

## MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS COMMITTEE

The meeting was called to order by Chairman Ray Cox at 3:30 P.M. on February 15, 2006 in Room 527-S of the Capitol.

All members were present except:

Representative Steve Brunk - Excused

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:

Pam Scott, Executive Director of Kansas Funeral Directors and Embalmers Association

Sonya Allen, General Counsel for Office of State Banking Commissioner

Others attending:

See attached list.

Chairman Cox announced that the committee would work **HB 2735 - UCCC, definition of appraised value, independent valuation model.**

Representative Dilmore said that he had two amendments to offer. The first restricts Automatic Valuation Methods (AVM) to those methods validated by an independent credit rating agency. The second amendment adds a stipulation that the loan amount will not be disclosed to an appraiser or be a required input into AVM software. The first amendment will appear in UCCC code, while the second is of a more general nature and will appear in Real Estate Code. Revisor, Bruce Kinsey announced that he would have to adjust the language to put in "acceptable to the Commissioner" on lines 11 and 12. This statement was inadvertently eliminated on the balloon. (**Attachment 1, 2**)

Following questions, Representative Dilmore asked that the words, "such as Standard and Poors" be removed from the first amendment. He then made a motion that his amendments to **HB 2735** be approved as modified. Motion was seconded by Representative Burroughs. Motion passed.

Representative Dilmore made a motion that **HB 2735** be passed favorably from committee as amended. Motion was seconded by Representative Goico. Motion passed. Representative Hummerickhouse asked to go on record as having dissented.

Chairman Cox opened hearings on **HB 2824 - Eliminating the waiting requirement for pre-arranged funeral agreement accounts.**

Testifying was **Pam Scott**, Executive Director of Kansas Funeral Directors and Embalmers Association. Ms. Scott explained that this bill allows banks and other financial institutions who offer pre-paid funeral accounts to pay out the account without waiting for five days, which is the case under existing law. This law would put financial institutions on a level playing field with insurance companies who are not required to wait five days for account payout.

Ms. Scott added that acceptable proof of death and a verified statement setting forth that all terms and conditions of the agreement have been fully performed are provided to the financial institution, acting as protection to prevent funds from being wrongfully disbursed. (**Attachment 3**)

Following questions, Chairman Cox closed hearings on **HB 2824**, noted that there is no fiscal effect from this bill, and asked for motions. Representative Grant made a motion that **HB 2824** be favorably passed from committee. Representative George seconded the motion. Representative Goico suggested that the person carrying the bill should request that it go on consent calendar when introduced. Motion passed.

CONTINUATION SHEET

MINUTES OF THE House Financial Institutions Committee at 3:30 P.M. on February 15, 2006 in Room 527-S of the Capitol.

Chairman Cox opened hearings on **HB 2874 - Money Transmitter Act, regulation of.**

General Counsel for the State Banking Commissioner's Office, **Sonya Allen** testified that this bill amends the group of statutes governing the licensing and regulation of money transmitters in Kansas.

The bill modernizes existing statutes to ensure that new technological methods of money transaction are clearly covered by law. Several sections of existing law are altered. (**Attachment 4**)

Ms. Allen also reviewed written testimony (**Attachment 5**) provided by **Ezra Levine** on behalf of the Non-Bank Funds Transmitters Group, who emphasized the need for updated language in the statutes. He also requested an amendment to add the word "willfully" after the words, "Any person who..." in Section 9-152(a).

Following questions, Chairman Cox closed the hearing on **HB 2474** and invited motions. Representative Burroughs motioned that the word "willfully" be changed to "knowingly". Representative Dilmore seconded the motion. Motion passed. Representative Burroughs then moved that **HB2474** be passed favorably as amended, which was seconded by Representative Grant. Motion passed.

Representative Grant moved to accept without objection the February 8th minutes. Minutes were approved.

Meeting was Adjourned at 4:15 P.M. Next meeting is on call of the chair.



Balloon  
1

**HOUSE BILL No. 2735**

By Committee on Financial Institutions

1-26

House Financial  
Institutions  
Feb. 15, 2006  
Attachment 1

9 AN ACT amending the uniform consumer credit code; relating to certain  
10 definitions; amending K.S.A. 2005 Supp. 16a-1-301 and repealing the  
11 existing section.

