

Approved: March 6, 2000
Date

MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS.

The meeting was called to order by Chairperson at Ray Cox on February 16, 2000 in Room 527-S of the Capitol.

All members were present except: Representative Cindy Empson
Representative Carlos Mayans

Committee staff present: Dr. Bill Wolff, Legislative Research
Bruce Kinzie, Office of Revisor
Maggie Breen, Committee Secretary

Conferees appearing before the committee: Chuck Stones, Kansas Bankers Association
Steve Rarrick, Office of the Attorney General
Ernest Pogge, AARP

Others attending: See attached

Chairman Cox said the committee would take final action on **HB 2675 - UCCC, manufactured homes.**

Representative Grant made a motion to adopt the amendments to HB 2675. Representative Vickrey seconded the motion. The motion carried.

Representative Vickrey made a motion to pass HB 2675 out favorably as amended. Representative Burroughs seconded the motion. The motion carried.

Chairman Cox said the committee would take final action on **HB 2753 - Banks and trust companies, list of stockholders.**

Representative Burroughs had a question on **HB 2753.** He said that line 19 said “president or cashier of every bank and every trust company.” He said there is a wide gap of responsibility between a president and a cashier. He asked about having it read “designated employee.” Judi Stork, Office of the State Bank Commissioner, said really what they’re looking for, when they say president or cashier, is whoever fills it out in the bank. They don’t really care who fills it out, they are just checking that it is attested to or signed by those parties. They want to know that a responsible party in the bank has looked it over.

Chairman Cox reminded the committee that there was an amendment presented for **HB 2753** which read “except that the names and addresses of all stockholders owning less than 5% of the capital stock of such bank shall be confidential and shall not be subject to disclosure under the provisions of the open records act.”

Representative Dreher made a motion to adopt the amendment to HB 2753. Representative Merrick seconded the motion. The motion carried.

Representative Grant made a motion to move HB 2753 out favorably as amended. Representative Minor seconded the motion. The motion carried.

Chairman Cox opened the hearing on: **HB 2825 - Consumer protection, prohibiting obtaining or submitting check without consent.**

Neutral:

Chuck Stones, Kansas Bankers Association, provided written information on how drafts, checks and negotiable instruments work at banks. The bank has a responsibility to pay only those items which are “properly payable.” Normally, the item has to be properly authorized to be properly payable. On a check, it’s your signature. When it’s a draft, there is no signature and drafts can come in many forms. Many times it looks exactly like a check and even has a customer’s name printed on it. How the draft is authorized, is the critical issue here. Often, an authorization is secured by the customer signing a form up-front saying it’s alright to deduct certain items from an account. The form is filed at the bank. What’s happened in telemarketing activities, a lot of times, is they will call a customer and ask for their authorization to purchase certain items. That’s where it gets sticky. If a customer gives their account number and in their head they

CONTINUATION SHEET

FINANCIAL INSTITUTION, Room 527-S Statehouse, at 3:30 p.m. on February 16, 2000.

know they're buying something, that is deemed to be authorization. What is happening with a few telemarketers is they will ask for your account number to verify that you're won a prize. In the customer's mind, even though they are giving their account number, they are not giving authorization. It's sticky for the bank. If it pays an unauthorized draft and the customer comes back and says I didn't authorize this, the bank's on the hook. It must credit the customer's account back. It's the bank's final responsibility to determine whether the draft is authorized or not. Banks have done a lot of things, mostly internally, to deal with this. For example, sometimes drafts over a certain amount are kicked out to be handled manually. He referred to the new FTC rule. (**Attachment 1**)

Proponents:

Representative Gerry Ray said she couldn't believe it when she learned, last year, that withdrawals could be taken from your account without your consent. She introduced **Steve Rarrick**, Office of the Attorney General, who said he was approached last year by a couple of groups, primarily the AARP, because they were very concerned about their constituents. The AG's office receives complaints on a regular basis from consumers whose accounts have been accessed without their authorization. There are numerous deceptive means that companies use to convince people to give their checking account number over the phone. Now the internet is a new means to do so. His office regularly cautions people, to not give out their checking account number, in their consumer education pieces. Most banks don't have the time to screen for unauthorized withdrawals: often banks pay them. Then it becomes the burden of the consumer to review their statement. There are certain rules about when they must notify the bank or they will suffer the loss. It also puts banks in a bad position. The language of the bill may not yet be exact or perfect. It has been brought to his attention that perhaps the phrase "negotiable paper" might be better phrased "negotiable instrument." His office believes the bill will get banks out of a "catch 22" situation. There are federal rules with regards to getting either written or oral verification or subsequent written verification. Unfortunately, the kind of businesses that do not follow the guidelines aren't around when his office is called in to take action. The AG's office supports **HB 2825** and is open to amendments to it. (**Attachment 2**)

Ernest Pogge, AARP, said he expresses the views of 340,000 members in the state of Kansas. They are in support of **HB 2825**. Telemarketing fraud victimizes people of all ages, ethnic groups, educational backgrounds and income levels. Unfortunately, unscrupulous telemarketers often target older Americans.

Congress passed the Telemarketing Fraud Prevention Act early in 1998. However, it addresses only certain deceptive and abusive practices. Many known abuses are still permissible. States such as Kentucky, Montana, Vermont, and Arkansas have addressed the access to bank account concerns. AARP supports access to consumers' bank, savings, trust, stock or bond accounts by a telephone solicitor only after receipt of written consent by the consumer.

Chairman Cox asked Steve Rarrick why the wording was changed to "negotiable instrument" in the amendment. Mr. Rarrick said he thought it was because it was the term used in the statute. The Chairman asked KBA if there was any feedback. Kathy Olsen said negotiable instrument is a term defined in the UCC.

A question-answer period followed. Particular areas of concern were: 1) situations where the amount of an authorized withdrawal would change due to the addition of a service or coverage and 2) the possibility of hurting honest business people.

There was a suggestion to grandfather existing businesses so that written authorization would be required from this day forward. Mr. Rarrick said that could be done or language could be added to the section which would basically allow ongoing business relationships to have one authorization that can be amended orally between the consumer and the merchant.

Chairman Cox closed the hearing on **HB 2825**.

Representative Sharp made a motion to approve the minutes for February 9th as written. Representative Vickrey seconded the motion. The motion carried.

The meeting adjourned at 4:17 p.m. The next meeting is scheduled for February 21, 2000.

