

MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS COMMITTEE

The meeting was called to order by Chairman Ray Cox at 3:30 P.M. on February 14, 2005 in Room 527-S of the Capitol.

All members were present except:
Tom Burroughs- 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:
Ron Gaches, Kansas Association of Financial Services
Kevin Glendening, State Banking Commissioner's Office
Dave Purdy, Kansas Association of Mortgage Brokers

Others attending:
See attached list.

Chairman Cox explained that we will not work HB 2277 - Credit card or debit card receipts, business name or HB 2278 - Uniform consumer credit code, alternative finance charges for certain loan. He then opened the floor to work HB 2205 - Prohibiting unauthorized use of lender's name, trade name or trademark.

Representative Dillmore made a motion to pass HB 2205 favorably. Motion was seconded by Representative Grant.

Representative Dillmore questioned the language "presumption of irreparable harm." Mr. Kinzie replied that the language has been used before. Mr. **Matthew Goddard**, sponsor of the bill, added that the party bringing the action is responsible for any costs. Frivolous actions would not be tolerated. Motion carried.

Chairman Cox opened the floor to work HB 2276 - Fees for transmission of money.

The chair recognized **Ron Gaches**, who handed out a document with proposed language change for the bill. This wording change was agreed to by First Data Corporation/Western Union and the Kansas Bank Commissioner's Office. (Attachment 1)

Representative Goico made a motion that we accept Substitute HB 2276. Second was made by Representative Olson. Motion carried.

Chairman Cox opened the hearing on HB 2145 - Consumer credit code, regulations, penalties.

Proponent **Kevin Glendening**, of the State Banking Commissioner's Office, explained that **HB 2145** contains a variety of amendments to the Uniform Consumer Credit Code (UCCC) representing both clean up language and several substantive additions to strengthen consumer protections and enforcement by the Administrator. He reviewed the proposed changes and concluded by saying the changes represent reasonable and necessary additions to the UCCC to ensure adequate protection of Kansas consumers. (Attachment 2)

There were quite a few questions on specific sections of the bill which were clarified by Mr. Glendening.

Proponent **Dave Purdy**, speaking for Kansas Association of Mortgage Brokers, voiced support of the proposed changes outlined in **HB 2145**. He stated that this bill will continue to help strengthen consumer confidence in financial institutions. Mr. Purdy reviewed several sections of the bill and ended by urging the committee to look at these changes from the consumer's standpoint and accept this bill in its current form. (Attachment 3)

Opponent **Ron Gaches**, speaking on behalf of Kansas Association of Financial Services (K.A.F.S.), expressed

CONTINUATION SHEET

MINUTES OF THE House Financial Institutions Committee at 3:30 P.M. on February 14, 2005 in Room 527-S of the Capitol.

concerns regarding certain provisions of this bill including: the number of working days, the shift in the burden of proof pertaining to the use of multiple agreements, fingerprinting and associated authorities, and the increased fines and new penalties which are excessive and unnecessary. Mr. Gaches also commented that K.A.F.S. views some sections of the bill as acceptable. He pointed out that most of his clients are making small consumer loans rather than financing mortgages and urged the committee to carefully review the many sections of this bill and reject those that are unnecessary, overly broad and excessive. **(Attachment 4)**

Written testimony was provided by **Mike Reed**, General Counsel to LoanMax, an opponent. **(Attachment 5)**

Chairman Cox closed the hearing on **HB 2145** and announced that the Committee would work the bill at the next meeting on Wednesday, February 16.

Meeting was adjourned at 4:15 P.M.

