

MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS COMMITTEE

The meeting was called to order by Chairman Anthony Brown at 3:30 p.m. on March 11, 2009, in Room 784 of the Docking State Office Building.

All members were present except:

Robert Olson - Excused
Cindy Neighbors - Absent

Committee staff present:

Bruce Kinzie, Office of the Revisor of Statutes
Sean Ostrow, Office of the Revisor of Statutes
Melissa Calderwood, Kansas Legislative Research Department
Terri Weber, Kansas Legislative Research Department
Joyce Bishop, Committee Assistant

Conferees appearing before the Committee:

John Smith, Administrator, Kansas Department of Credit Unions
Haley Davee, Director of State Legislative Affairs, Kansas Credit Union Association
Doug Wareham, Sr. Vice President, Kansas Banker's Association
Leslie Kaufman, Executive Director, , Kansas Cooperative Council

Others attending:

See attached list.

Chairperson Brown opened the hearing on **SB 72 - Credit unions, member of.**

John Smith, Administrator, Kansas Department of Credit Unions, presented written testimony only in support of **SB 72 (Attachment 1).**

Haley Davee, Director of State Legislative Affairs, Kansas Credit Union Association, presented testimony in support of **SB 72 (Attachment 2).** Haley also presented a proposed amendment to **SB 72 (Attachment 3).**

Leslie Kaufman, Executive Director, Kansas Cooperative Council, presented written testimony in support of **SB 72 (Attachment 4)**

Doug Wareham, Sr. Vice President, Kansas Banker's Association, presented neutral testimony on behalf of **SB 72 (Attachment 5).**

Chairperson Brown closed the hearing on **SB 72.**

Chairperson Brown opened the floor for discussion of **SB 163 - Consumer protection, mortgage trigger lead.**

Melissa Calderwood presented information on the background of **SB 163 (Attachment 6).**

Mario Goico made a motion to pass SB 163 favorably from committee. Phil Hermanson seconded the motion.

Niles Dillmore presented an amendment to SB 163 (Attachment 7). Niles then made a substitute motion to amend SB 163. Dale Swenson seconded the motion. The motion passed unanimously.

Mario Goico made a motion to pass SB 163 as amended favorably from committee. Phil Hermanson seconded the motion. The motion passed unanimously.

Chairperson Brown opened the floor for discussion of **SB 240 - Mortgages, the regulation of.**

Melissa Calderwood presented background information on **SB 240 (Attachment 8).**

CONTINUATION SHEET

Minutes of the House Financial Institutions Committee at 3:30 p.m. on March 11, 2009, in Room 784 of the Docking State Office Building.

Niles Dillmore made a motion to pass **SB 240** favorably from committee. Cindy Neighbors seconded the motion. The motion passed unanimously.

Niles Dillmore made a motion to approve the committee minutes from March 2nd, 4th and 9th. Mario Goico seconded the motion. The motion passed unanimously.

The next meeting is scheduled for March 16, 2009.

The meeting was adjourned at 4:15p.m.

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS

Statement in support of Senate Bill 72 as amended by the Senate

I support Senate Bill 72 as amended by the Senate and respectfully request favorable action by the House Financial Institutions Committee to move the bill forward for consideration by the House of Representatives.

Senate Bill 72 is an amendment to K.S.A. 2008 Supp. 17-2205 commonly referred to as the "field of membership statute". The bill corrects oversights found during our implementation of 2008 legislation (2008 Senate Bill 535). The correction clarifies that family members of eligible members and others within the field of membership can join a credit union; also language is included in the amendment specifying a credit union branch, which has been allowed by 2008 Senate Bill 535 to continue in operation even though not in a reconfigured geographic "field of membership", can be re-established if the original branch is unable to continue to operate for a specified list of conditions.

The Kansas Credit Union Association (KCUA) requested introduction of Senate Bill 72. The Kansas Department of Credit Unions (KDCU) was consulted by KCUA in constructing the language in Senate Bill 72.



