

Approved: 3/15/94
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson Richard Bond at 9:13 a.m. on March 10, 1994 in Room 529-S of the Capitol.

All members were present.

Committee staff present: William Wolff, Legislative Research Department
Fred Carman, Revisor of Statutes
June Kossover, Committee Secretary

Conferees appearing before the committee: Chuck Stones, Kansas Bankers Association
Ed Schaub, Western Resources
Kathy Taylor, Kansas Bankers Association
Judi Stork, Kansas Bank Department

Others attending: See attached list

Senator Lawrence made a motion, seconded by Senator Praeger, to approve the minutes of the meeting of March 9 as submitted. The motion carried.

The chairman opened the hearing on **HB 2654**, amending three statutes relating to mortgages. Chuck Stones, Kansas Bankers Association, testified as a proponent of this legislation and explained that Section 1 would allow a mortgagee to charge a \$5.00 fee for the release of a mortgage when the indebtedness is paid; Section 2 would allow any corporate officer to execute assignments or releases when designated by corporate resolution; and Section 3 would allow a married person to give a nonpurchase money security interest in exempt personal property titled in that person's name without the approval of the spouse. (Attachment #1.) It was clarified that the amendment would not apply to real estate or property acquired after marriage.

Ed Schaub, Western Resources, requested an amendment to reinstate the provisions of KSA 1993 Supp. 79-3102 and proposed a new exception to the requirement for payment of a mortgage registration fee to the office of the register of deeds in the county where the instrument is filed. (Attachment #2.) Mr. Carman pointed out that adoption of Mr. Schaub's proposed amendment would necessitate a change in the title of the bill.

There were no further questions and no other conferees; the hearing on **HB 2654** was closed. Senator Praeger made a motion to amend HB 2654 as requested by Mr. Schaub and to amend the title as appropriate. Senator Steffes seconded the motion. The motion carried.

Senator Praeger made a motion, seconded by Senator Moran, to move HB 2654 favorably as amended. The motion carried. Senator Bond will carry this bill.

The hearing was opened on **HB 2659**, concerning the responsibilities of a depositor using a machine readable instrument (debit card). Kathy Taylor, Kansas Bankers Association, appeared as a proponent and explained that adding the definitions of "unauthorized transaction" and "to notify the bank" would make Kansas law correspond with federal regulations. (Attachment #3.) Senator Bond requested clarification of the procedure the bank would follow after receiving notification that transactions by a particular party are no longer authorized. Ms. Taylor advised that steps would be taken to change the card and card number or the personal identification number and if the bank failed to act accordingly, the bank would be responsible for any subsequent transactions by the unauthorized person. In response to Mr. Carman's question, Ms. Taylor explained that this law would not apply to the one remaining state chartered savings and loan association, and that federal Regulation E applies to federally chartered savings and loan associations.

There being no further questions, the hearing was closed. Senator Lawrence made a motion to move HB 2659 favorably. The motion was seconded by Senator Corbin. The motion carried. Senator Steffes will carry this bill.

The chairman opened the hearing on **HB 2716**, which would increase from five years to ten years the length of time a bank could hold commercial real estate property before it would have to be written off as a book asset of the bank. The authority for the Bank Commissioner to authorize an extension of time up to four years would be retained. Chuck Stones, Kansas Bankers Association, appeared as a proponent of this bill, stating that it would allow banks greater flexibility in managing their assets. (Attachment #4.) Senator Moran questioned whether oil and gas leaseholds are included as real estate. Judi Stork, State Banking Department, stated that the Bank Commissioner has determined oil and gas leaseholds to be real property.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,
Room 529-S Statehouse, at 9:13 a.m. on March 10, 1994.

Following further discussion, it was determined that the bill should be amended to clarify this matter by inserting in section (b), page 2, line 10, the language, "...real estate *or interest in oil or gas leaseholds...*" Senator Moran made a motion to so amend the bill. Senator Corbin seconded the motion. The motion carried.

Senator Corbin made a motion, seconded by Senator Lee, to recommend **HB 2716** favorably as amended. The motion carried. Senator Corbin will carry this bill.

The committee adjourned at 9:50 a.m.

