TRUTH-IN-LENDING IN KANSAS

by

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INTRODUCTION

In the opening months of 1969, the Kansas Legislature staged a second act of the drama of Truth-in-Lending legislation in the United States. Act One had taken nearly a decade to complete in the Federal Congress. Indeed, the overature may have been played in 1933 by the sponsor of the 1960 Truth-in-Lending Bill, Senator Paul Douglas. He stated before a Senate Hearing in 1967:

> . . . I was called to Washington to work with the National Recovery Administration, and I was later assigned to the code authority for the credit industry, to establish a uniform code for credit.
>
> In the course of those discussions I proposed that creditors end the confusion by all quoting a simple annual rate on the declining balance.
>
> I shall never forget that afternoon. It was about this time of year.
>
> It was met with a storm of indignation and protest. The temperature in the room went down below freezing. The credit industry felt the public could not be safely told the facts about credit and opposed such reform.
>
> It was suggested that I resign from the code authority and I am ashamed to say I agreed to do so. It was one of the few times that I ever backed away from a fight, and I have regretted it ever since. I came to feel that if I could, I would try to make amends. Finally, the chance came. (S. 5, 1967, p. 44)

Senator Douglas did have a chance to make amends some twenty-seven years later. In 1960 Senator Douglas was a

member of the Committee on Banking and Currency and Chairman of the Subcommittee on Production and Stabalization. As subcommittee chairman he introduced S. 2755, the "Consumer Credit Labeling Bill," later to be known as the Truth-in-Lending Bill. The credit industry reacted to Senator Douglas' attempt to "end the confusion" in the credit market in much the same way as they reacted in 1933.

It is not the purpose of this thesis to re-inact the entire controversy over Truth-in-Lending legislation. This thesis will deal only with Kansas State Truth-in-Lending and this introduction is designed to give background on why the states became involved.

Exemption From Federal Truth-In-Lending

Eighty-Sixth Congress

The first bill to be introduced, S. 2755, gave the Board of Governors of the Federal Reserve System the regulatory and enforcement authority. Provision for state exemption was in Section 4:

> In prescribing any exception hereunder with respect to any particular type of credit transaction the Board shall consider whether in the case of such transactions substantial compliance with the disclosure requirements of this Act is being achieved under any other Act of Congress or the law of any State.

The Committee print of the revised Bill was introduced on May 3, 1960. After several days of hearings on S. 2755, the bill contained a new section 6 titled "Effect on State Laws":

> . . . The Board shall by regulation except from the requirements of this Act any credit transaction or class of transactions which it determined are effectively regulated under the laws of any State so as to require the disclosure by the creditor of the same or substantially the same information as is required under Section 4 of this Act. (S. 2755, sec. 6, 1960, p. 6)

Nowhere in the 898 pages of hearings on S. 2755 can be found any specific testimony bearing on state exemption. There was some discussion on the states rights issue of whether the Federal Government should regulate consumer credit at all. The only specific reference to the exemption of states was made in the agency letter signed by William McChesney Martin, Jr. Chairman of the Board of Governors of the Federal Reserve System to Chairman Robertson of the Committee on Banking and Currency:

> In addition, whatever agency is charged with administering the bill, certain of the provisions of the bill would require that agency to determine the effectiveness of the enforcement machinery of the Federal Trade Commission and of each State having a similar statute and would thus give rise to serious administrative difficulties. (S. 2755, 1960, p. 12)

Also, nowhere can be found any reason for the inclusion of the section which would allow state exemption from Truth-in-Lending by those states which have enacted substantially similar laws.

At the time the Bill was introduced there was not any realistic hope of its passage. Therefore, the Bill was argued on the merits of the disclosure sections of the Bill with very little attention given to the regulatory procedures prescribed by the Bill.

Eighty-Seventh Congress, 1st Session

In the Eighty-Seventh Congress, 1961, Senator Douglas again introduced his credit bill which was almost identical to the 1960 revised Bill with a new title: Truth-in-Lending. The 1961 Bill was introduced as S. 1740. In his opening statement of the hearings of S. 1740 Senator Douglas stated that while there were many abuses in the credit industry he felt that:

> Although these many other abuses are matters of major concern, it has seemed preferable to severely limit the scope of Federal Legislation to the disclosure of true costs of the price of credit, leaving to the States the right of enacting legislation to correct the other abuses. (S. 1740, 1961, p. 1)

In the section on the effect on state laws, Section 6(b), one small change can be found. That section states:

> The board shall by regulation exempt from the requirements of this Act any credit transactions or class of transactions which it determines are effectively regulated under the laws of any State so as to require the disclosure by the creditor of the same information as is required under Section 4 of this Act. (S. 1740, 1961, p. 8)

The wording of this section differs from the 1960 Bill significantly by the fact that the 1960 Bill included in the exemption for states that the Board would exempt those states that had "the same or substantially the same" information requirements. In the 1961 Bill the words "substantially the same" were dropped.

In the 1961 Hearings, unlike the 1960 Hearings, there was some explanation and discussion about Section 6(b). One comment was made by Mr. Carl A. Bimson, President of

the American Bankers Association. He stated:

> Under this section the Federal supervisiory authority would be able to exempt from the Federal law credit transactions in a State only if the State law was identical in its substantive requirements. It is most doubtful that more than one or two State statutes, if indeed there are any, could meet this rigid test. We also believe that the provisions with respect to civil penalties as they appear in the bill could lead to substantial difficulties for lenders because of unjustified harrassment by litigation. (S. 1740, 1961, p. 533)

It would appear that Mr. Bimson did not envision states enacting new legislation to gain exemption from the Federal regulatory authority. Also, in the accompanying testimony of Mr. J. O. Elmer, general counsel for the American Bankers Association, there can be found additional explanation of Section 6(b):

> The American Bankers Association asks the committee to consider one aspect of the language of the proposed bill which would considerably broaden its application and create many problems which would not have been created by the language of the subcommittee print S. 2755 of last year.
>
> Section 6(b) states:
>
> The Board shall by regulation except from the requirements of this act any credit transactions or class of transactions which it determines are effectively regulated under the laws of any State so as to require the disclosure by the creditor of the <u>same information</u> as is required under Section 4 of this act.
>
> Thus, the relatively flexible doctrine of substantial compliance has been omitted from S. 1740, whereas it was contained in last year's bill.

