

MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS COMMITTEE

The meeting was called to order by Chairman Ray Cox at 3:30 P.M. on February 8, 2006 in Room 527-S of the Capitol.

All members were present.

Committee staff present:

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

Conferees appearing before the committee:

Jim Mattes - Appraiser
Richard Livingston - Appraisal Board
Kevin Conway - Appraiser
Kathy Olsen - Kansas Banker's Assoc.
Sonya Allen - Office of State Banking Commissioner

Others attending:

See attached list.

Chairman Cox announced that the committee would work **HB2669 - Withholding of wages, allowing automatic enrollment in 403 (b) retirement plan.**

Natalie Haag, Attorney with Security Benefit, offered an amendment to **HB 2669** which adds additional retirement option products to the bill as it was initially proposed. The products include 401 (k), 408, 408 (a), and 457 in addition to 403 (b) plans which was originally included. This balloon expands the original bill and was jointly drafted by Security Benefit and Sister's of Charity Healthcare. **(Attachment 1)**

Representative Goico made a motion to recommend the balloon favorably, and the motion was seconded by **Representative Olson**. Motion passed. **Representative Olson** then made a motion that the committee recommend **HB2669**, as amended, favorably for passage. Motion was seconded by Representative Dilmore. Motion passed.

Chairman Cox then opened Hearings on **HB2806 - Consumer credit code, uniform, mortgages.**

Sonya Allen, General Counsel for the Bank Commissioner's Office, said that there was a major revision to the Uniform Consumer Credit Code (U.C.C.C.) In 2005. This bill changes one word in 16a-3-308a which was an error in the 2005 code revision. The word recession is proposed to be changed to rescission. (No written testimony.)

Chairman Cox closed the hearings and announced that the committee would work the bill.

Representative Hummerickhouse requested that the committee recommend that the bill be moved to consent calendar when it is carried to the floor.

Representative Grant moved that the bill be recommended favorably for passage. **Representative Brunk** seconded the motion. The motion passed.

Chairman Cox then welcomed Reagan Cussimano, Legislative Research Department, who was attending the committee meeting for the first time.

Chairman Cox announced that he was continuing hearings on **HB2735 - UCCC, definition of appraised value, independent valuation model.** He acknowledged that he continued hearings to allow both sides to be heard.

First to testify was **Jim Mattes**, an independent appraiser. Mr. Mattes stated that most licensed and certified

CONTINUATION SHEET

MINUTES OF THE House Financial Institutions Committee at 3:30 P.M. on February 8, 2006 in Room 527-S of the Capitol.

appraisers find accurate and honest values, using the tools available to the profession. These tools include Automated Valuation Models (A.V.M.), county data, and MLS data where available. The most important part of the appraisal process is the inspection of the property. Use of other methods limits the accuracy of the appraisal. He also pointed out that there are two options available today in existing law. In addition to an appraisal, the loaner has the option to use county data at no cost. **(Attachment 2)**

Kevin H. Conway, a Certified Residential appraiser in Kansas and Missouri and past president of the Kansas City Chapter of the Appraisal Institute, then testified. Mr. Conway said that **HB2735** would primarily affect B-C Lenders, which he identified as lenders whose clients have less than an "A" credit rating. Mr. Conway said that even though lenders have the option to use tax values instead of an appraisal, that value may be viewed as conservative and would not allow them to loan the maximum amount that they might on a property which has been appraised. Mr. Conway contended that it is critically important to protect the borrower from an inflated appraisal. **(Attachment 3)**

Richard Livingston, an Independent Fee Appraiser, announced that he was testifying in opposition to **HB2735**. He maintained that A.V.M.'s are good tools to aid an appraisal, but they are only one of many tools. An A.V.M. should not be equated to an appraisal. He said that during an extremely stable market an A.V.M. may give a good indication of value. However, during times of fluctuation, this tool may not be as accurate. He added that without an onsite inspection many adverse conditions with a property may remain unseen. He concluded by saying that you cannot make something more secure or prevent a fraudulent act by taking away the safeguards or reducing the requirements. **(Attachment 4)**

Kathy Olsen of the Kansas Banking Association said that Banks follow federal guidelines and regulations, so they are not affected by **HB2735**, even though they do make the same types of loans. (No Written Testimony.) Following questions, **Chairman Cox** closed the hearings on **HB2735** and announced that we would work the bill on Wednesday, February 15.

Representative Grant made a motion that minutes of the February 1st meeting be approved without objection. **Minutes are approved.**

Meeting was adjourned at 4:20 P.M. Next meeting will be February 15, 2006 at 3:30 P.M.