The subcommittee on **SB 622 and SB 828** will meet Monday, March 14, during the regular committee time. The full committee will meet next on Tuesday, March 15, 1994.

GUEST LIST

SENATE

COMMITTEE: FINANCIAL INSTITUTIONS AND INSURANCE

DATE: 3/10/94

[illegible]

The Kansas Bankers Association

1500 Merchants National Bank Bldg.

Topeka, KS 66612

913-232-3444 FAX 913-232-3484

TO: Senate Financial Institutions and Insurance Committee

FROM: Chuck Stones, Director of Research

RE: HB 2654

Mr. Chairman and Members of the Committee:

The Kansas Bankers Association appreciates the opportunity to appear before you to discuss HB 2654. While HB 2654 amends Chapter 58 of Kansas Statutes it really addresses 3 separate issues. Please allow us to address these separately.

1) Page one, Lines 25 & 26 strikes the language prohibiting a mortgagee from charging the mortgagor a fee for releasing the mortgage. This language is in conflict with KSA 16-207(d) which allows the lender to *"collect from the borrower: (1) The actual fees paid a public official or agency of the state, or federal government, for filing, recording or releasing any instrument relating to a loan"*. Striking the language in 58-209a will allow the mortgage release to be governed by 16-207 similar to other promissory notes, and will eliminate the confusion created by the conflict between these two statutes.

2) HB 2654 (Page 2, Lines 14 & 15) also amends KSA 58-2318 to allow any officer authorized by corporate resolution to execute a release of mortgage. Current law provides that only the president, vice-president, secretary, cashier or treasurer of the corporation may do so. This bill allows the bank a little more flexibility. Especially in the case where the corporate offices are located in another city or county. As you know, consolidation is happening in the banking industry, making this situation more and more common. It may authorize, by corporate resolution, who may execute a release of mortgage.

3) Finally, it repeals KSA 58-312 which is an old law that makes it unlawful for a married person to give a non-purchase money security interest in exempt personal property unless both spouses consented. This law applies even where the property is solely owned by either the husband or the wife. It is important to understand that this law only covers non-purchase money security interests. That is, when the money borrowed is not used to purchase the item with the security interest. This law also only applies to exempt personal property. Exempt property includes household goods, a vehicle (up to \$20,000), and tools of the trade (up to \$7,500). However, Federal Reg AA prohibits a bank from taking a non-purchase money security interest in household goods, so in effect we are only dealing with vehicles and tools of the trade. It is also important to note that Federal Reg B, The Equal Opportunity Credit Act, requires only one signature on such a transaction. Normally, you would reason, where collateral is owned by just one person, it is not necessary to get the consent of that person's spouse to obtain a valid security interest on that property. But when a bank takes a non-purchase money security interest in a married person's car or tools of the trade, the bank must obtain consent of both spouses, even if the car / tools of the trade are owned by just one spouse. If the bank doesn't do so its security interest is invalid!

If 58-312 is repealed, when exempt personal property is owned by one person in a marriage relationship, the bank could take a non-purchase money security interest in that property with the consent of that person only. If the property is jointly owned, Reg B would allow the bank to require signatures of all the interested parties.

We would urge your favorable consideration of HB 2654.

Senate 7/21
3/10/94
attachment #1

1923, 58-308; Repealed, L. 1965, ch. 564, § 416; Jan. 1, 1966.

CASE ANNOTATIONS

1. Right of action barred after one year; demand. Travelers Ins. Co. v. Stucki, 4 K.A. 424, 427, 46 P. 42.
2. Right to penalty not defeated because register's fees not tendered. Thomas v. Reynolds, 29 K. 304, 307.
3. Penalty may be recovered only after demand has been made. Hall v. Hurd, 40 K. 374, 375, 19 P. 802; Wey v. Schofield, 53 K. 248, 36 P. 333.
4. Right not lost because action delayed until after satisfaction entered. Hall v. Hurd, 40 K. 740, 741, 21 P. 585.
5. Right of action under this section is penal in character. Wey v. Schofield, 53 K. 248, 36 P. 333; Frame v. Ashley, 59 K. 477, 480, 53 P. 474.
6. Mentioned in considering mortgage priority and subrogation rights. Fourth National Bank v. Hill, 181 K. 683, 684, 700, 314 P.2d 312.