Senator Douglas replied:

> Mr. Elmer, the reason why "substantial" was dropped was so the provision for true annual rate

> on the outstanding balance could not be omitted and to prevent this omission with the retention of the other six from being regarded as substantial compliance. That is the purpose.
>
> Let me say once again for the record that is not our intent to have interest figured daily or to get interest down to the hundredth of one percent or even to the tenth of one percent but to reach an approximate figure.
>
> I personally am ready to have carefully guarded language inserted in the bill on this point.
>
> Let me ask you this: If we do that, would you still object to the bill? (S. 1740, 1961, p. 548)

At this point the subject matter of Section 6(b) was dropped. Mr. Elmer continued that he objected to the Bill and raised other points to which the American Bankers Association objected.

In all the 1,388 page Hearings on the 1961 Truth-in-Lending Bill these were the only specific references to the state exemption section of the Bill. The Federal Reserve Board which was charged with the regulatory authority and enforcement authority of the Bill, made no mention of the change, and made no reference to the state exemption portion of the Bill at any time.

Eighty-Seventh Congress, 2nd Session

In 1962, during the Second Session of the 87th Congress, Committee Print dated April 21, 1962 was re-introduced by Senator Douglas. Section 6(b) was not changed.

In the 416 pages of Hearings on S. 1740 only one specific reference was made to Section 6(b). During

testimony given by Edward Gudeman, Under Secretary of Commerce, Senator Beall asked the following question during a discussion of states rights:

> That means States no longer would have the right to legislate if your department or some other Government agency said that the other laws of the State were inconsistent?

Mr. Gudeman's reply was:

> Section 6(b) reads: The Board shall by regulation except from the requirements of this act any credit transactions or class of transactions which it determines are effectively regulated under the laws of any State so as to require the disclcsure by the creditor of the same information as is required under section 4 of this act.

Senator Beall then asked: "If the States have laws, why should we have this law? Let me be more specific . . ." Senator Beall then went on to discuss other aspects of states right and the subject of Section 6(b) was dropped. (S. 1740, 1962, p. 42)

Further on in the Hearings a comment was made by Paul Rand Dixon, Chairman of the Federal Trade Commission, during questioning by Senator Bennett, the committee member who led the opposition to Truth-in-Lending. Senator Bennett asked:

> I have one final question just to make the record clear.
>
> Do I gather that you do not think it would be necessary or advisable for the FTC to seek injunctive powers to carry out this act?

Mr. Dixon replied:

> I think this has been pretty thoroughly explored by this committee, and I would doubt if it would

> be necessary at this time, sir, because you have the third avenue which I did not mention. You have the avenue of the various States which have various statutes. I would understand the desire of this statute would be to hope that all of the 50 States would adopt a piece of legislation that would be somewhat in conformity with the rules and regulations that would flow from this statute. If that happened, under this legislation, whoever promulgates the rules, would provide that such State would be exempted. It would be turned over to the State. Then it would be entirely a State matter and a State court matter. (S. 1740, 1962, p. 158)

It would appear from Mr. Dixon's statement that it was the intent of the legislation that the inclusion of Section 6(b) would prompt the states to enact Truth-in-Lending Bills and thus make the enforcement of Truth-in-Lending a state rather than a Federal matter.

Eighty-Eighth Congress

In the Eighty-Eighth Congress, 1963, the Truth-in-Lending Bill was re-introduced by Senator Douglas. This time it carried the number S. 750. Section 6(b) was identical to the 1961 and 1962 versions of the Bill. (S. 750, 1963-64, p. 21) The Hearings on S. 750 stretched over a two year period of 1963 and 1964.

Again very few references were made to Section 6(b) of the Bill. One reference was made by Secretary of Labor, W. Willard Wirtz. In his prepared statement to the subcommittee, he states:

> Section 6(b) of the Bill would require the administering agency to except from the requirements of the proposal "any credit transactions or class of transactions" which it determines are effectively regulated under the laws of any State.

> Administrative problems might be obviated if the exception authority were permissive rather than mandatory. (S. 750, 1963-64, p. 1278)

It would appear that the Secretary had some misgivings about the language of Section 6(b) requiring the regulatory agencies to exempt a state by regulation. This would mean that once regulations for the exemption of the state had been promulgated, the regulatory agency would have no choice but to exempt the state if it met those prescribed requirements. The Secretary seemed to indicate that this exemption might be permissive, meaning that the regulatory agency could, if it chose, exempt a state. However, there was no discussion about the point raised by the Secretary and no other mention was made of this section.

Also, in the Hearings on S. 750, Senator Milward L. Simpson, a member of the subcommittee, sent out a list of 83 questions to various regulatory agencies of the Federal Government. Published in the Hearings were the replies of two of the agencies, the FTC and the Federal Reserve Board. Two of the questions seemed to bear directly on Section 6(b) of the Bill:

> Question 73. If the State law required additional information, would that be all right?
>
> Question 74. Suppose the State law required approximately the same information, stated or computed somewhat differently. Would it be "inconsistent" if the information were given both ways, so as to satisfy both the State and Federal requirements? (S. 750, 1963-64, p. 1301)

The reply by the FTC was:

> 73. As the purpose of this statute is to assure a full disclosure of credit costs to the consumer without placing any undue burdens on creditors, the act imposes a minimum rather than a maximum disclosure requirement.
>
> 74. Not necessarily. If a State law required the same information, stated or computed somewhat differently such a State law would not necessarily be inconsistent with this act. As long as the requirements of the act were met, additional information complying with the requirements of the State law could be given by the creditor. (S. 750, 1963-64, p. 1307)

The reply from the Federal Reserve Board was:

> Comments concerning question 73. The fact that a State law required the disclosure of information in addition to that required to be disclosed by S. 750 would, of itself, seem to be unobjectionable under the bill.
>
> Comments concerning questions 74 through 77. The answers to the specific questions necessarily would depend on the facts and circumstances, including any applicable regulations of the administering Federal agency, and particularly its regulations under Section 6(b) of the bill. Where the State law was more severe than the provisions of S. 750, by requiring the disclosure of more complete information, for example, a creditor might be in violation of the State law if he chose merely to follow the less severe provisions of S. 750. (S. 750, 1963-64, p. 1312)

Very little consideration was being given to the exemption of states for the purposes of state enforcement of Truth-in-Lending. It is significant to note that very few state commissioners of consumer credit, Attorney Generals or state Governors testified on the Bill. However, it should be noted that at this stage the Bill still had very little hope of passage, and the controversy over the Bill continued around whether a simple annual rate could be

disclosed and whether the federal government should in fact legislate in the area of consumer credit.

Eighty-Ninth Congress

Because there was not a commitment from the White House on Truth-in-Lending during the 89th Congress no bill was introduced. Also, in the fall of 1966 Senator Douglas was defeated by Senator Percy.