John P. Smith, Administrator
Kansas Department of Credit Unions



KANSAS CREDIT UNION ASSOCIATION

To: House Financial Institutions Committee

**From: Haley DaVee, Director of State Legislative & Public Affairs
Kansas Credit Union Association**

Date: Wednesday, March 11, 2009

Re: Support of Senate Bill 72

The Kansas Credit Union Association, on behalf of the 86 state-chartered and 23 federally-chartered Kansas credit unions, appreciates this opportunity to testify in support of Senate Bill 72. SB 72 would clarify some provisions of the credit union membership statute that were changed last year with the passage of SB 535.

Background

During the 2008 legislative session, there was an issue that came before the House Insurance and Financial Institutions Committee regarding lack of clarity and transparency in the credit union statute—particularly the field of membership provisions. Kansas credit unions were asked by a number of legislators from both chambers and from both sides of the aisle to sit down with the banking industry to find a compromise that would resolve the questions and provide a long term resolution to the issue.

The compromise language that the industries jointly agreed to was amended into SB 535 and the bill passed both chambers by a large majority. KCUA believed that both goals were achieved, while still providing credit unions a distinct state charter and flexibility to continue serving their members.

The law went into effect July 1, 2008 and in the ensuing months it became clear that the language of SB 535 did not fully capture the “intent” of the agreed-upon compromise between the banking and credit union industries. Following the process requested of us last session, KCUA has worked closely with the banking associations to clarify the statute while remaining within the intent of last year’s compromise.

Components of SB 72

There are two areas that KCUA is proposing clarification within SB 72—membership eligibility and the replacement of grandfathered branches.

1. **Membership Eligibility:** Membership eligibility is who, within the field of membership, can belong to a credit union. SB 535 grandfathered membership components that credit unions had already been serving. A question has been raised;

however, that because these components were placed in the grandfathering sections of the statute, versus the prospective sections, that credit union may not be able to continue to serve some portions of their membership going forward.

The majority of these components had been allowed under the credit unions bylaws, industry standards, and the authority of the regulator to interpret membership eligibility. The wording in SB 72 is similar to the membership eligibility language utilized by federal credit unions. SB 72 will codify industry practices that we intended to include and believed were covered under SB 535. It is our goal to make sure that any credit union membership eligibility practices are clearly specified in statute to prevent any misinterpretation.

2. **Replacement of Grandfathered Branches:** SB 535 allowed credit unions to grandfather any branches or continue with overt actions they had taken to construct branches and not count them towards their population limitations. These credit unions cannot build additional branches but they can continue to operate in the counties where they are located. SB 72 provides a safeguard that if something outside of the credit union's control happened to those branches that they would be able to build a replacement branch in that county.

Because the language in SB 72 and the amendment to the volunteer section have been carefully crafted and both industries are in agreement on the language and amendment, KCUA requests that committee recommend the bill as favorable for passage with no additional amendments.

Thank you again for the opportunity to appear in support of SB 72. I would be pleased to answer any questions at the appropriate time.

SENATE BILL No. 72

By Committee on Financial Institutions and Insurance

1-22

AN ACT concerning credit unions; pertaining to membership of a credit union; amending K.S.A. 2008 Supp. 17-2205 and repealing the existing section.

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

Section 1. K.S.A. 2008 Supp. 17-2205 is hereby amended to read as follows: 17-2205. (a) (1) The membership shall consist of the organizers and such persons, societies, associations, copartnerships and corporations as have been duly elected to membership and have subscribed to one or more shares and have paid for the same, and have complied with such other requirements as the articles of incorporation may contain.

(2) Once a person becomes a member of the credit union, such person may remain a member of the credit union until the person chooses to withdraw or is expelled from the membership of the credit union.