58-309.

History: G.S. 1868, ch. 68, § 17; R.S. 1923, 58-309; Repealed, L. 1965, ch. 564, § 416; Jan. 1, 1966.

CASE ANNOTATIONS

1. Mortgagee cannot remove property to foreign county to make sale. Scott v. Davis, 4 K.A. 488, 494, 44 P. 1001.
2. Mortgagee may maintain replevin after condition broken. Brookover v. Esterly, 12 K. 149, 151.
3. Mortgagee liable to mortgagor only for surplage from sale. Denny v. Faulkner, 22 K. 89, 100.
4. Provision "sale without notice after condition broken," may be enforced. Harris v. Lynn, 25 K. 281; Reynolds v. Thomas, 28 K. 810; Foy v. Comanche County, 69 K. 206, 208, 76 P. 859.
5. Parties may agree upon method for disposal of mortgaged property. Denny v. Van Dusen, *Adm'r*, 27 K. 437, 440.
6. Section inapplicable to mortgage-foreclosure sale under special execution. Liberty Savings & Loan Ass'n v. Jones, 143 K. 422, 426, 54 P.2d 937.
7. Cited; expense of repossessing chattel not lienable under artisan's lien law (58-202). National Bond & Investment Co. v. Midwest Finance Co., 156 K. 531, 537, 134 P.2d 639.
8. Purchaser from mortgagee on default not compelled to accept payment and release mortgage. Grant v. Stryker, 156 K. 682, 684, 135 P.2d 534.
9. Mortgagor's waiver of right to redeem held valid. Fourth National Bank v. Hill, 181 K. 683, 701, 314 P.2d 312.
10. Chattel mortgage terms held to make notice hereunder unnecessary. Watkins v. Layton, 182 K. 702, 705, 324 P.2d 130.
11. Discussed and applied; district court action to establish alleged personal property mortgage constituted demand; probate court jurisdiction. Shields v. Fink, *Executrix*, 190 K. 17, 27, 372 P.2d 252.

58-310.

History: G.S. 1868, ch. 68, § 18; R.S. 1923, 58-310; Repealed, L. 1965, ch. 564, § 416; Jan. 1, 1966.

CASE ANNOTATIONS

1. Risk of delay upon mortgagee after mortgagor demands sale. Bank v. Leslie, 72 K. 401, 404, 83 P. 984.
2. Mortgagor entitled to have property sold after mortgagee obtains possession. Snider v. Windsor, 77 K. 67, 93 P. 600.
3. Possession taken by mortgagee when he deems himself insecure. Thorp v. Fleming, 78 K. 237, 242, 96 P. 470.

58-311.

History: G.S. 1868, ch. 68, § 19; R.S. 1923, 58-311; Repealed, L. 1965, ch. 564, § 416; Jan. 1, 1966.

CASE ANNOTATIONS

1. Cited; expense of repossessing chattel not lienable under artisan's lien law (58-202). National Bond & Investment Co. v. Midwest Finance Co., 156 K. 531, 537, 134 P.2d 639.
2. Punitive damage award for failure to account for surplus; affirmed. Watkins v. Layton, 182 K. 702, 705, 324 P.2d 130.

58-312. Exempt personal property; joint consent of husband and wife required. It shall be unlawful for either husband or wife (where that relation exists) to create any lien or security interest other than a purchase money security interest upon any personal property owned by either or both of them, and now exempt by law to resident heads of families from seizure and sale upon any attachment, execution or other process issued from any court in this state, without the joint consent of both husband and wife; and from and after the time when this act shall take effect no agreement creating such a security interest shall be valid unless executed by both husband and wife: *Provided*, That this act shall not be construed to invalidate any such lien or security interest except so far as relates to the exempt property covered thereby.

History: L. 1889, ch. 176, § 1; L. 1901, ch. 103, § 1; R.S. 1923, 58-312; L. 1965, ch. 564, § 410; Jan. 1, 1966.

