, the intent of the legislature controls. State v. Royse, 252 Kan. 755 (1993). It is proper to review historical background and changes made in a statute when determining legislative intent. Moore v. City of Lawrence, 232 Kan. 353 (1982).

The forerunner of K.S.A. 58-2309a was first interpreted in Blout v. Atena Building & Loan Assoc., 97 Kan. 77 (1916). In that case, the court was interpreting the provisions of Gen. Stat. 1909, § 5202, repealed by L. 1971, ch. 189, § 2, which required that:

"When any mortgage of real estate shall be paid . . . it shall be the duty of the mortgagee . . . to enter satisfaction or cause satisfaction of such mortgage to be entered of record without charge."

The Blout court pointed out that the fee for recording the release was a "trifling expense of thirty cents." Id. at 80. The court went on to hold that parties could contract outside of the statute, so that the mortgagor could pay for the release if the agreement specified. Id. at 81

In Bird v. Aetna Building & Loan Assoc., 110 Kan. 706 (1922) the court followed the decision of Blout. There again, the court noted how minimal the expense for releasing a mortgage would be. Bird 110 Kan. at 709. The court stated that "the statute (Gen. Stat. 1915, § 4720) provides that the fee for releasing a mortgage . . . shall be twenty-five cents. . . ." Id.

In addition to this historical background of the statute, we must also look at the legislative history of the statute. When there is uncertainty about the meaning of a statute it is prudent to examine its legislative history. Koch v. Shell Oil Co., 820 F.Supp. 1336 (D.Kan. 1993). In your letter of request, you refer to comments made during the drafting of the amendment which refer to a \$5.00 fee. This \$5.00 fee you refer to was mentioned on several occasions during the drafting of the statute.

The actual \$5.00 amount was first referred to when Mr. Stones, director of research for the KBA, stated that "the KBA would prefer that the customer be charged the \$5.00 fee." Minutes, House Committee on Financial Institutions and Insurance, Feb. 14, 1994. The \$5.00 amount was next mentioned by Representative Allen when he recommended that "the lending institutions would have to pay the \$5.00 fee." Minutes, House Committee on Financial Institutions and Insurance, Feb. 23, 1994. The last time the fee is mentioned is when Representative King moved to pass out house bill no. 2654 "in the original form which required the borrower to pay the \$5.00 fee." Id.

Based on the above statements and the actual change made to the statute an inference can be drawn that this \$5.00 amount refers to the fee required by a government office to have a mortgage released from the record.

This position is further supported by K.S.A. 28-115 which provides that:

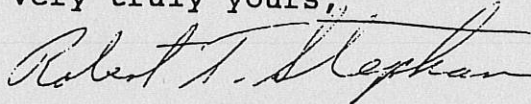
"The register of deeds of each county shall charge and collect the following fees:

"Recording release or assignment of real estate mortgage 5.00"

Based on the court cases which refer to K.S.A. 58-2309a's predecessor, the legislative history accompanying the amendments made in L. 1994, ch. 250, § 1 and the provisions of K.S.A. 28-115, we opine that the 1994 amendments to K.S.A. 1993 Supp. 58-2309a allow lenders to require mortgagors to pay the \$5.00 filing fee, to be forwarded to the county register of deeds, to release that individual's mortgage. The amendment cannot, however, be used as authority to charge any other fees to the mortgagor for preparation of a mortgage

release. This opinion does not address whether statutes other than K.S.A. 58-2309a may authorize the mortgagee to charge additional fees for preparation of the release.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Lawrence J. Logback
Assistant Attorney General

RTS:JLM:LJL:bas



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To: House Financial Institutions Committee
From: Matthew Goddard
Heartland Community Bankers Association
Date: February 2, 2005
Re: House Bill No. 2125

The Heartland Community Bankers Association appreciates the opportunity to express our support for House Bill 2125 to the House Committee on Financial Institutions.

House Bill 2125 explicitly authorizes mortgage lenders to collect the fee for filing a mortgage release from a mortgagor. The legislature last visited this issue in 1994, but the solution at the time has proven to be somewhat ambiguous. House Bill 2125 would clarify the law for all parties involved.

Prior to the passage of House Bill 2654 in 1994, Kansas law prohibited a mortgagee from passing along to the mortgagor the fee payable to the register of deeds for releasing a mortgage. K.S.A. 16-207, however, authorized lenders to collect from borrowers the actual fees paid to a government agency. The two statutes were clearly in conflict with one another. House Bill 2654 removed this statutory disagreement by striking the prohibitory language from K.S.A. 58-2309a. Kansas law then spoke with one voice in allowing lenders to collect the actual fees paid to a government agency.

The thinking in 1994 was that eliminating the prohibition on passing the cost on to the customer would allow mortgage lenders to do just that. Attorney General Opinion No. 94-143 from then-Attorney General Bob Stephan reached the same conclusion when it stated:

"...we opine that the 1994 amendments to K.S.A. 1993 Supp. 58-2309a allow lenders to require mortgagors to pay the \$5 filing fee... to release that individual's mortgage."

Unfortunately, the lack of clear statutory authority for lenders to collect from the borrower the actual fee they pay for releasing a mortgage has led some nonlenders to question their authority to do so.

Following the legislature's 1994 action, some of our members began collecting the mortgage release fee from their customers. Others chose not to collect the fee and still today pay it themselves instead of passing it on to the borrower. For a high volume lender, the cost of paying the fee can be significant. The fee is currently \$5 for filing a release, plus an additional \$2 per page for the applicable Register of Deeds technology fund. Some HCBA members now pay \$9 for each release.

House Bill 2125 makes clear that a mortgagee has the authority to collect the actual mortgage release fee from a borrower by expressly stating that the fee may be collected from the mortgagor pursuant to K.S.A. 16-207. The Heartland Community Bankers Association respectfully requests that the House Financial Institutions Committee recommend HB 2125 favorable for passage.

Thank you.

SERVING FINANCIAL INSTITUTIONS IN COLORADO, KANSAS, NEBRASKA

House Financial Institutions

February 2, 2005

Attachment 7