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

13 Section 1. K.S.A. 2005 Supp. 16a-1-301 is hereby amended to read  
14 as follows: 16a-1-301. In addition to definitions appearing in subsequent  
15 articles, in K.S.A. 16a-1-101 through 16a-9-102, and amendments thereto:

16 (1) "Actuarial method" means the method of allocating payments  
17 made on a debt between the principal and the finance charge pursuant  
18 to which a payment is applied, assuming no delinquency charges or other  
19 additional charges are then due, first to the accumulated finance charge  
20 and then to the unpaid principal balance. When a finance charge is cal-  
21 culated in accordance with the actuarial method, the contract rate is ap-  
22 plied to the unpaid principal balance for the number of days the principal  
23 balance is unpaid. At the end of each computational period, or fractional  
24 computational period, the unpaid principal balance is increased by the  
25 amount of the finance charge earned during that period and is decreased  
26 by the total payment, if any, made during the period after the deduction  
27 of any delinquency charges or other additional charges due during the  
28 period.

29 (2) "Administrator" means the deputy commissioner of the consumer  
30 and mortgage lending division appointed by the bank commissioner pur-  
31 suant to K.S.A. 75-3135, and amendments thereto.

32 (3) "Agreement" means the bargain of the parties in fact as found in  
33 their language or by implication from other circumstances including  
34 course of dealing or usage of trade or course of performance.

35 (4) "Amount financed" means the net amount of credit provided to  
36 the consumer or on the consumer's behalf. The amount financed shall be  
37 calculated as provided in rules and regulations adopted by the adminis-  
38 trator pursuant to K.S.A. 16a-6-117, and amendments thereto.

39 (5) "Annual percentage rate" means the finance charge expressed as  
40 a yearly rate, as calculated in accordance with the actuarial method. The  
41 annual percentage rate shall be calculated as provided in rules and reg-  
42 ulations adopted by the administrator pursuant to K.S.A. 16a-6-117, and  
43

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NILE DILLMORE

1 amendments thereto.

2 (6) "Appraised value" means, with respect to any real estate at any  
3 time:

4 (a) The total appraised value of the real estate, as reflected in the  
5 most recent records of the tax assessor of the county in which the real  
6 estate is located; ~~or~~

7 (b) the fair market value of the real estate, as reflected in a written  
8 appraisal of the real estate performed by a Kansas licensed or certified  
9 appraiser within the past 12 months; ~~or~~

10 (c) *In the case of a nonpurchase money real estate transaction, the*  
11 *estimated market value as reflected in an independent valuation model*  
12 *acceptable to the administrator.*

13 (7) "Billing cycle" means the time interval between periodic billing  
14 statement dates.

15 (8) "Cash price" of goods, services, or an interest in land means the  
16 price at which they are offered for sale by the seller to cash buyers in the  
17 ordinary course of business and may include (a) the cash price of acces-  
18 sories or services related to the sale, such as delivery, installation, alter-  
19 ations, modifications, and improvements, and (b) taxes to the extent im-  
20 posed on a cash sale of the goods, services, or interest in land. The cash  
21 price stated by the seller to the buyer in a disclosure statement is pre-  
22 sumed to be the cash price.

23 (9) "Closed end credit" means a consumer loan or a consumer credit  
24 sale which is not incurred pursuant to open end credit.

25 (10) "Closing costs" with respect to a debt secured by an interest in  
26 land includes:

27 (a) The actual fees paid a public official or agency of the state or  
28 federal government, for filing, recording or releasing any instrument re-  
29 lating to the debt; and

30 (b) bona fide and reasonable expenses incurred by the lender in con-  
31 nection with the making, closing, disbursing, extending, readjusting or  
32 renewing the debt which are payable to third parties not related to the  
33 lender, except that reasonable fees for an appraisal made by the lender  
34 or related party are permissible.