Nintieth Congress

In 1967 Senator Proxmire reintroduced the Truth-in-Lending Bill. This time it was numbered S. 5. Section 6(b) of S. 5 was identical to the 1961-62 and 1963-64 Bills and required that for a state to gain exemption from the requirements of this act the state would have to require the creditor to disclose the same information as required in the Federal Act. (S. 5, 1967, p. 12)

Now that there appeared to be a very good chance for passage of Truth-in-Lending in 1967 there was some attention given to Section 6(b) in the testimony of the various witnesses.

The American Bankers Association, in the testimony of Mr. William G. Kirchner, stated:

> One must conclude that the administrative function given to the Federal Reserve board under section 5(a) and section 6(b) presents an almost impossible task. It is difficult to conceive that the Board would be able to analyze and evaluate the hundreds of affected State laws to determine which transactions are "effectively regulated" so as to require "the same information"

> as is required by S. 5 and to exempt all or part of each of these laws. (S. 5, 1967, p. 412)

Mr. Kirchner, however, did not elaborate on what he thought should be done or how this problem could be solved.

A more significant piece of testimony was given in the statement of J. L. Robertson, a member of the Board of Governors of the Federal Reserve, when he stated:

> We believe that section 6(b) of the bill should be modified. That section now provides that the implementing agency shall exempt from the act any credit transactions which it determines are effectively regulated under the laws of any State so as to require the disclosure by the creditor of the same information as required under S. 5. We seriously doubt that a Federal agency should be called upon to judge how effectively State laws in this field are enforced, particularly where, as in the case of S. 5, they are enforced in the courts. Action at the State level should be made clear that the States need not follow precisely the provisions of this Bill. You have indicated during the hearings, Mr. Chairman, that this is your intent, but we think it should be spelled out in the Bill. The Board recommends, therefore, that section 6(b) be amended to exempt transactions that are determined to be subject to State law that requires disclosure substantially similar to that required under S. 5. (S. 5, 1967, p. 666)

Further on, in his prepared statement, Governor Robertson stated:

> However, we believe the need for legislation of this kind is great. If the Congress decides to designate the Board as the agency to prescribe regulation to implement this bill, we will do our best to carry out the assignment, but we hope that in time either the States will promulgate substantially similar disclosure requirements, leading to exemptions under section 6(b), or administration of Federal disclosure requirements will be reassigned to an agency better suited to perform the function. (S. 5, 1967, p. 667)

During his testimony, Governor Robertson was questioned by Senator Bennett, the arch-foe of Truth-in-Lending, concerning Section 6(b):

> Senator BENNETT. I am very much encouraged by your attitude toward the relationship of your agency and State laws. I assume from your testimony that you might be more liberal than a requirement that the State laws must be so nearly equal to this law that it would take a lawyer to tell the difference. In other words, there are in existence many State disclosure laws right now. They are not exactly the same as this. Would you think that it would be part of your responsibility somewhere along the line, or at least on application from a State, to examine the State law and determine whether or not it was covered?
>
> Mr. ROBERTSON. I would think we would have to, Senator. As I understand this whole proposal, one of the purposes is to encourage States to do this sort of job themselves. As a matter of necessity the Federal Government has considered taking the first step. As soon as a State enacts a similar law you exempt that State.
>
> We would be obliged to look at the State law to see if it provides substantially similar protection.
>
> Senator BENNETT. This will create an interesting problem for you and for them. In my State there are a lot of people who will say if the Federal Government will administer this, why should we spend our taxpayers' money at the State level doing it? So we won't accept the responsibility. They passed their own law, now let them administer it.
>
> Mr. ROBERTSON. It could be.
>
> Senator BENNETT. It could be.
>
> Senator PROXMIRE. Could I interrupt?
>
> Senator BENNETT. Yes.
>
> Senator PROXMIRE. I hesitate to interrupt. This is a very important point. We could have some ambiguity and confusion. I agree

substantially similar information may very well be better language. But I want to be sure I understand what you mean.

Substantially similar information--would it mean, for example, that if they had an add-on requirement instead of an annual rate, if they specified that kind of thing?

Mr. ROBERTSON. Definitely not. The requirement would have to be substantially similar. It doesn't mean completely different from the criteria in the Federal law. It has to be substantially the same. It doesn't have to be identical by any means.

As can be seen in the foregoing testimony it was the intent of Senator Proxmire, the sponsor of the 1967 Truth-in-Lending Bill, that "substantially similar" had been omitted for the reasons previously given by Senator Douglas. That was that "substantially similar" had been dropped so that states could not enact legislation that met all requirements of Truth-in-Lending with the exception of the annual percentage rate. Therefore, the wording had been changed to "the same information" rather than "substantially the same information."

Senator Brooke of Massachusetts questioned Governor Robertson about Section 6(b):

Senator BROOKE. At page 15 I take your amendment with respect to section 6(b) is that all a State needs to do to get out of S. 5 would be to pass a law requiring disclosure substantially similar to that required by S. 5?

Mr. ROBERTSON. That is right.

Senator BROOKE. If a state did nothing to enforce, you would still permit a complete exemption from S. 5?

> Mr. ROBERTSON. I personally would, because in the first place I have confidence that if States are going to enact legislation they will enforce the legislation. They may not do it--some may do it better than others. But I don't think the Federal Government ought to be in the position of deciding whether their courts have acted properly or whether their state officials have acted properly. It seems to me that this is up to the State government.
>
> Senator BROOKE. You would leave it to the State?
>
> Mr. ROBERTSON. I would. (S. 5, 1967, p. 681)

Apparently the Senate Committee was satisfied by the assurances given by Governor Robertson that states would not be exempted if they did not contain provisions in state law for disclosure of an annual percentage rate. The Bill, as passed by the Senate by a vote of 92-0 had been amended to read in Section 6(b) "Substantially similar" rather than "the same information." This language, of course, gave the implementing agency, the Federal Reserve Board, the freedom they deemed desirable in order to facilitate the goal of eventual state enforcement of Truth-in-Lending.

The Bill, now passed unanimously by the Senate, came before the House of Representatives. There were two major bills. The Republican version, H. R. 11602, was the same as S. 5 as passed by the Senate; and the Democrat version, H. R. 11601, was the same as S. 5 plus other sections dealing with consumer credit protection. However, both bills contained the same wording of the section on state exemption as that of S. 5.

During the House Hearings on the Truth-in-Lending

Bill, only two statements were made regarding state exemption. The first statement was made by Governor Robertson of the Federal Reserve Board when he stated:

> The Board shares the hope expressed by the Senate Committee that enactment of Federal disclosure legislation will prompt the States "to pass similar legislation so that after a period of years the need for any federal legislation will have been reduced to a minimum" - Senate Report 392, p. 8. (H. R. 11601, 1967, p. 127)

The only other comment made gives some insight into the Administration feeling about state exemption from Truth-in-Lending. The agency report issued by Betty Furness, Special Assistant to the President for Consumer Affairs, contained a sentence about Section 205, the House counterpart of Senate Section 6(b). However its reference to time price doctrine indicates failure to fully understand the state exemption section of the Bill.