(3) Members of a credit union also may include the following:

(A) The spouse of any person who died while such person was within the field of membership of the credit union;

(B) any employee of the credit union;

(C) any person who retired from any qualified employment group within the field of membership;

(D) ~~any volunteer of an organization or employee group~~ **person of a volunteer group recognized by the management of the association or employee group within the field of membership;**

(E) any member of such person's immediate family or household;

(F) any organization whose membership consists of persons within the field of membership; and

(G) any corporate or other legal entity **within the field of membership as identified in the charter, articles of incorporation or bylaws of the credit union.**

(4) For the purposes of subparagraph (E) of paragraph (3):

(A) Except as provided in subparagraph (B), the term "immediate family or household" shall mean spouse, parent, stepparent, grandparent, child, stepchild, sibling, grandchild or former spouse **and persons living in the same residence maintaining a single economic unit with**

On page 1, line 32, after "membership" and before the ";" add

(1) who has completed a training program offered by the volunteer group to further its goals or (2) who serves on the board of the volunteer group or (3) who serves as an officer of the volunteer group.



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House Committee on Financial Institutions

March 11, 2009
Topeka, Kansas

SB 72 - clarifications pertaining to credit union fields of membership.

Chairman Brown and members of the committee, thank you for the opportunity to comment on SB 72. I am Leslie Kaufman, Executive Director for the Kansas Cooperative Council. The Kansas Cooperative Council represents all forms of cooperative businesses across the state -- agricultural, utility, credit, financial and consumer cooperatives. Cooperative enterprises operate in every county across Kansas. Credit unions, as cooperatively structured financial entities, comprise an important segment of the Council's membership.

The KCC supports the ability for cooperatively owned financial organizations, which are regulated, to grow and modify as their member-owners needs change. As you all know, extensive debate regarding credit union fields of membership took place last year, culminating in the passage of legislation. The bill that was drafted last year was extensive, with many sections. As the legislation was reviewed during the interim, it seemed additional clarification was warranted.

The bill before you today, SB 72, as we understand it, will provide additional clarification to the measure passed last year. And, as we understand the matter, it follows with the intent of what was thought to be in last year's package. As such, we ask you to look favorably on SB 72.

Thank you for allowing us to comment on SB 72. Please feel free to contact me if you have any questions regarding our testimony or position on the bill.

Leslie Kaufman, Executive Director
Kansas Cooperative Council
785-220-4068

The Mission of the Kansas Cooperative Council is to promote, support and advance the interests and understanding of agricultural, utility, credit and consumer cooperatives and their members through legislation and regulatory efforts, education and public relations.

HOUSE FINANCIAL INSTITUTIONS
DATE: 3-11-2009
ATTACHMENT: 4



Date: March 11, 2009
To: House Financial Institutions Committee
From: Doug Wareham, Senior Vice President-Government Relations
Re: Senate Bill 72 – Credit Union Fields of Membership

Chairman Brown and members of the Senate Financial Institutions & Insurance Committee, I am Doug Wareham appearing on behalf of the Kansas Bankers Association (KBA). KBA's membership includes 347 Kansas banks, which operate more than 1,300 banking facilities in 440 towns and cities across the state. Thank you for the opportunity to provide comments on S.B. 72.

For the record, our official position on this bill is neutral, however, we want to inform the committee that we have met on numerous occasions with staff of the Kansas Credit Union Association as they have attempted to resolve a couple of concerns that have surfaced since the adoption of Substitute for Senate Bill 535 last year. We have reviewed the language contained in S.B. 72 and we have no objections to what is being proposed. Simply put, we have agreed with the language contained in S.B. 72 which addresses eligibility requirements as they relate to a credit unions' membership and S.B. 72 also clarifies circumstances where a grandfathered credit union branch is allowed to relocate.

Once again, we are in agreement with the language contained in this proposal and we thank you for the opportunity to share our position. I am happy to respond to any questions you might have.