Research and Practice Aids:

- Husband and Wife, 169(2).
- Hatcher's Digest, Exemptions §§ 30 to 35.
- C.J.S. Husband and Wife § 345.
- Affidavit of ownership attached to chattel mortgage, Vernon's Kansas Forms § 4156.
- Designating mortgagor, Kansas Practice Methods, §§ 304, 307, 931.
- Signatures and addresses, Kansas Practice Methods § 925.

Law Review and Bar Journal References:

- Case in annotation No. 20 below discussed in 1955-56 survey of debtor-creditor law, F. J. Moreau, 5 K.L.R. 239, 246, 247 (1956).

Secured transactions under 5 W.L.J. 192, 199 (1966).
Discussed in survey of Kansas personal property (1965-1969).

CASE ANNO

1. Effect of insanity of on ority; evidence. State Bank v. P. 312.
2. Exemption laws may wife joining. Kroenert v. M. 684.
3. Mortgage signed by l against unexempt property. 844, 66 P. 997.
4. Mortgage void unless consent to same. Alexander P. 339; Searle v. Gregg, 67.
5. Mortgage on exempt t joint consent. Jackman v. L. 55.
6. Provision of this sect chase-price mortgage. Bogg 765.
7. Husband may deliver consent of wife. Beach v. F. P. 206.
8. Wife establishing exer representations of husband. 657, 658, 149 P. 433.
9. Wife's consent not pr held not exempt. Bank v. 182 P. 653.
10. Mortgage to secure bile; consent of wife. The 456, 210 P. 1091.
11. Cited in action to double liability. Glenn v. P. 583.
12. Right of wife to inte upheld. Hoxie State Bank 21 P.2d 356.
13. Mortgage of "fami signed by husband and Nat'l Bank, 140 K. 615, 6.
14. Section does not pr erty by husband. Lupton v. K. 615, 620, 38 P.2d 125.
15. Mortgage of hotel c quires joint consent. Fost P.2d 1350.
16. Applies to property band or wife. Morris Plan 231, 232, 233, 175 P.2d 1.
17. Mortgage void unl jointly executed. Morris P. 229, 230, 231, 232, 233, .
18. Section not applic gage; who may raise exer vestment Co. v. Meeker, .
19. Wife's consent not personal property invalic Co. v. Rehrig, 173 K. 84.
20. Sale of exempt tra fuge; mortgage void. Wh Co. v. Roulston, 178 K.
21. Husband's transfer pation of divorce taxable division. Wiles v. C.I.R..
22. Cited in holding

4141 3/10/94
1-2

**Testimony to Senate Financial Institutions
and Insurance Committee**

**By Ed Schaub
Western Resources, Inc.**

Mr. Chairman and members of the Committee I am Ed Schaub representing Western Resources, Inc. I am appearing today in regard to HB 2654. The purpose of my testimony is to suggest an amendment to HB 2654.

The proposed amendment is contained in the "balloon" of the House bill on page 2, line 21. Our proposed amendment would reinstate the provisions of K.S.A. 1993 Supp. 79-3102 as it currently exists in the statute books. In addition to the existing language we are proposing a new exception to the requirement for payment of a mortgage registration fee to the office of the register of deeds in the county where the instrument is filed. That addition is stated simply, "*(7) any mortgage or other instrument given for the sole purpose of changing the trustee; or (8)*".

The existing statute and the bill sent to this body by the House contains a major disincentive to any corporation considering making a change of trustee from one bank to another. The House bill and the existing law could require any corporation desiring to make such a change to pay an additional tax on its entire bonded debt even though no new debt was created. Western Resources, has for example, paid a mortgage registration fee on all of its bonded indebtedness when that debt was originally filed of record.

We believe the proposed amendment would help create a more favorable business climate in the state which may have broad economic benefits for the state.

Thank you for your consideration of this proposal.

Senate 7121
3/10/94
Attachment #2

1 any additional damages that the evidence in the case warrants. Civil
2 actions may be brought under this act before any court of competent
3 jurisdiction, and attachments may be had as in other cases.

4 (e) The mortgagee or assignee of a mortgagee entering satisfaction
5 or causing to be entered satisfaction of a mortgage under the pro-
6 visions of subsection (a) shall furnish to the office of the register of
7 deeds the full name and last known post office address of the mort-
8 gator or the mortgagor's assignee. The register of deeds shall forward
9 such information to the county clerk who shall make any necessary
10 changes in address records for mailing tax statements.