FINANCIAL INSTITUTIONS COMMITTEE GUEST LIST

DATE: February 8, 2006 _____

NAME	REPRESENTING
Cynthia Smith	SCL Health System
Matthew Lightner	HSBC
Doug Hayes	HSBC
Kevin H Coward	Kansas Appraisers
Richard Livingston	KANSAS APPRAISER
James Mattes	Coalition of Kansas Appraisers
Gene Lampe	SCL Health System
Garnie Ann Power	Capitol Strategies
Natalie Haag	Security Benefit
Tina Engstrom	ESWS
Ron Gehes	KAFS : KAMB
Bud Burke	CFSA
Sonya Allen	OSBC
Bill Young	KCUA
Tom [Signature]	OSBC

HOUSE BILL No. 2669

By Committee on Financial Institutions

1-20

House Financial Institutions
Feb. 8, 2006
Attachment 1

9 AN ACT relating to the withholding of wages; amending K.S.A. 44-319
10 and repealing the existing section.

concerning automatic enrollment retirement plans;

11
12 *Be it enacted by the Legislature of the State of Kansas:*

New Section 1. (see Attached)

13 Section 1. K.S.A. 44-319 is hereby amended to read as follows: 44-
14 319. (a) No employer may withhold, deduct or divert any portion of an
15 employee's wages unless: (1) The employer is required or empowered to
16 do so by state or federal law; (2) the deductions are for medical, surgical
17 or hospital care or service, without financial benefit to the employer, and
18 are openly, clearly and in due course recorded in the employer's books;
19 ~~or~~ (3) the employer has a signed authorization by the employee for de-
20 ductions for a lawful purpose accruing to the benefit of the employee; or
21 (4) the deductions are for an automatic enrollment in a 403(b) retirement
22 plan established by the employer.

Sec. 2.

23 (b) Nothing in this section shall be construed as prohibiting the with-
24 holding of amounts authorized in writing by the employee to be contrib-
25 uted by ~~him~~ the employee to charitable organizations; nor shall this section
26 prohibit deductions by check-off of dues to labor organizations or service
27 fees, where such is not otherwise prohibited by law.

contributions attributable to automatic enrollment, as defined in section 1, and amendments thereto, in a

28 Sec. 2. K.S.A. 44-319 is hereby repealed.
29 Sec. 3. This act shall take effect and be in force from and after its
30 publication in the statute book.

described in sections 401(k), 403(b), 408, 408A or 457 of the internal revenue code

New Section 1. (a) Any employer which provides automatic enrollment in an employee retirement plan described in sections 401(k) or 403(b) of the internal revenue code, or a governmental deferred compensation plan described in section 457 of the internal revenue code, or a payroll deduction IRA plan described in section 408 or 408A of the internal revenue code, shall be relieved of liability for the actual decisions made by the employer on behalf of any participating employee as to the default investment of contributions made for that employee to the plan or program provided that:

(1) The plan allows the participating employee at least quarterly opportunities to select investments for the employee's contributions between investment alternatives available under the plan;

(2) the employee is given notice of the investment decisions that will be made in the absence of participant direction, a description of all the investment alternatives available for employee investment direction under the plan and a brief description of procedures available for the employee to change investments; and

(3) the employee is given at least annual notice of the actual default investments made of contributions attributable to the employee.

(b) As used in this section, "automatic enrollment" means a plan provision under which the employee will have a specified contribution made to the plan equal to a compensation reduction that will be made for the employee unless the employee affirmatively elects no compensation reduction contributions or a compensation reduction contribution in another amount. The relief from liability of the employer under this section shall extend to any other plan official which actually makes the default investment decisions on behalf of participating employees.

(c) Nothing in this section shall modify any existing responsibility of employers or other plan officials for the selection of investment funds for participating employees.



Mattes Appraisal Company, Inc.

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My name is Jim Mattes, my wife and I own a small appraisal company in Shawnee. We have been in business for more than 20 years and do residential and small commercial appraisals in Eastern Kansas. Our small firm has over 60 years of combined appraisal practice. We have experienced all of the ups and downs of the real estate cycles since 1981. We have experienced the fallout of the S&L scandals and bailouts of those early years and now we are experiencing the fallout of the most recent mortgage fraud scandals. However, I contend that appraisers are not all of the blame for all of the scandals. Yes, there are unethical appraisers, who co-operate with other participants in these fraud schemes; but the majority of licensed and certified appraisers are good, honest and hard working members of our profession. As you know, Congress has worked on several laws about undue pressure put on appraisers by loan companies and realtors to make values. I say, that given some time, these laws can limit the amount of over-valued appraisals because without the pressure of "making a deal" from lenders, most licensed and certified appraisers do find accurate and honest values.

They do this by using all of the tools available to the profession, including AVM's, county data, and MLS data where available. The most important part of the appraisal process is the inspection of the property. The appraiser's interior inspection will find the obvious limits of the value for the property. The use of other methods limits the accuracy of the appraisal. I, in fact, sometimes do a drive-by appraisal where I am asked for various reasons not to inspect the property. In these cases, my caveats limit the reliability of the appraisal. But I still try to ascertain the data about the interior of the property from other sources. When this is impossible, my company policy is to turn down the assignment or try to convince the client that an interior inspection is required to give an accurate assessment of the value.