FINANCIAL INSTITUTIONS COMMITTEE GUEST LIST

DATE: 2-14-05

NAME	REPRESENTING
Hanna Jan Mich	KUMHA
Tom Gaches	GBA
Patricia Lightner	HSBC
Kathy Peffer	Wells Fargo Financial
Adam Courtney	OSBC
Kevin Colendening	OSBC
Betty Wilkno	KAMB
Melissa Vinks	KAMB
Dave Turdy	KAMB
Pamie Ann Rauer	KS Govt Consulting
D S. Koch	Pausinewy
Jim Gschader	Pozzelli



GACHES, BRADEN, BARBEE & ASSOCIATES

PUBLIC AFFAIRS & ASSOCIATION MANAGEMENT

825 S. Kansas Avenue, Suite 500 ♦ Topeka, Kansas 66612 ♦ Phone: (785) 233-4512 ♦ Fax: (785) 233-2206

Proposed Substitute for HB 2276 By First Data Corporation/Western Union Regarding HB 2276 – Money Transmitters

Agreed to language between First Data/Western Union and the
Kansas Bank Commissioner's Office:

"Any person complying with the provisions of K.S.A. 9-508 through 9-513 and amendments thereto 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 the service is the same for all forms of payment which are accepted within the same mode of transmission."

KANSAS

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

KATHLEEN SEBELIUS, GOVERNOR

House Financial Institutions Committee

February ¹⁴~~7~~, 2005

Re: House Bill 2145

Mr. Chairman and members of the committee:

House Bill 2145 contains a variety of amendments to the Uniform Consumer Credit Code (UCCC) representing both clean up language and several substantive additions to strengthen consumer protections and enforcement by the Administrator. To facilitate their explanation, I have referenced the substantive changes in the order in which they appear in the Bill and they are as follows:

Page 1, line 36 - Would allow lenders the option of using the "amortization" method in addition to the actuarial method for the computation of finance charges on consumer loans secured by first or second lien real estate mortgage. This change will facilitate the current prevailing practice within the mortgage lending industry and potentially benefit consumers through the application of interest charges.

Page 3, line 38 - Would permit the Administrator to establish minimum net worth requirements for licensed Supervised Lenders. This provision will deter license swaps to avoid certain requirements under the Mortgage Business Act.

Page 4, line 42 through page 5, line 8 - This provision would add employment of or contracting with a person convicted of a felony or crime involving fraud, dishonesty, or deceit; or, who has been the subject of a disciplinary or other administrative action as a possible reason to deny or revoke a license. Current law contains such a provision for officers and directors. A similar provision currently exist under the Mortgage Business Act and it is our desire to ensure Supervised Lenders and their employees or agents are held to the same standard.

Page 5, line 38 - Adds a requirement that records must be produced within three business days from the date the records are requested by the Administrator. This provision is currently in the Mortgage Business Act.

Page 6, line 18 - Adds a specific provision prohibiting the destruction of records to obstruct an investigation or examination.

Page 7, line 26 – Adds a prohibition on recording a mortgage lien if moneys are not available for disbursal to the mortgagor.

Page 9, line 20 - Changes possible criminal conviction for violation to a felony with a subsequent conviction having a presumptive sentence of imprisonment. This is consistent with penalties under the Securities Code.

Page 11, line 32 - Allows the Administrator to require fingerprinting in connection with criminal background checks. A similar provision is being requested for the Mortgage Business Act, and already exists for Credit Service Organizations.

Page 13, line 16 - Raises the potential civil penalty to \$10,000 for each violation, additional penalty for violations involving elderly or disabled, and may order restitution to consumers. This amount puts the potential penalty in line with those of the KCPA and Securities Code.

These amendments, I believe, represent reasonable and necessary additions to the UCCC to ensure adequate protection of Kansas consumers.

Respectfully,

Kevin Glendening
Deputy Bank Commissioner
Administrator UCCC



**House Financial Institutions Committee
Testimony of the Kansas Association of Mortgage Brokers
Regarding HB 2145: UCCC Penalties and Authorities
Presented by Dave R. Purdy
President, Kansas Association of Mortgage Brokers
Monday, February 14, 2005**

Committee Members:

I am here representing members of the Kansas Association of Mortgage Brokers, and to support Mr. Glendening, and his staff, in the introduction of changes to House Bill 2145. We, as an Association, believe that the overall changes in this bill will continue to help strengthen the confidence of any consumer that deals with a financial institution for their financial needs.