> Section 205 preserves the laws of the state to the extent that they are not inconsistent with the Bill, and appears cognizant, among other things, of the concern of some to preserve the time-price doctrine. (H. R. 11601, 1967, p. 898)

Truth-in-Lending became the law of the land in 1968 with an enactment date of July 1, 1969. The section as regards state exemption states:

> The Board shall by regulation exempt from the requirements of this chapter any class of credit transaction within any state if it determines that under the law of that state that class of transactions is subject to requirements substantially similar to those imposed under this chapter, and that there is adequate provision for enforcement. (Truth-in-Lending as passed, par. 123)

It should be noted that state exemption can be gained

only from Chapter 2 of Title I; the Act which deals with the disclosure of pertinent information regarding the credit transaction. The other chapters pertaining to credit advertising, garnishingment of wages, loan sharking, etc., are not covered in this paragraph on state exemption. Therefore a state can only become exempt from Federal Truth-in-Lending as regards the disclosure provisions of that Bill.

The Truth-in-Lending Act like all regulatory laws required that regulations be written to implement the law. With the passage of the Act the Federal Reserve Board began writing their regulations. The Board also began preparing procedures to handle the applications for state exemption from the Federal Truth-in-Lending Act.

With passage of the Federal Act, forces on the State level began to move and the scene of action shifts from the Federal level to the State level with various attempts being made to gain State exemption from the disclosure requirements of Federal Truth-in-Lending.

The chronological order of these events and publications and other pertinent events are presented in Appendix A.

Purpose

It is the purpose of this thesis to document the Kansas legislative action and evaluate the effect of that action at the state level. This purpose will be fulfilled (1) by documenting the action in the legislature to the

introduction at the state level of Truth-in-Lending legislation, (2) by developing the various key issues involved in Truth-in-Lending legislation at the State level and, (3) by evaluating the impact of State and Federal Truth-in-Lending on various segments of the credit industry.

Procedure

Any student who ventures into the area of research on state legislative matters may find himself confronted immediately with two obstacles. The paramount obstacle in Kansas is the fact that there are no minutes or records kept of committee meetings concerning various pieces of legislation. The second handicap, of equal importance, is the fact that many state legislatures and Kansas in particular are not funded in such a way as to provide adequate staff for the various committees that would enable the committees to assemble data and records to help them in their deliberation over various legislative action. Indeed it may be because of these shortcomings and handicaps of state legislatures that more study into the area of state legislative action is not undertaken. Because of these handicaps the data used in the study of state legislative action on Truth-in-Lending came primarily from correspondence and interviews with the principals involved in the controversy over State Truth-in-Lending. Also data from various news sources have been used.

The procedure has been to set the data in

chronological order, develop a documented case study of the major issues, and estimate the impact of the State Bill on the credit vendors of Kansas.

A SUMMARY OF KANSAS CREDIT LAWS

Introduction

Prior to Senate Bill 125

Some consideration should be given to the credit laws in effect in the State of Kansas prior to the introduction of S. B. 125. Kansas had basically two credit acts: the Consumer Loan Act and the Kansas Sales Finance Act. These provide for credit styles normally prohibited by usury statutes.

In order to understand the difference between the two Kansas acts one must have an understanding of the definition of loan and sales credit. The Consumer Loan Act covers loans of money to consumers. The Sales Finance Act covers a credit transaction where a consumer buys goods and agrees to pay in one or more deferred installments the price of the goods plus a finance charge.

The Kansas Sales Finance Act provided for finance charges of $12/$100 on the first $200, $9/$100 on the next $700, and $8/$100 on sales over $1,000. These are per annum rates applied to the initial amount financed. Banks as well as finance companies must be licensed for authorization to charge these rates.

The Kansas Consumer Loan Act contained provisions for

contract and installment cash loans commonly known as the "small loan act" enacted in 1955. The contract rate in the State of Kansas of 10% per annum simple interest, unless otherwise authorized by law, is commonly regarded as the usury statute of Kansas. Installment loans which were an exception to the usury law provided for loans that were made in installment payments and the rates that could be charged thereunder. These rates were $8/$100 on the first $1,000 and $6/$100 on balances over $1,000. These are per annum rates applied to the initial amount financed. The act also provided the mechanics for the collection of loans, late fees, deferrment fees, refunds and insurance, and criminal penalties for violations.

The Consumer Loan Act also provides for loans up to $2100 and allows charges at the rate of 3% per month on the first $300 and five-sixths of 1% per month on the remaining unpaid balance to $2100. The Consumer Loan Act as amended in 1955 also included provisions for the establishment of a Consumer Credit Commissioner who would regulate creditors licensed under the Consumer Loan and the Kansas Sales Finance Acts. It also outlines his duties and obligations. Credit Unions operate under special legislation, either Federal or State, and can charge not more than 1% per month on the unpaid balance.

Senate Bill 125

S. B. 125, as introduced in the Senate of the State

of Kansas, was a 50-page bill containing seven parts and 58 sections. Each part has its own characteristics and reasons for inclusion. However, it should be noted that there are several interrelated parts as well as several parts that bear no relationship to the other parts of the bill.

Part 1, which deals with disclosure of credit terms, has little connection with other parts of the bill with the exception of references in the other parts made to Part 1.

Parts 2 and 3 give statutory authority for revolving loan accounts and the rates which may be charged. A revolving loan is defined as an arrangement where a lender from time to time advances loans to a debtor.

Parts 4 and 5 are connected in much the same way. Part 4 gives the statutory authority for revolving charge accounts, and Part 5 makes provision for the charges permitted under revolving charge accounts.

Parts 6 and 7 bear no real relationship to any of the other parts except that Part 6 amends out the old disclosure requirements of the State of Kansas.

The full intent of S. B. 125 was never publicly proclaimed by either State legislators or the credit industry of Kansas. However, it was popularly proclaimed as needed to gain exemption from Federal enforcement of Truth-in-Lending. But it also is apparent from reading the bill that it was intended to give statutory authority to open end or revolving type credit and to raise rates favorable to the industry. Prior to S. B. 125 revolving credit existed

legally in the State of Kansas solely on a ruling by the Attorney General of the State of Kansas. Therefore Sections 2, 3, 4, and 5 of S. B. 125 which give statutory authority to revolving loan and revolving charge accounts could be considered the major points of S. B. 125.