February 6, 2009

The Honorable Ruth Teichman, Chairperson
Senate Committee on Financial Institutions and Insurance
Statehouse, Room 241-E
Topeka, Kansas 66612

Dear Senator Teichman:

SUBJECT: Fiscal Note for SB 163 by Senate Committee on Financial Institutions and Insurance

In accordance with KSA 75-3715a, the following fiscal note concerning SB 163 is respectfully submitted to your committee.

SB 163 would amend the Consumer Protection Act to include the definitions of "lender" and "mortgage trigger lead." A "mortgage trigger lead" is defined as a consumer report obtained under the Federal Fair Credit Reporting Act where the issuance of the report is triggered by an inquiry made with a consumer reporting agency in response to an application for credit. In addition, SB 163 would require that in written or oral solicitations for products or services based on mortgage trigger leads, the solicitation must clearly state that the solicitor is not affiliated with the lender or broker with which the consumer initially applied, and that the solicitation was based on personal information about the consumer that was purchased, directly or indirectly, from a consumer reporting agency without the knowledge of the lender or broker with which the consumer initially applied. Failure to comply with this requirement would be considered a deceptive act or practice under the Kansas Consumer Protection Act.

SB 163 would have no fiscal effect on state operations.

Sincerely,



Duane A. Goossen
Director of the Budget

cc: Sheila Head, Attorney General's Office
John P. Smith, Credit Unions
Linda Bundy, Banking

SESSION OF 2009

SUPPLEMENTAL NOTE ON SENATE BILL NO. 163

As Amended by Senate Committee on
Financial Institutions and Insurance

Brief*

SB 163, as amended, would amend the Kansas Consumer Protection Act (KCPA) to establish definitions for the terms, "lender" and "mortgage trigger lead" and to establish a deceptive act or practice under the Act. A "mortgage trigger lead" would mean a consumer report obtained under the federal Fair Credit Reporting Act where the issuance of the report is triggered by an inquiry made with a consumer reporting agency in response to an application for credit.

The bill also would require that in oral and written solicitations for products or services based on a mortgage trigger lead, the solicitation must clearly and conspicuously state that the solicitor is not affiliated with the lender or broker with which the customer initially applied, and that the solicitation is based on personal information about the consumer that was purchased, directly or indirectly, from a consumer reporting agency without the knowledge or permission of the lender or broker with which the consumer initially applied. Further requirements for written solicitations would define "clear and conspicuous" to include legible type in contrast by typography, layout or color with other printing on the first page of correspondence. Additionally, any solicitor making either an oral or written solicitation would be required to be in compliance with the provisions of the Kansas Mortgage Business Act and any other law or regulation. Failure to comply with this requirement would be considered a deceptive act or practice under the KCPA.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

The bill also would specify that any consumer report on an applicant obtained by a lender with whom the applicant has initially applied for credit or who holds or services an existing extension of credit of the applicant who is the subject of the report.

Background

The bill was introduced at the request of the Heartland Community Bankers Association whose representative indicated that the bill requires greater disclosures to consumers by users of mortgage trigger leads and rather than providing prohibitions, attempts to ensure that consumers are educated about who is making an unsolicited offer of mortgage credit. Written testimony in support of the bill was provided by the Kansas Bankers Association and the Kansas Credit Union Association. There were no opponents present at the time of the Committee hearing.

The Senate Committee on Financial Institutions and Insurance recommended amendments to create an exclusion in the definition of mortgage trigger lead and to create separate requirements for written and oral solicitations for products and services based on a mortgage trigger lead.

The fiscal note prepared by the Division of the Budget on the original bill states that the bill would have no fiscal effect on state operations.