11 Sec. 2. K.S.A. 58-2318 is hereby amended to read as follows:
12 58-2318. All assignments and releases of mortgages by a corporation
13 shall be valid when executed by the president, vice-president, sec-
14 retary, cashier or, treasurer or any other officer of such corporation
15 so authorized by corporate resolution. Any assignment or release of
16 a mortgage by a corporation which was executed on or after March
17 8, 1974, and prior to the effective date of this act, by one of the
18 corporate officers designated herein, with or without attestation by
19 the corporate seal, is hereby declared to be a legal and valid act of
20 such corporation.

21 ~~{Sec. 3. K.S.A. 1993 Supp. 79-3102 is hereby amended to read~~
22 ~~as follows: 79-3102. (a) Before any mortgage of real property, or~~
23 ~~renewal or extension of such a mortgage, is received and filed for~~
24 ~~record, there shall be paid to the register of deeds of the county~~
25 ~~in which such property or any part thereof is situated a registration~~
26 ~~fee of \$.26 for each \$100 and major fraction thereof of the principal~~
27 ~~debt or obligation which is secured by such mortgage and upon~~
28 ~~which no prior registration fee has been paid, except as provided~~
29 ~~in the following provision. In the event the mortgage states that~~
30 ~~an amount less than the entire principal debt or obligation will be~~
31 ~~secured thereby, the registration fee shall be paid on such lesser~~
32 ~~amount.~~

33 ~~{(b) As used herein, "principal debt or obligation" shall not in-~~
34 ~~clude any finance charges or interest.~~

35 ~~{(c) In any case where interest has been precomputed, the reg-~~
36 ~~ister of deeds may require the person filing the mortgage to state~~
37 ~~the amount of the debt or obligation owed before computation of~~
38 ~~interest.~~

39 ~~{(d) No registration fee whatsoever shall be paid, collected or~~
40 ~~required for or on: (1) Any mortgage or other instrument given~~
41 ~~solely for the purpose of correcting or perfecting a previously re-~~
42 ~~corded mortgage or other instrument; (2) any mortgage or other~~
43 ~~instrument given for the purpose of providing additional security~~

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Sec. 3. K.S.A. 1993 Supp. 79-3102 is hereby amended to read as follows: 79-3102. (a) Before any mortgage of real property, or renewal or extension of such a mortgage, is received and filed for record, there shall be paid to the register of deeds of the county in which such property or any part thereof is situated a registration fee of \$.26 for each \$100 and major fraction thereof of the principal debt or obligation which is secured by such mortgage and upon which no prior registration fee has been paid, except as provided in the following provision. In the event the mortgage states that an amount less than the entire principal debt or obligation will be secured thereby, the registration fee shall be paid on such lesser amount.

(b) As used herein, "principal debt or obligation" shall not include any finance charges or interest.

(c) In any case where interest has been precomputed, the register of deeds may require the person filing the mortgage to state the amount of the debt or obligation owed before computation of interest.

(d) No registration fee whatsoever shall be paid, collected or required for or on: (1) Any mortgage or other instrument given solely for the purpose of correcting or perfecting a previously recorded mortgage or other instrument; (2) any mortgage or other instrument given for the purpose of providing additional security for the same indebtedness, where the registration fee herein provided for has been paid on the original mortgage or instrument; (3) any mortgage or other instrument upon that portion of the consideration stated in the mortgage tendered for filing which is verified by affidavit to be principal indebtedness covered or included in a previously recorded mortgage or other instrument with the same lender or their assigns upon which the registration fee herein provided for has been paid; (4) any lien, indenture, mortgage, bond or other instrument or encumbrance nor for the note or other promise to pay thereby secured, all as may be assigned, continued, transferred, reissued or otherwise changed by reason of, incident to or having to do with the migration to this state of any corporation, by merger or consolidation with a domestic corporation as survivor, or by other means, where the original secured transaction, for which the registration fee has once been paid, is thereby continued or otherwise acknowledged or validated; (5) any mortgage or other instrument given in the form of an affidavit of equitable interest solely for the purpose of providing notification by the purchaser of real property of the purchaser's interest therein; (6) any mortgage in which a certified development corporation certified by the United States small business administration participates pursuant to its community economic development program; (7) any mortgage or other instrument given for the sole purpose of changing the trustee; or (8) any mortgage for which the registration fee is otherwise not required by law.

