

Approved: February 8, 1993
Date

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson William Bryant at 3:30 p.m. on February 2, 1993 in Room 527-S of the Capitol.

All members were present except:

Committee staff present: William Wolff, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Nikki Feuerborn, Committee Secretary

Conferees appearing before the committee:

Kevin C. Glendening, Assistant Deputy Commissioner, State Banking
Bill Caton, Kansas Consumer Credit Department

Hearing on HB 2081:

Kevin Glendening, Assistant Deputy Commissioner of the State Banking Department, explained that this bill would make all banks merging, consolidating, or transferring assets with or to a state chartered bank within the state of Kansas would be subject to the oversight authority of the State Banking Department (Attachment 1). The state chartered bank involved in the transaction is liable for the fee of \$2000 which is the basic charge. If audits or on-site examinations are required, additional fees are charged. National banks have not fallen under this authority but will now if they have transactions with state chartered banks. This amendment would give authority to the State Banking Department to charge fees and oversee mergers, consolidations, and the transfer of assets between existing banks and private corporations.

Hearing on HB 2077:

Kevin Glendening, Assistant Deputy Commissioner of the State Banking Department, explained that the bill would permit one limited exception to the existing requirement that individuals who serve as directors own a minimum amount of stock, or as, it is often referred to, "qualifying shares" in the bank/trust company or its parent holding company (Attachment 2). This arrangement must have the prior approval of the Insurance Commissioner. A situation has developed in a small problem bank in which two directors went off the board and the next two directors could not pay their portion for the "qualifying shares" nor the assessment. This would only be an interim step until the bank could merge, recapitalize, or placed in receivership. The bill does not include a time period for this interim arrangement. By leaving the directors in place the state is not liable, as the directors are liable as being stewards of the bank. It was suggested that additional language be included such as an amendment that directors could serve in this capacity until the bank was put in receivership. Should the bank become solvent, then the directors who did not own a minimum amount of stock would be replaced by qualifying directors.

Bill Caton, Kansas Consumer Credit Department, requested four legislative changes that would affect the Kansas Uniform Consumer Credit Code (Attachment 3).

1. Change in definition of credit card.
2. Discontinue the use of pre-computed contracts for consumer credit transactions (adding interest to the front of the loan and not calculating on each payment).
3. Change in formula determining maximum amounts used in tiered interest rate structure.
4. Change to address rates, fees, disclosure and conduct on small, short term loans. This is particularly needed to protect the poor who use "pay day loans."

Representative King moved that all four requests be introduced into legislation. Representative Neufeld seconded the motion. Motion. carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,
Room 527-S Statehouse, at 3:30 p.m. on February 2, 1993.

Representative Cornfield moved that the minutes of the January 25, 26, and 27 minutes be approved.
Representative Correll seconded the motion. Motion carried.

The meeting was adjourned at 4:30 p.m. The next meeting is scheduled for February 3, 1993.

GUEST LIST

COMMITTEE:

DATE:

Financial Institutions
Insurance

Feb. 2

NAME (PLEASE PRINT)

ADDRESS:

COMPANY/ORGANIZATION

[illegible]

HB 2081

House Bill 2081 amends the language of K.S.A. 9-1724 to clarify that the Office of the Bank Commissioner, as the primary regulator of state chartered banks, does have oversight authority in any merger, consolidation, or transfer of assets and liabilities in which a state chartered bank is involved. This change in the wording of the statute would be consistent with the actual policies and practices our office has carried out for many years.

In essence, the amendment would clarify that whenever a state chartered bank seeks to be a party to any of the transactions outlined in the statute, the Bank Commissioner has the authority to approve or deny the transaction based on whether or not it complies with the criteria contained in the statute, regardless of whether the other party to the transaction is another state chartered bank, a national bank, savings and loan, or any other entity.

That concludes my comments Mr. Chairman, I will be happy to answer any questions.

*House Financial Institutions
& Insurance
Attachment 1
February 3, 1993*

TESTIMONY BEFORE THE
COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

KEVIN C. GLENDENING
ASSISTANT DEPUTY COMMISSIONER

HB 2077

House Bill 2077 would amend K.S.A. 9-1117 to permit one limited exception to the existing requirement that individuals who serve as directors own a minimum amount of stock or, as it is often referred to, "qualifying shares" in the bank/trust company or its parent holding company.

In certain problem bank situation, the bank's capital may deteriorate to a point where, by law, the stockholders of that institution must be assessed some certain amount in an effort to raise additional capital. Those stockholders who do not pay their portion of the assessment forfeit their ownership of the stock.

The exception contained in HB 2077 would be that, if in a problem bank situation as I described, a director fails to pay their stock assessment and thereby loses their "qualifying shares", that person may continue to serve as a director provided they have received the prior approval of the Bank Commissioner.