03/11
Adapted

1 *sumer initially applied and that the solicitation is based on personal*
2 *information about the consumer that was purchased, directly or*
3 *indirectly, from a consumer reporting agency without the knowl-*
4 *edge or permission of the lender or broker with which the consumer*
5 *initially applied. Clear and conspicuous shall include legible type*
6 *in contrast by typography, layout or color with other printing on*
7 *the first page of the correspondence; and*

8 (C) ~~if applicable, any~~ *solicitor under clause (A) or (B) shall be*
9 *in compliance with the provisions of the Kansas mortgage business*
10 *act and any other law or regulation.*

~~Any~~

, unless otherwise exempted from such act,

11 Sec. 3. K.S.A. 50-624 and 50-626 are hereby repealed.

12 Sec. 4. This act shall take effect and be in force from and after its
13 publication in the statute book.

HOUSE FINANCIAL INSTITUTIONS
DATE: 3-11-2009
ATTACHMENT: 7

February 12, 2009

The Honorable Ruth Teichman, Chairperson
Senate Committee on Financial Institutions and Insurance
Statehouse, Room 241-E
Topeka, Kansas 66612

Dear Senator Teichman:

SUBJECT: Fiscal Note for SB 240 by Senate Committee on Financial Institutions and Insurance

In accordance with KSA 75-3715a, the following fiscal note concerning SB 240 is respectfully submitted to your committee.

SB 240 would amend both the Kansas Uniform Consumer Credit Code (UCCC) and the Kansas Mortgage Business Act relating to mortgages and mortgage loan originators. The bill would bring these state laws into compliance with recently enacted federal legislation under sections of the Housing and Economic Recovery Act of 2008, commonly known as the SAFE Act. The bill would also prohibit a loan processor or underwriter from advertising that they perform the duties of a mortgage loan administrator. The bill would require the Office of the State Bank Commissioner to continue to regulate this industry and to participate in the Nationwide Mortgage Licensing System and Registry. The Nationwide Mortgage Licensing System and Registry is a licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators. The bill would allow the Office of the State Bank Commissioner to assess the cost of the administration of the Kansas Mortgage Business Act in a similar way as current law permits under the UCCC. All mortgage loan originators would be required to comply with additional reporting and other requirements.

The Office of the State Bank Commissioner indicates SB 240 would result in an increase in the number of loan originators that would be registered with the agency. However, the agency is unable to provide an estimate on the additional revenue and expenditures that would be generated. The agency does not anticipate any additional staff would be required as a result of this bill. Any fiscal effect associated with SB 240 is not reflected in *The FY 2010 Governor's Budget Report*.

Sincerely,



Duane A. Goossen
Director of the Budget

cc: Linda Bundy, Banking

SESSION OF 2009

SUPPLEMENTAL NOTE ON SENATE BILL NO. 240

As Recommended by Senate Committee on
Financial Institutions and Insurance

Brief*

SB 240 would enact new law and amend the Uniform Consumer Credit Code (UCCC) and the Kansas Mortgage Business Act (KMBA) to amend and establish standards for the regulation of mortgages and mortgage loan originators. Among the amendments in the bill, the bill would:

- **Computation of Time (UCCC).** Specify that any period of time included in provisions of the UCCC would be calculated in calendar days.
- **Mortgage Loan Originators, Powers of the Administrator and Prohibited Practices (UCCC).** Allow the Administrator to deny, revoke, or suspend the registration of a residential mortgage loan originator under certain findings, including if the applicant or registrant has been convicted of any crime involving fraud, dishonesty or deceit, or the applicant or registrant has not completed all requirements for registration or renewal.

The Act also would specify prohibited practices for licensees and registrants including: delaying the closing of a loan for the purpose of increasing interest, costs, fees or charges payable by the borrower and engaging in any fraudulent lending or underwriting practices.

- **Definitions (KMBA).** Amend the definition of "loan originator" and add definitions for "loan processor or underwriter", "clerical or support duties" as it applies to

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

loan processors and underwriters, "Nationwide Mortgage Licensing System and Registry", and "unique identifier."