35 (11) "Code mortgage rate" means the greater of:

36 (a) 12%; or

37 (b) the sum of:

38 (i) The yield on 30-year fixed rate conventional home mortgage loans  
39 committed for delivery within 61 to 90 days accepted under the federal  
40 home loan mortgage corporation's or any successor's daily offerings for  
41 sale on the last day on which commitments for such mortgages were  
42 received in the previous month; and

43 (ii) 5%.

determined through an automated valuation model. As used in this paragraph (c), "automated valuation model" means an automated system that is used to derive a property value through the use of publicly available property records and various analytic methodologies such as comparable sales prices, home characteristics and historical home price appreciations. Automated valuation models must be validated by an independent credit rating agency, such as Standard and Poor's. An automated valuation model provider shall not accept a property valuation assignment when the assignment itself is contingent upon the automated valuation model provider reporting a predetermined property valuation, or when the fee to be paid to the automated valuation model provider is contingent upon the property valuation reached or upon the consequences resulting from the property valuation assignment

# HOUSE BILL No. 2735

By Committee on Financial Institutions

1-26

*Balloon  
3*

*House Financial  
Institutions  
Feb. 15, 2006  
Attachment 2*

9 AN ACT ~~amending the uniform consumer credit code, relating to certain~~  
10 ~~institutions,~~ amending K.S.A. 2005 Supp. 16a-1-301 and repealing the  
11 existing section.  
12

relating to real estate loans; concerning the appraised value;

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

14 Section 1. K.S.A. 2005 Supp. 16a-1-301 is hereby amended to read  
15 as follows: 16a-1-301. In addition to definitions appearing in subsequent  
16 articles, in K.S.A. 16a-1-101 through 16a-9-102, and amendments thereto:

17 (1) "Actuarial method" means the method of allocating payments  
18 made on a debt between the principal and the finance charge pursuant  
19 to which a payment is applied, assuming no delinquency charges or other  
20 additional charges are then due, first to the accumulated finance charge  
21 and then to the unpaid principal balance. When a finance charge is cal-  
22 culated in accordance with the actuarial method, the contract rate is ap-  
23 plied to the unpaid principal balance for the number of days the principal  
24 balance is unpaid. At the end of each computational period, or fractional  
25 computational period, the unpaid principal balance is increased by the  
26 amount of the finance charge earned during that period and is decreased  
27 by the total payment, if any, made during the period after the deduction  
28 of any delinquency charges or other additional charges due during the  
29 period.

30 (2) "Administrator" means the deputy commissioner of the consumer  
31 and mortgage lending division appointed by the bank commissioner pur-  
32 suant to K.S.A. 75-3135, and amendments thereto.

33 (3) "Agreement" means the bargain of the parties in fact as found in  
34 their language or by implication from other circumstances including  
35 course of dealing or usage of trade or course of performance.

36 (4) "Amount financed" means the net amount of credit provided to  
37 the consumer or on the consumer's behalf. The amount financed shall be  
38 calculated as provided in rules and regulations adopted by the adminis-  
39 trator pursuant to K.S.A. 16a-6-117, and amendments thereto.

40 (5) "Annual percentage rate" means the finance charge expressed as  
41 a yearly rate, as calculated in accordance with the actuarial method. The  
42 annual percentage rate shall be calculated as provided in rules and reg-  
43 ulations adopted by the administrator pursuant to K.S.A. 16a-6-117, and

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1 (45) "Supervised lender" means a person authorized to make or take  
2 assignments of supervised loans, either under a license issued by the ad-  
3 ministrator (K.S.A. 16a-2-301 and amendments thereto) or as a super-  
4 vised financial organization (subsection (44) of K.S.A. 16a-1-301 and  
5 amendments thereto).

6 (46) "Supervised loan" means a consumer loan, including a loan made  
7 pursuant to open end credit, with respect to which the annual percentage  
8 rate exceeds 12%.

9 (47) "Written agreement" means an agreement such as a promissory  
10 note, contract or lease that is evidence of or relates to the indebtedness.  
11 A letter that merely confirms an oral agreement does not constitute a  
12 written agreement for purposes of this subsection unless signed by the  
13 person against whom enforcement is sought.

14 (48) "Written administrative interpretation" means any written com-  
15 munication from the consumer credit commissioner which is the official  
16 interpretation as so stated in said written communication by the consumer  
17 credit commissioner of the Kansas uniform consumer credit code and  
18 rules and regulations pertaining thereto.

19 ~~Sec. 2. K.S.A. 2005 Supp. 16a-1-301 is hereby repealed.~~

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

New Sec. 2. No lender, as defined in K.S.A. 58-2337, and amendments thereto, or any person acting on behalf of a lender shall disclose to an appraiser or other person engaged to determine the appraised value of real estate, the amount of a proposed real estate loan or the preferred or required value of any real estate intended to secure such loan.