Summary of Senate Bill 125

Part 1

Part 1 of S. B. 125 is an almost word for word duplication of Title I of the Federal Truth-in-Lending Bill with minor revisions to convert it to a Kansas statute. This part basically contains the definition of various credit terms, describes the features by which they will be disclosed to the consumer, establishes the regulatory authority for its enforcement and contains three sections concerning the advertising of credit.

One significant difference between the Federal and State bills was the inclusion of the last sentence of Paragraph F of Section 8:

> Provided that the acceptance by a person of a credit card issued pursuant to an open end credit plan by a creditor other than the person accepting said credit cards shall not in and of itself require such person to file a notification provided herein.

The notification refers to requirements that all creditors, not licensed under the Consumer Loan Act of the State of Kansas shall file a notification fee, notifying the Consumer Credit Commissioner that they are engaging in consumer

credit. This notification procedure costs the retailer $10 annually and $10 for each $100,000 outstanding credit. The inclusion of this amendment by the House Committee puts the credit card plans in a favorable position in dealing with small retailers enabling the retailer to extend credit without paying the notification fee.

Part 2

Part 2 of S. B. 125 gives statutory authority to revolving loan accounts which heretofore had no statutory authority in the State of Kansas. All revolving loan accounts had been operated under a 1961 Attorney General's opinion that allowed the blending of rates under the Kansas Sales Finance Act. Part 2 contains definitions of revolving loan accounts.

Part 3

Part 3 of the Kansas Truth-in-Lending Bill is the rewritten form of the Kansas Consumer Loan Act dealing with definitions of precomputed loans, rates that may be imposed on this type of loan, procedures prescribed for refunding, selling of insurance by creditors, collecting delinquency payments and deferment fees.

Part 4

Part 4 of the Kansas Truth-in-Lending Bill defines the revolving charge account. The difference between a revolving charge account and a revolving loan account is that

the revolving loan account is an arrangement by which the lender from time to time extends the loan of money to a consumer while a revolving charge account is an arrangement by which a seller, from time to time, permits a consumer to purchase goods or services on credit. With the exception of difference in definition, Part 4 replicates Part 3 with exception to reference to rates.

Part 5

Part 5 of the Kansas Truth-in-Lending Bill deals with definitions of finance charge limitations on credit sales. This section is an amended version of the Kansas Sales Finance Act KSA 16-502. One major amendment to KSA 16-502 is a redefinition of the term "services". The old definition, under KSA 16-502, was: "Services means work, labor and services furnished in the delivery, installation, servicing, repair, or improvement of goods." This meant that selling of services other than those involved in the purchase or repair or improvement of goods on credit was not covered under the Kansas Sales Finance Act. The definition, as written in S. B. 125, states:

> Services includes: (1) Work, labor and other personal services; (2) privileges with respect to transportation, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations, and the like, but does not include insurance premium financing as provided for by K. S. A. 1968 Supp. 40-2601 et seq.

This definition of services is exactly the same definition

as found in S. B. 355 entitled "The Uniform Consumer Credit Code." It was introduced by Senator Smith in 1969 and held over until the 1970 session of the Kansas legislature. This change in the definition of service was made because the Federal Truth-in-Lending Bill stated that a credit sale included goods and services, not just services sold with goods.

Aside from the important rate changes contained in Section 5, the only other major change from the Kansas Sales Finance Act is an amendment in the rate section of K. S. A. 16-508 dealing with the minimum finance charge that may be collected by a creditor when making a loan under the Kansas Sales Finance Act. Under K. S. A. 16-508: "The minimum finance charge of $15 may be charged on any retail installment transaction." There is no documentation or reason why this section was amended, save for a small reference found in the Governor's news release upon signing S. B. 125 (Document 64). Under S. B. 125, as passed by the Senate and eventually passed by the entire legislature, the minimum finance charge section states: "A minimum finance charge of $15 may be charged on any motor vehicle installment transaction."

This is a most significant change. Now, in the State of Kansas, on purchases other than motor vehicles there is no minimum finance charge on installment contracts that can be collected. Why and how this amendment became part of S. B. 125 may never be known, as there are no minutes for

any meetings of committees in the State legislature.

Part 6

Part 6 of S. B. 125, entitled "Amendment to the Consumer Loan Act" removes that section of the Consumer Loan Act which dealt with disclosure requirements, because part 1 of S. B. 125 prescribes disclosure consistent with the Federal Truth-in-Lending Act.

Part 7

Part 7, entitled "Credit Unions" is probably one of the more interesting parts to be found in S. B. 125. It provides: "Credit Unions may enter into agreements with banks for the extension of credit card service and check credit plans to their members."

Why and how the credit unions of the State of Kansas chose to become involved with S. B. 125 remains a mystery. One official of the Kansas Credit Union League told this candidate during hearings on the bill in Topeka, that they did not really like S. B. 125, but went along with it because they were afraid of what might be enacted if S. B. 125 was not enacted.

Senate Bill 388

Senate Bill 388, which is a bill enacted at the one-day "cleanup" session of the legislature, amended S. B. 125. It provides that the administrators charged with enforcing S. B. 125 will have the enforcement powers of the Attorney

General granted under the 1968 Buyer Protection Act of the State of Kansas. It provides that the Attorney General, at his discretion, can assume enforcement of S. B. 125 if he determines that the commissioners and administrators charged with enforcing S. B. 125 are not adequately enforcing the Kansas Truth-in-Lending Act.

KANSAS TRUTH-IN-LENDING DOCUMENTS

Introduction

This chapter itemizes in chronological order documents collected by the Department of Family Economics, Kansas State University, pertaining to Truth-in-Lending in Kansas. The documents have been bound in three volumes and placed on file in Farrell Library at Kansas State University (Documents __). A summary of each is presented, herein. The summaries are not to be considered as substitute reading for the original documents but as providing the key characteristic of each document or relating why the document was included in this collection. Although there is no way to guarantee full documentation of this historic event there is reasonable assurance that the most significant items have been included, with the exception of any radio or television coverage.

Documents

Document 1: (Undated) A 66 page detailed comparison of each section or paragraph of Title I of the Federal Consumer Credit Protection Act with existing Kansas Law, authored by Mr. Stanley L. Lini, Counsel and Executive Secretary of the Kansas Association of Finance Companies. This

document had two stated objectives:

> . . . to discuss the contents of the Consumer Protection Act in an attempt to make its provisions more easily understood.
>
> . . . to compare the statutes of Kansas to see whether or not they are "substantially similar" to the Federal Act, and to suggest whether legislation will be needed if Kansas is to retain control over those matters which are the subject of the Federal Act.

The format was: (1) to state a section of the Federal Act, (2) to state comparable state statutes, (3) to comment on any differences between the Federal and State statutes, (4) to recommend action that would be needed to make Federal and State statutes comparable.