If in the Bank Commissioner's determination, a person did not cause or contribute to the institutions's problem condition, allowing that person to continue in their capacity as director could provide continuity and be a positive factor in either restoring the institution to a sound position or facilitating its sale or liquidation. Permitting the board of directors to continue

Kevin C. Glending
Attachment 2
Feb. 3, 1933

to function in these situations may also reduce the urgency with which our office must move to close an institution.

This concludes my comments, and I would ask for the committee's favorable consideration on HB 2077. Mr. Chairman I will be happy to answer any questions.



KANSAS

Office of CONSUMER CREDIT COMMISSIONER

Joan Finney
Governor

Wm. F. Caton
Commissioner

INTRODUCTION OF LEGISLATION REQUESTS
CONCERNING THE KANSAS UNIFORM CONSUMER CREDIT CODE

BY BILL CATON, CONSUMER CREDIT COMMISSIONER
FEBRUARY 2, 1993

The Office of the Consumer Credit Commissioner requests consideration of four legislative changes that would affect the Kansas Uniform Consumer Credit Code. The following pages are brief proposed changes to the code.

1. Change in definition of "credit card" - the word "arrangement" in the present definition has been a point of considerable confusion in recent months. This change would dispel any confusion of the definition.
2. Discontinue the use of pre-computed contracts for consumer credit transactions - adding interest to the front of the loan and not calculating actual interest on each payment is archaic and in many instances unfair to the consumer. This change will require all credit grantors to use the actuarial method of calculating interest.
3. Change in formula determining maximum amounts used in tiered interest rate structure - this change is needed since inflation in the early 1980's has skewed the results of the formula, a recent 3% increase in the Consumer Price Index caused a 10% increase in these tiered amounts. The proposed change would discontinue using 1974 as the benchmark and use the latest date a change was made for the formula base.
4. Change in the Code specifically to address rates, fees, disclosure and conduct on small, short term loans - this change is needed to regulate a new industry that provides this new financial product. Current statutes do not address the multitude of problems and situations arising out of the needs of limited income families.

*House Financial Institutions
& Insurance*

Feb. 3, 1993

Attachment 3

- (c) which is for a term exceeding four months; and
- (d) which is not made pursuant to a lender credit card.

(13) "Consumer loan":

(a) Except as provided in paragraph (b), a "consumer loan" is a loan made by a person regularly engaged in the business of making loans in which:

(i) The debtor is a person other than an organization;

(ii) the debt is incurred primarily for a personal, family or household purpose;

(iii) either the debt is payable in installments or a finance charge is made; and

(iv) either the amount financed does not exceed \$25,000 or the debt is secured by an interest in land.

(b) Unless the loan is made subject to K.S.A. 16a-1-101 through 16a-9-102, and amendments thereto, by agreement (section 16a-1-109), a "consumer loan" does not include:

(i) A loan secured by a first real estate mortgage; or

(ii) a loan secured by a second or other subordinate mortgage if the second or other subordinate mortgage is granted to the same lender as the first mortgage; or

(iii) a loan made by a qualified plan, as defined in section 401 of the internal revenue code, to an individual participant in such plan or to a member of the family of such individual participant.

(14) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(15) "Credit card" means ~~an arrangement pursuant to which a card issuer gives a cardholder the privilege of purchasing or leasing goods or services, obtaining loans, or otherwise obtaining credit from the card issuer or other persons.~~

(16) "Creditor" means a person who regularly extends credit in a consumer credit transaction which is payable by a written agreement in more than four installments or for which the payment of a finance charge is or may be required and is the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by written agreement. In the case of credit extended pursuant to a credit card, the creditor is the card issuer and not another person honoring the credit card.

(17) "Earnings" means compensation paid or payable to an individual or for such individual's account for personal services rendered or to be rendered by such individual, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension, retirement, or disability program.

(18) "Finance charge":

(a) "Finance charge" means the sum of:

(i) All charges payable directly or indirectly by the consumer and imposed directly or indirectly by the

any card, plate or other single credit device that may be used from time to time to obtain credit. Since this involves the possibility of repeated use of a single device, checks and similar instruments that can be used only once to obtain a single credit extension are not credit cards.

The finance charges on consumer loans and consumer credit sales originated on or after January 1, 1994 shall be computed on the unpaid principal balances by the actuarial method.

Any and all references to precomputation in this act shall not be applicable to any consumer loan or consumer credit sale originated after the above date.

Definitions 16a-1-301

"Interest bearing" means the finance charge on a consumer credit transaction is computed on the unpaid principal balances by the actuarial method.