Addition to Section 1, (3). In amending the method of computation of finance charges on consumer loans secured by a first or second lien real estate mortgage will make the State of Kansas more conforming with most other states and allow many Mortgage Lenders to offer more of their products, namely second mortgages, in our state due to this more simplified computation.

Addition to Section 2., (2) (b). The addition of net worth requirements we hope will encourage some supervised lenders to receive their licensure under the Kansas Mortgage Business Act.

Changes to Section 3., (e) and (g). We are in hope that this change will encourage all lenders to be more thorough in the manner in which they hire anyone that comes in contact with the financial information of their clients, whether it be someone they employ or contract with, i.e. technology service companies or even who they may hire to clean their offices. Any entity that a lender may contract with should make sure that those employees are bonded or make sure that they have had no felony convictions or have ever been "justly" accused of any dishonesty, disciplinary or administrative action if those individuals working for those contracted companies could at all possibly have access to the financial information of their clients.

(2)

Changes to Section 4. (1) and the addition of (3) (a) and (b). We feel the time restraints of access to a lenders records will discourage what is described in the addition of (3), (a) and (b) of any destroying and concealing of information of a consumer's file.

Addition of Section 7. (4). It is our feeling that this addition is needed to prohibit any filings of a mortgage prior to that loan being funded, especially in regards to refinances because of the rescission period in which the consumer may decide to not continue with the transaction. This is especially important in regards to any deceit or misrepresentation that the consumer may feel that they were subjected to between the time of application and the actual closing of their loan file.

Addition of Section 11. (k). We encourage the requirement to have any applicant, etc., to be fingerprinted so that the information would be available for further submission to the KBI, the FBI or any other agency for the sole purpose of verifying the identities of all employees to help in determining if they have had any criminal arrests and convictions.

Changes to Section 12. (b) and addition of (d). We agree that the increase in fines and the order to pay restitution for any loss arising from a violation of any provisions of this act will help to discourage such violations to the consumer.

To reiterate again, we as an association and as consumer advocates, encourage you to look at each portion of changes to this bill, from the consumer's standpoint and accept this bill in its current form.

Respectfully,

Dave R. Purdy
President, Kansas Association of Mortgage Brokers



GACHES, BRADEN, BARBEE & ASSOCIATES
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**House Financial Institutions Committee
Hearing on HB 2145 – UCCC Regulations and Penalties
Testimony of Kansas Association of Financial Services
Submitted by Ron Gaches
Gaches, Braden, Barbee & Associates
Monday, February 7, 2005**

Thank you Chairman Cox for this opportunity to speak on behalf of the Kansas Association of Financial Services and express our concerns about the provisions of HB 2145. KAFS is the Kansas affiliate of the American Financial Services Association. KAFS members are both small and large consumer finance companies, including some of the largest and most diversified financial services firms in the world.

Kevin Glendening discussed some of the concepts and details of this bill with KAFS members this past fall. There are some proposed changes to the UCCC contained in HB 2145 that we view as being acceptable, but several that we are strongly opposed to. There are no provisions of this bill that were requested by the Financial Services Association.

Section 1. KSA 2004 Supp. 16a-2-103.
KAFS has no objection to this language.

Section 2. KSA 2004 Supp. 16a-2-302.
KAFS has no objection to the minimum net worth language at lines 38-41 of page 3 of the bill. This language is intended to address the problem of some firms that should be licensed as mortgage brokers who have chosen to register as licensed lenders instead. If this language helps the Commissioner's office in addressing that problem, we have no objection. Our only qualification is that the net worth requirements should be such that a small, independent licensed lender should still be able to reasonable satisfy the net worth requirement.

Section 3. KSA 2004 Supp. 16a-2-303.
The employment and contract prohibitions contained in this section are too broad and unnecessary and KAFS is strongly opposed to them.