Document 2: (October 28, 1968) A six-page letter from Dr. Richard L. D. Morse, Professor and Head, Family Economics, Kansas State University to Mr. Lind commenting on Document 1. It contains technical suggestions and a discussion of the philosophical differences between Lind and the Federal Truth-in-Lending Act.

Document 3: (January 8, 1969) A letter from Dr. Morse to Mr. Lind regarding the problem of converting add-on rates to annual percentage equivalents. This letter was the result of a telephone call Dr. Morse made to Mr. Lind, Dec. 30, 1968, pursuant to another matter. However, during the telephone conversation Mr. Lind brought up the subject of converting add-on rates to monthly percentage equivalents, and Dr. Morse suggested alternative ways to obtain the desired 18% annual percentage rate. Mr. Lind subsequently

sent Dr. Morse a copy of the proposed revised rate schedule. In the letter, Dr. Morse outlines the complications involved in converting add-on rates to monthly percentage rates and confirms the adequacy of his proposed revised rate schedule. He also expresses concern for the need of 18% on revolving credit and the need for publication of this independent of Truth-in-Lending.

Document 4: (January 15, 1969) Mr. Lind's proposed "Kansanized" version of Truth-in-Lending. This document contains:

> A "Kansanized" version of Title I of the Federal Consumer Credit Disclosure Act commonly known as the Truth-in-Lending Act, an amended version of the installment loan section of the Kansas General Usury Act, specific provisions for revolving loan and charge accounts adapted from the uniform Consumer Credit code, amended versions of the definition and rates sections of the Kansas Sales Finance Act.

Document 5: (Undated) A five-page commentary by Mr. Dale Bruce, General Counsel for the Kansas Credit Union League of Mr. Lind's "Kansanized" version of the Truth-in-Lending law. Mr. Bruce's commentary contains ten technical legal comments and two general criticisms: (1) The "legal flim-flam" of quoting the dollar add-on rate ceilings rather than annual percentage rates, and (2) the provisions for increasing the rates under the Kansas Consumer Loan Act and the Kansas Sales Finance Act.

Document 6: (January 21, 1969) A letter from M. O. Wray, Treasurer of the Kansas Highway Credit Union to Dr. Morse advising that a Truth-in-Lending bill was about to be

"railroaded" through the Kansas legislature, and that this bill, written in rather confusing language, would substantially raise interest rates in the State of Kansas.

Document 7: (February 5, 1969) Senate Bill 125 as introduced in the Senate. It did not carry the name of any sponsor as do many bills introduced in the Kansas legislature. This fifty-page bill was the legislative draft of Mr. Lind's "Kansanized" version of Truth-in-Lending found in Document 4.

Document 8: (February 5, 1969) A letter from Dr. Morse to Mr. Lind containing a three-page commentary and criticism of Document 4. It listed four major criticisms: (1) this type of legislation was not necessary; (2) the section on administrative enforcement did not give any authority for public representation with regard to enforcement of the Kansas Truth-in-Lending law; (3) it continued use of dollar add-on rates rather than annual percentage rates; and (4) its rate raising sections should be the subject of separate legislation.

Document 9: (February 10, 1969) A highly critical legislative report on the Kansas Truth-in-Lending, S. B. 125, by Representative Keenan of Great Bend. Rep. Keenan was most critical of the proposed rate changes and urged his constituants to write each chairman of the Senate and House Committees on Commercial and Financial Institutions.

Document 10: (February 12, 1969) A Great Bend Daily Tribune article headlined "Truth-in-Lending Bill is a

Farce." This article is based on Rep. Keenan's legislative report, Document 9.

Document 11: (February 13, 1969) An article from the Hutchinson News headlined "Pending Consumer Bill is Blasted," written from Mr. Keenan's legislative report, Document 9.

Document 12: (February 13, 1969) A Wichita Eagle article headlined "Truth-in-Lending Meets Dissent in Legislature," based on Rep. Keenan's legislative report, Document 9.

Document 13: (February 14, 1969) A Topeka Daily Capital article headlined "Truth-in-Lending Concept Blasted." It reports testimony given before the Senate Committee on Commercial and Financial Institutions on February 13 by Mr. Lind and comments of Mr. James Garrison, Director of Southwest Kansas Community Action Programs and Director of the Kansas Association of CAP Directors. The article states that Mr. Lind appeared before the Committee representing five state groups including the State Chamber of Commerce, Kansas Bankers Association, and the Kansas Association of Finance Companies. The article reports:

> Lind said the organizations he represents thinks the bill should be made effective before July 1, when the Federal version would go into effect in all states which have not adopted an acceptable equivalent to the Federal Act.

Mr. Garrison argued that the Federal Bill would go into effect whether Kansas adopted a bill or not. Mr. Garrison also attacked the increased rates contained in S. B. 125.

Document 14: (February 17, 1969) Prepared statement of Dr. Morse for delivery February 17 before the Senate Committee on Commercial and Financial Institutions. Dr. Morse appeared at the verbal invitation of Senator Ed Reilly, Jr. Dr. Morse points out, among other matters, that there is no immediate need for passage of such legislation at the State level, questioned the need for increased interest rates, and criticised the bill for not quoting the rates as annual percentage rates. Only a portion of the statement could be given in the approximately twenty minutes made available for his presentation. However, a copy was filed with the chairman. The committee chairman, Senator Bennett, referred the matter to the subcommittee of the Committee on Commercial and Financial Institutions chaired by Senator Ed Reilly, Jr. Insufficient time was again allowed to complete the presentation. These two appearances were the only occasions before the Senate committees that anyone other than the proponents were given an opportunity to appear.

Document 15: (February 21, 1969) An article appearing in the Topeka Daily Capital headlined "Loan Truth Bill Also May O.K. Interest Boost." The article referred to Mr. Lind's and Dr. Morse's testimony before the Senate Committee. It pointed out that the fifty-page bill included increases in interest rates on virtually all types of consumer loans in the State of Kansas. The article quoted Mr. Lind as saying: "The rates are essentially the same rates that have been in effect since 1958."

Document 16: (February 21, 1969) An Associated Press article from the Manhattan Mercury headlined "Credit Expert Gives Testimony." This article referred to Dr. Morse's statements regarding the increased rates. It also reported that:

> Senator Ed Reilly, Jr., Republican Leavenworth, was asked if he knew where the bill originated. He commented that he did not. Reilly is chairman of the Banks and Banking subcommittee.

The article went on to report:

> . . . But Senator Robert F. Bennett, Republican Prairie Village, Chairman of the full committee, said that the bill was prepared at the request of many organizations representing financial institutions and businesses in Kansas.

Document 17: (March 12, 1969) Senate Bill 125 as amended by Senate Committee (Committee on Commercial and Financial Institutions) and the Senate Committee of the Whole.