1. 2-401a. Same; adjustment of dollar amounts. The dollar amounts of three hundred dollars (\$300) and one thousand dollars (\$1,000) in K.S.A. 16a-2-401(2) are subject to change pursuant to the provisions on adjustment of dollar amounts as follows:

(1) From time to time the dollar amounts designated in this section as subject to change shall change, as provided in this section, according to and to the extent of changes in the consumer price index for urban wage earners and clerical workers: U.S. city average, all items, 1967 = 100, compiled by the bureau of labor statistics, United States department of labor, and hereafter referred to as the index. ~~The index for December, 1974, is the reference base index.~~

(2) The designated dollar amounts shall change on July 1 of each even-numbered year if the percentage of change, calculated to the nearest whole percentage point, between the index at the end of the ~~preceding year and the reference base index~~ is ten percent (10%) or more, except that

(a) the portion of the percentage change in the index in excess of a multiple of ten percent (10%) shall be disregarded and the dollar amounts shall change only in multiples of ten percent (10%) of the amounts ~~appearing in this act on the date of enactment;~~ and

(b) the dollar amounts shall not change if the amounts required by this section are those currently in effect pursuant to this act as a result of earlier application of this section.

(3) If the index is revised, the percentage of change pursuant to this section shall be calculated on the basis of the revised index. If a revision of the index changes the reference base index, a revised reference base index shall be determined by multiplying the reference base index then applicable by the rebasing factor furnished by the bureau of labor statistics. If the index is superseded, the index referred to in this section is the one represented by the bureau of labor statistics as reflecting most accurately changes in the purchasing power of the dollar for consumers.

(4) The administrator shall adopt a rule announcing

(a) on or before April 30 of each year in which dollar amounts are to change, the changes in dollar amounts required by subsection (2); and

(b) promptly after the changes occur, changes in the index required by subsection (3) including, if applicable, the numerical equivalent of the reference base index under a revised reference base index and the designation or title of any index superseding the index.

(5) A person does not violate this act with respect to a transaction otherwise complying with the uniform consumer credit code if he relies on dollar amounts either determined according to subsection (2) or appearing in the last rule of the administrator announcing the then current dollar amounts.

History: L. 1975, ch. 126, § 2; April 12.

in which the change in the designated dollar amount last occurred

currently in effect and adjusted to the nearest \$5 increment;

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HOUSE BILL No. 2749

By Committee on Commercial and Financial Institutions

1-23

AN ACT concerning the uniform consumer credit code; loan finance charges for certain loans.

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

Section 1. (1) On consumer transactions in which cash is advanced:

(a) With a short term,
(b) a single payment repayment is anticipated, and
(c) such cash advance is equal to or less than the maximum amount of the first tier used in the blended alternative rate in K.S.A. paragraph (a) of subsection (2) of 16a-2-401, and amendments thereto, and adjusted in K.S.A. 16a-2-401a, and amendments thereto, a licensed or supervised lender may charge in lieu of the loan finance charges specified in K.S.A. 16a-2-401, and amendments thereto, the following amounts:

(i) On any amount up to and including \$100, a charge may be added equal to 10% of the loan proceeds plus a \$5 administrative fee;

(ii) on amounts in excess of \$100, but not more than \$250 a charge may be added equal to 7% of the loan proceeds with a minimum of \$10 plus a \$5 administrative fee;

(iii) for amounts in excess of \$250 and not greater than the maximum defined in this section, a charge may be added equal to 6% of the loan proceeds with a minimum of \$17.50 plus a \$5 administrative fee.

(2) The maximum term of any loan made under this section shall be 30 days.

(3) The contract rate of any loan made under this section shall not be more than 3% per month of the loan proceeds after the maturity date. No insurance charges or any other charges of any nature whatsoever shall be permitted, except as stated in subsection (6), including any charges for cashing the loan proceeds if they are given in check form.

(4) Any loan made under this section shall not be repaid by proceeds of another loan made under this section by the same lender

or related interest. The proceeds from any loan made under this section shall not be applied to any other loan from the same lender or related interest.

(5) On a consumer transaction in which cash is advanced in exchange for a personal check, a return check charge may be charged if the check is deemed insufficient as defined in K.S.A. paragraph (e) of subsection 2 of 16a-2-501, and amendments thereto.

(6) In determining whether a consumer transaction made under the provisions of this section is unconscionable conduct under K.S.A. 16a-5-108, and amendments thereto, consideration shall be given, among other factors, to:

(a) The ability of the borrower to repay within the terms of the loan made under this section; or

(b) the original request of the borrower for amount and term of the loan are within the limitations under this section.

(7) This section shall be supplemental to and a part of the uniform consumer credit code.

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

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