Licensed lenders have a fiduciary responsibility to the shareholders, employees and customers to not make bad hiring decisions or put employees or customers in harms way. This hiring prohibition is not needed. Furthermore, it is impossibly broad as it applies to "any person the applicant or licensee contracts with or employs in any manner..." That language could apply to the elderly man who works in the mailroom, or the outsourced

data processing vendor, or the firm who cleans the building. These are employees or contractors who do not pose a threat to customers in any way.

The prohibition on hiring a felon is unnecessary because licensed lenders are already screening their employees, just as banks and credit unions and other firms who come in contact with consumers do. Why should licensed lenders be held to a higher standard than those similar financial firms? And, what exactly is a crime involving “dishonesty?” Wouldn’t this be any crime? The proposed language could be any misdemeanor crime involving dishonesty. Is it really in the best interest of the State to prevent people who have made a misdemeanor mistake to forever be prohibited from working in this industry? If so, why, and on what grounds are licensed lenders singled out for this prohibition?

Section 4. KSA 2004 Supp. 16a-2-304

KAFS is opposed to the proposed “three business day” standard for delivering records to the administrator. Many of our members’ offices move thousands of files a year. To the maximum extent possible, these files are quickly centralized; in part to provide security of the personal information contained within them. The current standard is “reasonably available.” We are unaware that the Administrator has a regular problem obtaining records. Currently, files are routinely available because the Administrator’s office alerts the office that they are coming for an audit and describe in advance the files they would like to see. If the Administrator has problems with specific firms, we believe he has the discretionary authority to deal with those problems. If a specific deadline must be included in the statutes we recommend “ten business days.”

We are not opposed to the additional prohibitions found on page five, lines 18-25 regarding intentionally impeding, obstructing or influencing any investigation by the Administrator.

Section 6. KSA 16a-3-205

KAFS is opposed to the shifting burden of proof contained in the language beginning at the bottom of page 6 and continuing to the top of page 7, pertaining to use of multiple agreements. Some consumers choose to renew their loans or extend their payment schedule by entering into a new loan. This practice is very common in payday loans and occurs on some occasions with other consumer loans. But the proposed language reduces the burden of proof on the Administrator to proof intent and proposes instead language that is not defined in the bill. What constitutes “a pattern or practice of using multiple agreements...”? If it occurs twice in a year in all the thousands of loans a major lender makes in Kansas, is that a “practice” and a violation of the law?

The purpose of this intent of the language is unclear and the burden of proof shifts too dramatically to the licensee with this proposed change.

Section 7. KSA 16a-3-308a.

KAFS is not opposed to this language.

Section 10. KSA 2004 Supp.16a-5-301

KAFS members are strongly opposed to the increased penalties contained in this section. The proposed language makes the first willful or knowing violation of the Act, no matter how minor, a level 7 non-person felony. Given the complexity of the UCCC and the minor nature of many of its requirements, that seems a harsh sentence. A second or subsequent conviction over any period of time, whether it is willful or unintentional, would have a presumptive sentence of imprisonment.

This language provides the Administrator a much larger hammer than is needed to ensure compliance. Under this proposed language, the second violation could be an unintentional minor violation of the Act that occurs twenty (20) years after the first and the penalty is still presumptive imprisonment. That doesn't seem reasonable in any way.

The Commissioner's office has the authority to prosecute violators, and does. The Administrator routinely negotiates settlements with firms that he believes have violated the Act. The State of Kansas successfully participates with other states to engage in multi-state leverage on those firms it believes are engaged in widespread, inappropriate practices. And the Administrator routinely revokes or suspends the license of those who violate the Act, as evidenced by the 200 names on the list of Unauthorized Companies and Individuals. These enhanced penalties are not needed.

KAFS members did not have a strong reaction to the proposed five-year statute of limitations, but believe a shorter statute of limitations is adequate to protect the interests of consumers. It is not clear what the language in lines 9-11 on page 10 means in conjunction with the proposed statute of limitations. It appears that this additional language would supercede any SOL in the section above. KAFS is opposed to the elimination of a reasonable statute of limitations.

Section 11. KSA 2004 Supp. 16a-6-104.