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Testimony before the  
House Financial Institutions Committee  
By Pam Scott, Executive Director  
Kansas Funeral Directors and Embalmers Association

February 15, 2006

Chairman Cox and members of the committee, I thank you for the opportunity to appear before you today on behalf of the Kansas Funeral Directors and Embalmers Association (KFDA) in support of House Bill No. 2824. The KFDA represents a membership of over 300 Kansas funeral homes.

House Bill No. 2824, which was introduced at the request of the KFDA, would amend K.S.A. 16-304 to eliminate the waiting period before funds can be paid out of a pre-arranged funeral agreement account held by a bank, credit union, or savings and loan association.

Under current law, funds cannot be paid out of such an account until at least five days have expired from the date of death of the person for whose services the funds were paid. We are uncertain as to why the five day waiting period was originally included in the statute. The result today is that the waiting requirement makes it more difficult for financial institutions to compete with insurance companies to fund prearranged funeral agreements. Insurance companies often allow funds to be paid immediately to the funeral provider. Some companies even provide the funeral home with a checkbook to write themselves a check to cover the funeral costs funded by the insurance policy.

If the waiting period is removed, protections remain in place to assure funds are not wrongfully paid out of a pre-arranged funeral account. The statute would continue to require that acceptable proof of death and a verified statement setting forth that all of the terms and condition of the agreement have been fully performed have been provided to the financial institution.

The KFDA would just like to level the playing field between financial institution funded and insurance companies when it comes to funding prearranged funeral agreements.

Your support of House Bill No. 2824 would be appreciated. I would be happy to answer any questions you may have.





# KANSAS

KATHLEEN SEBELIUS, GOVERNOR

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

## HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS

February 15, 2006

Mr. Chairman and Members of the Committee:

My name is Sonya Allen, and I am the General Counsel for the Office of the State Bank Commissioner. I am testifying today in support of HB 2874.

HB 2874 amends the group of statutes governing the licensing and regulation of money transmitters in Kansas. Money transmitters include non-bank companies that perform funds transfers for consumers wanting to wire money from one location to another, and companies that engage in the sale of money orders, traveler's checks and stored value cards. They operate through agent locations. Those agents typically are businesses that offer money transmission services as an ancillary service. Grocery stores, convenience stores, and even banks are often agents for money transmitter companies. HB 2874 is designed to modernize the statutes that are currently on the books in order to ensure that new technological methods of transmission are clearly covered by the licensing requirements of the law. The OSBC currently licenses 34 money transmitters operating through approximately 3,345 agents located in Kansas. The OSBC is part of the Money Transmitter Regulator's Association ("MTRA"). Some of the changes in this bill address our supervision and examination authority and our ability to coordinate and share information with other states, many of whom are MTRA members. In drafting these changes, we consulted with other MTRA member states that have recently changed or updated their laws, and also reviewed two model acts, one authored by the MTRA and the other, the Uniform Money Services Act drafted in 2000 by the National Conference of Commissioners on Uniform State Laws. A section-by-section synopsis of HB 2874 follows:

**New Section 1. Names this group of statutes the "Kansas Money Transmitter Act".**

**New Section 2. Establishes licensing criteria.** The bill requires the commissioner to determine that the character and fitness of the applicant warrants a belief that the applicant will conduct the business competently, honestly and fairly. It also provides the commissioner, after notice and opportunity for a hearing, the ability to revoke a license.

**New Section 3. Introduces the concept of "permissible investments".** The bill requires that a money transmitter possess certain types of assets (defined in Section 5 of the bill) in an amount equal to the amount of outstanding payment instruments, and specifies that those assets are deemed to be held in trust for the benefit of the consumer holders of those payment instruments. This is a concept that has been adopted by several other states, particularly those who have recently updated or enacted money transmitter laws.

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**New Section 4. Sets out the parameters for the Commissioner to share information with other state and federal agencies having the supervisory or regulatory authority over money transmitters.** Many money transmitters operate on a nationwide or regional basis, and the ability for states to share examination information and to conduct joint examinations with other states and with the Federal government will reduce the burden on the licensees. Currently, the OSBC is involved in the development and implementation of a core examination report that all states could use to conduct joint examinations. Besides state licensing requirements, all money transmitters are subject to inspection and regulation by the Internal Revenue Service for compliance with provisions in the Bank Secrecy Act which are designed to detect and deter money laundering. With respect to the IRS, a nationwide Memorandum of Understanding has been drafted concerning sharing of information and examination functions between the states and the IRS.