(e) The register of deeds shall receive no additional fees or salary by reason of the receipt of fees as herein provided. After the payment of the registration fees as aforesaid the mortgage and the note thereby secured shall not otherwise be taxable.



The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

March 10, 1994

TO: Senate Committee on Financial Institutions and Insurance

FROM: Kathleen A. Taylor, Associate General Counsel
Kansas Bankers Association

RE: HB 2659: Unauthorized Transactions / Machine Readable Instruments

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before the Committee on the matter of amending the Kansas Banking Code as it relates to unauthorized transactions and machine readable instruments.

The term "machine readable instrument" as it is used in the Banking Code refers to what you and I call bank debit cards. These cards allow the bank customer to access his or her bank account through the use of an electronically encoded card and a machine that has the capacity to read the code. Typically this will be an ATM machine or a "point of sale" terminal. The difference between a bank debit card and a credit card is that the debit card gives a bank customer access to funds in a bank account, whereas the credit card allows the holder of the card to incur unsecured debt.

HB 2659 would amend KSA 9-1111d to include a definition of what is considered to be an "unauthorized transaction by a machine readable instrument". This term had not been defined by statute before, creating uncertainty for banks and for bank customers in some situations.

The definition which our bill incorporates is found in Federal Regulation E which also deals with debit cards. Regulation E governs debit cards issued by entities other than state-chartered banks, which would include national-chartered banks in Kansas.

The language of Regulation E attempts to address the gray areas by not only defining what an unauthorized transaction is, but also specifically stating certain transactions that are NOT included in the definition.

Situations that are specifically excluded, and so are considered authorized transactions for which the bank customer would be liable, include those instances where the debit card was given to another person by the bank customer and then the bank customer claims the transactions made were not authorized. The bank customer will be liable for transactions conducted by this person - unless the customer has notified the bank that transfers by that person are no longer authorized. Subsection (b) then defines what is considered "notification" to the bank.

Senate 7141 3/10/94

Office of Executive Vice President • 1500 Merchants National Building
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Attachment #3

In addition, the bank customer would be liable for any fraudulent transactions conducted by the bank customer and/or a co-conspirator . The final exemption just makes it clear that the bank is allowed to debit the customer's account for service fees, etc. that are permitted by law or that are agreed to by the bank customer and the bank.

In summary, this bill would clear up some confusion regarding unauthorized transactions for state-chartered banks offering machine readable instruments, by using definitions that are already in place for national-chartered institutions in Kansas.

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3-2

The Kansas Bankers Association

1500 Merchants National Bank Bldg.

Topeka, KS 66612

913-232-3444 FAX 913-232-3484

TO: Senate Financial Institutions and Insurance Committee

FROM: Chuck Stones, Director of Research

RE: HB 2716

Mr. Chairman and Members of the Committee:

The Kansas Bankers Association appreciates the opportunity to appear before you to discuss HB 2716. HB 2716 would allow a bank greater flexibility when attempting to manage its assets.

Many times a bank will acquire property in satisfaction of debts due. That property is placed in an asset category called "other real estate owned". Under normal circumstances a bank would not be allowed to own such property, but under these circumstances the bank may acquire the property with certain time requirements given for the property's disposition. Many times, especially in smaller communities, there is not an active market for the property acquired. So, even though the property may actually be making money for the bank through rents or other means, when the time limit expires, the bank must dispose of the property, **even if it means taking a loss.**

Current law allows a bank to own agricultural property as OREO for 10 years and all other property for 5 years with a possible extension for both of 4 years. HB 2716 would make the time frame for owning all types of OREO consistent. It would give the bank some flexibility in the time allowed to dispose of the property, while at the same time giving the commissioner more than adequate control in their review process. The safety and soundness of the bank would not be compromised and, in many cases, would be protected while the bank is attempting to secure a buyer for the property at a fair price.

We believe HB 2716 is positive legislation and urge your favorable consideration.

Senate 7141
3/10/94
Attachment #4