KAFS is opposed to the fingerprinting and associated authorities requested by the Commissioner's Office in this section. It's not clear what problem this language is intended to address. It apparently is intended to provide the authority to exercise the hiring prohibitions contained in Section 3 of the bill, which we oppose. If the intention is to check the identity of officers or directors of our members that is clearly an unnecessary action as they are employed by national and international firms with the highest hiring standards and legal responsibilities to their shareholders. But the proposed language goes far beyond even that intention and suggests the Administrator have the authority to fingerprint and run identity checks and criminal background checks on "any agent acting on their behalf, or other person as deemed appropriate by the administrator." This language is vague and overly broad, providing the Administrator with authority he doesn't need to solve a problem that we believe doesn't exist.

Section 12. KSA 2004 Supp. 16a-6-108.

KAFS believes the increased fines and other new penalties are excessive and unnecessary. The Administrator already has the authority to suspend or revoke a licensed lender's ability to do business in the state. The Commissioner's Office already has sufficient tools to negotiate effectively to obtain restitution for consumers, and does so today. The proposal to double and quadruple fines per each violation of the Act is hugely excessive. A violation of the Act can be as simple as charging the wrong fee for performing an administrative function. None of the KAFS members expect the Commissioner's Office would impose such large fines for minor violations, but the general direction of these changes is to dramatically increase the regulatory authority of the Administrator's. After all, the changes proposed in Section 10 of the bill would make a second violation of the Act, even an unintentional violation, presumptive prison time.

While there are several proposals in the bill that are not objectionable, and while KAFS supports trying to resolve the issue of requiring mortgage brokers to properly file as brokers and not licensed lenders, the remaining portions of the bill overextend the authorities of the Commissioner's office and dramatically increase the potential penalties on firms that have a good record of compliance with the UCCC and the Commissioner's Office. We urge the committee to carefully review the many components of this bill and reject those that are unnecessary, overly broad and excessive.

STATEMENT OF MICHAEL REED
GENERAL COUNSEL
LOANMAX
HOUSE FINANCIAL INSTITUTIONS COMMITTEE
REGARDING 2005 HOUSE BILL 2145
February 7, 2005

Mr. Chairman and Members:

My name is Mike Reed and I am general counsel to LoanMax. Our company has a number of concerns about HB 2145.

Section 3, subsection (1)(e). We do not think it is fair or reasonable to disqualify someone from employment because of a crime that may have been committed thirty years ago, in their youth. We also do not believe that all crimes involving deceit or dishonesty should be disqualifying. Regardless, there needs to be a safeguard that shields supervised lenders from adverse administrative action if the lender terminates its relationship with the convicted person within a reasonable time after the administrator advises the lender of the person's conviction.

Section 3, Subsection (1)(g). The term "administrative action" is ambiguous and needs to be clarified. Supervised lenders should not be subject to any kind of adverse action unless they have been proven, after a right to a contested hearing, to have committed a violation. Even then, only the most serious or repeated violations should warrant significant fines or license suspension or revocation. The requirements imposed on supervised lenders are many. Some are complicated. Minor violations, if fixed, should not result in disciplinary action.

Additionally, the license of a supervised lender should not be subject to potential revocation because of disciplinary action taken against one of its employees that is unrelated to supervised lending activities. It is simply irrelevant that an employee had his driver's license suspended for medical reasons, or that an employee who owns a tavern was fined \$25 for failing to notify the Liquor Board that he was closing for two weeks for remodeling.

Section 10(1). Making a person subject to a *felony* for a relatively minor violation of the Act, or of any rule or regulation, is not warranted. At a minimum, only serious acts, expressly identified in the statute, should be eligible for felony treatment. Also, a good faith belief that an action is lawful should preclude conviction.

Section 12, subsection (3)(b). Raising the per-violation penalty from \$5,000 to \$10,000 serves no legitimate purpose. If there are particular kinds of violation that are so serious that they truly warrant a fine of more than \$5,000, those violations should be identified in the bill, and the \$10,000 fine should be limited to those types of violations.