Document 18: (March 12, 1969) An article appearing in the Topeka Daily Capital headlined "Senate Gives Interest Bill Tentative O.K." reporting that on March 11, the Senate of the State of Kansas passed S. B. 125 without any "no" votes and sent it to the House of Representatives. The article outlined all of the increased rates embodied in S. B. 125.

Document 19: (March 13, 1969) A letter from Mr. Harry F. Lutz, Chairman of the House Committee on Commercial and Financial Institutions to Dr. Morse inviting him to appear on March 18 before the House Committee's Hearings on

S. B. 125.

Document 20: (March 15, 1969) A Kansas City Times article headlined "Hearings Soon on Loan Bill." This article reported the passage of S. B. 125 from the Kansas Senate. Its opening sentence was:

> Substantial interest rate increases on many consumer loans would be allowed under a Truth-in-Lending bill now in the Kansas House Committee on Commercial and Financial Institutions, with hearings expected sometime this week.

The article reported on Senator Robert F. Bennett's justification of the increase in rates. One statement was:

> This code sets interest maximums considerably lower than the new Federal Code and would control them until such time as the legislature might adopt the National Uniform Code, Senator Bennett said.

The article also reported that Senator Glee S. Smith, Jr., Republican, Larned, had introduced in the 1969 session a version of the National Uniform Consumer Credit Code, but that Bill would probably be held over for study until the 1970 session of the legislature. The article ended with a summary of the increase in interest rates, proposed under Senate Bill 125.

Document 21: (March 19, 1969) An article appearing in the Topeka Daily Capital headlined "Lending Truth Bill Hides Rate Boost, Foes Claim" reporting the hearing before the House Committee on Commercial and Financial Institutions. Mr. Harold Stones, Research Director of the Kansas Bankers Association, told the committee he was speaking in behalf of seven financial associations made up of retailers,

lenders, and creditors. The article outlined the increase in interest rates and reported that the debate mainly centered around whether such a bill was necessary in the State legislature at this time and whether this particular bill would gain exemption for the State of Kansas. The article also reported that several individuals representing organizations appeared in opposition to the bill. They were Dr. Morse, Mr. Jim Yount, Vice-President of the Kansas State Federation of Labor, Mr. Gerald Robinson, Director of the Topeka Office of Economic Opportunity.

Document 22: (March 19, 1969) A letter from Dr. Morse to Mr. Stones regarding Mr. Stones statement that he had received fair assurance from the Federal Reserve Board that Senate Bill 125 would exempt the State of Kansas from Federal Enforcement of Truth-in-Lending.

Document 23: (March 20, 1969) A copy of a news release delivered by Dr. Morse over radio station KSAC. He pointed out the major provisions of the Federal Truth-in-Lending Law and the Kansas Truth-in-Lending bill. He also stated that the Kansas Bill provides for increased rates of as much as fifty percent. Kansas, he said, need not legislate in this area in order to bring Truth-in-Lending to the citizens of Kansas. He pointed out that the Federal Bill would become effective July 1 regardless of what the Kansas Legislature did.

Document 24: (March 21, 1969) A letter from Dr. Morse to Mr. Daniel D. Beatty, Business Manager, Kansas

State University, explaining why he had appeared before the House committee. This letter was sent because Mr. Beatty had received several telephone calls questioning Dr. Morse's appearance.

Document 25: (March 21, 1969) A letter from Rep. Keenan to Dr. Morse, containing Rep. Keenan's notes relating to the House Hearings on Senate Bill 125.

Document 26: (March 25, 1969) A letter from Mr. Beatty to Mr. Max Bickford, Executive Officer of the State Board of Regents explaining Dr. Morse's reasons for appearing before the committee and enclosing a copy of Dr. Morse's letter, Document 24.

Document 27: (March 25, 1969) A letter from Mr. Stones to Dr. Morse in which Mr. Stones questioned Dr. Morse's statement over KSAC regarding the Kansas Truth-in-Lending Bill being a burden upon the taxpayers of the State of Kansas. Mr. Stones pointed out that the regulatory authority in the State of Kansas, such as the State Banking Commissioner and the Consumer Credit Commissioner are not supported by General funds of the State of Kansas. Their departments are supported entirely from licencing fees collected by their agencies. He did not question Dr. Morse's statement that the Kansas Truth-in-Lending Bill would increase interest rates by as much as fifty percent and that such legislation was not needed at this time. Mr. Stones sent copies of his letter to: Dr. James McCain, President of Kansas State University, Mr. C. Ned Cushing, Chairman of

the Board of Regents, the State Banking Commissioner, the Chairman of the House Committee, and the president and vice-president of the Kansas Bankers Association.

Document 28: (Undated) An anonymous flyer "Watch Your Interest," referred to in Mr. Stone's letter as being circulated widely in the legislature. Stones attributed it to Dr. Morse and asserted that the flyer was "full of half-truthes and inaccuracies" which he did not identify.

Document 29: (March 26, 1969) An article from the Topeka Daily Capital headlined "Homemaker Group Fights Interest Bill" reporting that the Kansas Home Economics Association was opposed to the Kansas Truth-in-Lending Bill, S. B. 125. The article stated that the Association supports the principles of Truth-in-Lending but was opposed to any increase in interest rates. A spokesman for the Association stated the bill had been written in such a way that it made it difficult for any person to understand the language of the bill.

Document 30: (March 27, 1969) A letter from Dr. Morse to Mr. Carl Rochat, Director of the University News of Kansas State University, submitting material for news releases. Included were two tables. One showed the cost of various loans under existing rates and those that would be imposed under S. B. 125. The second table showed a comparison of the rates under then present Kansas law and those proposed in S. B. 125. In his letter, Dr. Morse stated that this factual information would be most helpful to editors

and station managers to better understand present Kansas Credit laws and S. B. 125 when answering their public's questions about the proposed legislation. There is no record of these tables being sent from the University News Service.

Document 31: (March 27, 1969) A Topeka Daily Capital article headlined "Protection of Borrowers on Interest Rates Sought" reporting an attack by Representative Keenan on the Kansas Truth-in-Lending Bill. Rep. Keenan was most critical of the increase in interest rates. The article included several recommendations Rep. Keenan had made for possible inclusion in the Kansas Truth-in-Lending Bill. These dealt mainly with the penalty section dealing with violators of the Kansas Truth-in-Lending Bill.