- **Participation Requirements, Nationwide Mortgage Licensing System and Registry (KMBA).** Require mortgage business involving loan origination, in addition to registration, to maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry (if operational at the time of registration).
- **Licensure, Mortgage Business (KMBA).** Amend required licensure from biennial to annual.
- **Criteria for Denial of Applicant for Registration (KMBA and UCCC).** Specify criteria in which the Commissioner would not be allowed to grant a registration to loan originators (includes felony convictions, license or registration revocation in other jurisdictions). Similar amendments would be made to the UCCC to specify application criteria for the Administrator.
- **Regulation By the Commissioner—Rules and Regulations; Fees; Education; and Fingerprinting (KMBA).** Permit the Commissioner to adopt rules and regulations to implement the requirements of the S.A.F.E. Act. Enhance investigative authority to include controlling access to documents and records of the licensee or registrant under examination or investigation. The Commissioner is required to establish fees associated with administration of the Act with the charges to be based on the licensee's loan volume. For education – specify prelicensing education hours (applicants) and completion of continuing education (CE) hours on an annual basis (previously biannual for CE). For fingerprinting – Commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agency.

Additional provisions would be added allow the Commissioner to use the registry for requesting and distributing information regarding loan originators and

mortgage companies, for collecting and transacting fees, for reporting violations of the law and enforcement activities, and for filing reports.

- **Surety Requirements (KMBA).** Amend surety standards and permit the Commissioner to establish an amount (not less than \$50,000 for *bona fide* office; \$100,000 for applicant or licensee who does not maintain a *bona fide* office) in rules and regulations; specify terms of the bond.
- **Prohibited Practices, Amendments (KMBA).** Specify additional prohibited practices in the Act to include the solicitation, advertisement or entering into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of the solicitation, advertisement, or contract.
- **Recordkeeping (KMBA).** Allow the Commissioner to adopt rules and regulations to specify a records retention period. Require licensees to establish security procedures for records and arrange for preservation of those records.
- **Mortgage Transactions, Journal Entries (KMBA).** Require inclusion of the name of the loan originator and recording of any compensation or other fees.
- **Definitions (UCCC).** Add definitions for “residential mortgage loan originator”, “loan processor or underwriter”, “Nationwide Mortgage Licensing System and Registry”, “residential mortgage loan”, “registrant”, and “unique identifier.”

Additionally, the bill would make similar amendments to the UCCC to include prohibited acts and define the practices and registration of mortgage loan originators (as outlined above for requirements applied to the Kansas Mortgage Business Act).

Background

The bill was introduced at the request of the Office of the State Bank Commissioner whose representative indicated that Congress recently enacted the Housing and Economic Recovery Act of 2008 with provisions in Title V of the Act (the S.A.F.E. Mortgage Licensing Act) containing certain federal requirements applicable to the state regulation of mortgage loan originators. The central goal of the S.A.F.E. Act, the representative noted, is to facilitate mortgage regulation by implementing a nationwide mortgage loan originator registry to encourage uniform applications and reporting requirements for loan originators. The majority of the amendments in the bill are designed to bring current state law into compliance with the provisions of the Act (federal law requires states to implement these requirements by July 31, 2009). Proponents of the bill included two representatives of the Kansas Association of Mortgage Professionals and the Kansas Association of Financial Services. The Kansas Bankers Association provided written testimony in support of the bill. The Kansas Manufactured Housing Association testified as a neutral party and requested an amendment to clarify that manufactured housing retailers were not within the scope of persons who are "loan originators" under the federal S.A.F.E. Act.

The fiscal note prepared by the Division of the Budget states that the Office of the State Bank Commissioner indicated the bill would result in an increase in the number of loan originators that would be registered with the agency. However, the note continues, the agency is unable to provide an estimate on the additional revenue and expenditures that would be generated. The agency does not anticipate any additional staff would be required as a result of this bill. Any fiscal effect associated with the bill is not reflected in *The FY 2010 Governor's Budget Report*.