**Section 5. Includes the list of defined terms to be used in the act.** Key changes include broadening the definition of "money transmission" and adding a broad definition of "payment instrument" to encompass new electronic technologies for moving money from one place to another, such as Internet funds transmission and stored value cards.

**Section 6. Includes the "nuts and bolts" requirements for licensing.** An application must be submitted to the commissioner for review. Agents must be identified. The transmitter must provide cash or securities, or post a bond in the amount of \$200,000. This section also authorizes the commissioner to examine licensees for compliance with state and federal law.

**Section 7. Provide authority for licensees to operate through the use of agents, and requires a list of those agents to be provided to the OSBC annually.** At this time, we issue licenses on an annual basis, so the list would be provided at the time of license renewal.

**Section 8. Provides exemptions from licensing for federally insured financial institutions and the government.**

**Section 9. Makes violations of the act a felony.** Engaging in a money transmitter business without a license is also a felony crime at the federal level.

**Section 10. Sets out the intent of the act.** Subsection (b) was added to state the purpose and scope of the law: to protect Kansas consumers who use money transmitter services regardless of whether or not the transmitter has a physical presence in the state.

I would respectfully request your favorable consideration of HB 2874, and would be happy to answer any questions about the bill.

February 13, 2006

Honorable Ray Cox  
Chairman, House Financial Institutions Committee  
Kansas State Capitol  
300 SW 10<sup>th</sup> Street, Room 431-N  
Topeka, KS 66612

**Re: Comments of Non-Bank Funds Transmitters Group in  
Support of HB 2874**

Dear Chairman Cox:

These comments are filed by the Non-Bank Funds Transmitters Group (“Group”) which is composed of the national issuers of money orders, travelers checks and drafts and transmitters of money -- Western Union Financial Services, Inc., MoneyGram International, Travelex Americas, American Express Travel Related Services, RIA Financial Services, Comdata Network, Inc. and Sigue Corporation.

The Group supports HB 2874 because, if enacted, it will modernize the existing Kansas Transmission of Money Law to deal with recent technological changes in money transmission, provide significant additional consumer protection, and strengthen the penalties for failure to be licensed.

The Group has supported the enactment of modern safety and soundness laws applicable to non-bank money transmission in many states. The transmission of funds by non-bank entities has increased dramatically and licensing laws should be broad enough to unambiguously encompass money transmission conducted by non-banks through all means -- even new technologies. HB 2874 would accomplish this by clarifying the scope of the existing law by adopting the definition of “money transmission” and “payment instrument” utilized in virtually all of the state licensing laws adopted in the last ten years.

Of significance in the area of consumer protection, HB 2874 contains a requirement that licensees, as in over twenty other states, maintain permissible

investments, i.e., a pool of assets equal to a licensee's outstanding obligations to its customers. These assets, of a type specified in HB 2874, are deemed to be held by operation of law, in a trust for the benefit of customers in the event of the bankruptcy of a licensee.

Increasingly, state banking regulators are cooperating through the Money Transmitters Regulators Association ("MTRA"), the association of state banking departments which supervises non-bank money transmitters, in joint examinations of licensees. HB 2874 provides specific authority for the Commissioner to conduct joint supervisory examinations which are both cost effective for the regulated industry and the regulators.

Recently, the U.S. Treasury Department has enlisted the aid of the states in examining non-bank money transmitters for compliance with the anti-money laundering recordkeeping and reporting requirements of the U.S. Bank Secrecy Act. HB 2874 will give the Commissioner specific authority to verify a licensee's compliance with such laws and regulations. Finally, under 18 U.S.C. § 1960, it is a federal felony to operate a money transmission business without the required state license. Congress, in the USA Patriot Act, amended 18 U.S.C. § 1960 to facilitate prosecution of unlicensed entities because it was believed that unlicensed money transmitters could be conduits for illicit transmission of funds including those destined for terrorist groups. It is important, therefore, that the penalty for unlicensed activities or willful violations of the act be a felony. Section 9-512(a) should be amended to add the word "willfully" after the words, "Any person who . . . ."

For the reasons stated above, the Group respectfully requests that the Committee approve HB 2874. The bill is in the public interest and does not place an inequitable burden on the regulated industry.

Sincerely,

Ezra C. Levine