I would like to remind the committee that under UCCC regulations, which govern the companies supporting this Bill, they can use the County Assessors value of the subject as a basis for their loan. This is a free service, and should not cost the borrower any money.

I want to thank the committee for the opportunity to testify today and state my reasons why this bill would not be good for the community and the consumers of the State of Kansas. We don't need another "bail-out" and borrowers losing their homes because they are upside down in their values.

Respectfully submitted
James A. Mattes, SRA

02/06/06

My name is Kevin H. Conway. I am a State Certified Residential appraiser in Kansas and Missouri. I have the Senior Residential Appraiser designation from the Appraisal Institute. I am a past president of the Kansas City Chapter of the Appraisal Institute. I have been in the appraisal industry since 1983. I currently own a residential appraisal shop in Overland Park, Kansas, and most of the appraisals we perform are relocation appraisals, or for upper bracket properties. As far as I know we have no customers who would be affected by changes in HB 2735. Such lenders are commonly referred to as B-C Lenders.

I would like to address the assertion that the proposed changes to HP2735 would reduce the cost of appraisals for borrowers. In the State of Kansas, county assessed values for taxation are based upon market value. The current Uniform Consumer Credit Code regulations allow for the use of county tax records for a value of a home. This is free information which is available on line or by a phone call to the county. It appears that the B-C lenders do not like to use the tax amount because it is felt to be too conservative. They want to loan the maximum amount that they can justify on a property, which would cause the loan amount to exceed the market value of the property if an inaccurate AVM value is used.

Typically the B-C lenders do not like to use the tax amount because it is felt to be conservative. They want to loan the maximum amount that they can on a property.

The B-C lenders state that the cost of the Automated Valuation Model (AVM) will be less than a conventional appraisal. As I noted previously, they already have access to a free source of market value. If we look at the whole package of this industry of the total fees charged by these lenders an appraisal is second to the credit check on the lower side of fees. Typically these lenders charge above market interest rates, have a greater amount of processing fees, loan fees and points included in a loan which are all paid by the borrower, either in up front fees or they are rolled into the loan.

In this market the typical borrower is frequently in a lower to middle income bracket, and their home is their only asset. In my opinion it is critically important that such borrowers not receive an inflated appraisal, which is a very real possibility when using AVM product. It is well worth an interior inspection to protect this borrower from over extension and loss of a property

I would therefore like to say to the Committee, that in my professional judgment, the changes proposed in HB 2735 should be rejected. They do not reduce the cost to borrowers, and because of the inaccuracy of public AVM products, increase the risk of appraisal inflation and problems for unsuspecting borrowers.

Thank you for the opportunity of speaking with you. I would be happy to answer any questions you might have.

HOUSE FINANCIAL INSTITUTIONS COMMITTEE

REFERENCE: HB-2735

Thank you, Chairman Cox and members of the committee for allowing me this opportunity to address you.

My name is Richard Livingston, I am an Independent Fee Appraiser in the state of Kansas and I am here to oppose this amendment.

Automated Valuation Models are good tools used to support appraised values; however they are just one 'tool' not worthy of being classified as an appraisal. Just as you cannot build a house with just a 'hammer' you should not dissect the appraisal process down to one tool and expect the result to be "Complete and Reliable" .

During extremely stable markets this tool may give a good indication of value; However during times of fluxuation this tool may not be able to keep up and 2nd without the use of onsite inspections many adverse conditions with a property may remain unseen.

The AVMS are cheaper than a full appraisal report; however there are options available which can reduce these cost! The argument is that this bill would help safeguard against certain types of fraud is weak. Although I agree that we have bad appraisers in this state who are willing to ^{succumb} to pressure and report erroneous values; we also have Good appraisers who are being pushed to the side because of their unwillingness to fraudulate a report.

This bill increases the risk to homeowners; during the purchase process the buyer of a home will typically enlist the counsel of a professional who will guide them so they do not over invest. But with the advent of 125% mortgages and interest only loans many home owners are finding themselves upside down in their homes.

If this is allowed no one will be responsible for the value. Computer driven models are only as good as the database and the answer it gives is only as good as the search perimeters provided.

I work for many investors and government agencies investigating the Fraud involved in the loan process and I can assure this committee that the appraisers in these frauds are only one of many participants in the process. The agencies are working hard to convict all of the participants.

In conclusion I would say that you cannot make something more secure or prevent a fraudulent act by taking away the safeguards or reducing the requirements. We as a state and as professionals should police this issue...starting with the hiring of good qualified, ethical appraisers, Loan officers, Title companies, and Real Estate Agents

Richard E. Livingston
Olathe, Kansas