Document 32: (March 27, 1969) A letter from Dr. Morse to Mr. Stones in reply to Mr. Stones letter, Document 27. Dr. Morse defended his speech over KSAC and reviewed the various consumer organizations he had worked with, state legislatures he had appeared before, and government agencies he had been a consultant to. He also stated that he had aided Mr. Lind in computation of monthly percentage equivalents of the add-on rates of S. B. 125. Dr. Morse asked Mr. Stones six questions including an itemization of the half-truthes and inaccuracies contained in the flyer "Watch Your Interest (Document 28). Dr. Morse gave his reply the same coverage that Mr. Stones had given his letter to Dr. Morse, Document 27, including the press.

Document 33: (March 27, 1969) Proposed guidelines for exemption from Federal Truth-in-Lending issued by the Federal Reserve Board. These guidelines outlined the procedures by which a State could become exempt from the Federal Truth-in-Lending law. The basis of the procedure was that the appropriately authorized officer of the State would submit to the Board documents indicating that State law was substantially similar to the Federal law and outlining the enforcement procedures by which the State law would be implemented.

Document 34: (March 28, 1969) A letter from Mr. Frederic Solomon, Director of the Division of Supervision and Regulation of the Board of Governors of the Federal Reserve System to Mr. Harold Stones. The letter stated that no opinion was asked or given as to whether the proposed Kansas Truth-in-Lending law would exempt the State of Kansas from the Federal Truth-in-Lending law. This letter was in answer to Dr. Morse's letter to Mr. Stones (Document 22) referring to Mr. Stones' statement before the House Committee that he had fair assurance from the Federal Reserve Board that Kansas Truth-in-Lending would exempt the State of Kansas from Federal Regulation.

Document 35: (March 29, 1969) A letter from Dr. Morse to Mr. Donn J. Everett, Representative from Riley County explaining the situation with regards to Mr. Stones letters to the President of Kansas State University and the Board of Regents of the State of Kansas.

Document 36: (March 30, 1969) An article in the Topeka Capital-Journal headlined "Professor has Clash on Bill With Lobbyist" written by Mick Rood, urban affairs writer for the Topeka Capital-Journal. Mr. Rood described the letter that Mr. Stones had sent to President McCain and Chairman of the Board of Regents, (Document 27). Mr. Roods quoted Mr. Stones as saying:

> I don't want to be dealing anyone dirt or anything like that . . . or keep him from testifying before the committee.

Mr. Stones also stated that his letter was not an official Kansas Bankers Association statement. However, an examination of Document 27 will show that the letter was written under the letter of the Kansas Bankers Association and that Mr. Stones' signature appears above his official title as Director of Research for the Kansas Bankers Association. The article also quoted Mr. Stones, as saying with regard to Dr. Morse's appearance before the House Committee:

> I think he was introduced in his official capacity as a Kansas State professor. I felt that this was a departure from procedure.

Mr. Rood contacted President McCain and reported in the article that President McCain stated that it was customary for university professors to be introduced by their full title. President McCain also stated:

> . . . K-State professors have been allowed to voice opinions on matters concerning their field of Academic interest. Morse was not speaking for the university, McCain said.

Document 37: (April 1, 1969) A letter from Mr. M.

O. Wray, Treasurer of the Highway Credit Union to President McCain stating that he was present at the committee meeting at which Dr. Morse testified and said:

> Dr. Morse very plainly pointed out, he was speaking as a private citizen. Anyone, with an ounce of understanding, knows that it was a dirty, sneaky, trick to attach an increase in interest rates on the Truth-in-Lending Bill now in the State legislature. D. Morse just brought the facts out into the open. That's why the K. B. A. is so mad.
>
> Congratulations to you, the university, and any other teacher who has the guts to stand up and be counted.

Document 38: (April 1, 1969) Amendments by the House Committee on Commercial and Financial Institutions to S. B. 125. At this meeting the bill was discussed among the members of the committee and Rep. Fish introduced a series of amendments changing various wordings in the bill. These amendments included such things as changing or amending the section on loan finance charge to have it read "loan finance charge also may be referred to as finance charge." As Rep. Fish introduced each of these amendments he would state that this was an amendment requested by Dr. Morse. Dr. Morse was totally unaware of Rep. Fish's actions and presumes his reference may have been to the statement prepared for the Senate, Document 14. Rep. Fish's last amendment was to reinstate the 30-month limitation on loans under the Kansas Sales Finance Act. Rep. Shelby Smith of Wichita then introduced an amendment which he claimed would return the interest rates proposed in S. B. 125 to the interest rates then

law in the State of Kansas.

Document 39: (April 1, 1969) An article appearing in the Great Bend Daily Tribune headlined "Expect Decision on Lending Bill" reporting that a decision on the Truth-in-Lending Bill was expected that day, April 1. Also included was a report of the Committee on Commercial and Financial Institutions meeting held on Monday, March 31. Representative Jack Turner, Republican of Wichita, had urged that the Committee recommend that Part I of the Kansas Truth-in-Lending Bill, that part which was most nearly identical to the Federal Truth-in-Lending Bill, be recommended for passage, and that those sections dealing with rate increases be held over until the next legislature. The article quoted Rep. Turner as saying "Truth-in-Lending is just a device to get this bill past the legislature."

Document 40: (April 1, 1969) An amended version of the "Watch Your Interest" flyer. It was headed "April Fool Edition" and explained what had happened in the committee meeting of April 1.

Document 41: (April 2, 1969) An article appearing in the Wichita Eagle headlined "Truth-in-Lending Bill Pushed by House Group" reporting the occurrences of the previous day before the House Committee on Commercial and Financial Institutions. The article states, in part:

> The House Commercial and Financial Institutions Committee lowered proposed interest rates hikes to their present level, made several technical amendments and sent the bill to the floor of the House for debate.

The amendment to remove interest hikes was offered by Representative Shelby Smith, Republican Wichita.

Representative Harry Lutz, Republican, Sharon Springs, Chairman of the Committee said as the bill left the Committee, consumers would pay no higher interest rates than they now pay.

Document 42: (April 2, 1969) "Revised Version of Interest Comparison Tables" was issued by the Department of Family Economics, Kansas State University. This is a three-page document showing the rates in the State of Kansas of S. B. 125 and what Rep. Smith's amendment did as regards proposed rate changes in S. B. 125.

Document 43: (April 2, 1969) A letter from Dr. Morse to President McCain thanking President McCain for his support during his confrontation with Mr. Stones of the Kansas Bankers Association. He informed the President that one of the reasons he had given public distribution of his letter in reply to Mr. Stones was the refusal of the University News to release background news (Document 30) to the press.

Document 44: (April 3, 1969) A three-page letter from Rep. Keenan to Governor Robert Docking. In the letter Rep. Keenan outlined the reasons for opposition to S. B. 125. Representative Keenan stated in part, that many of the legislators had been led to believe that if the State did not act before July 1, 1969, there would be no chance to gain exemption after that date, when in fact the Federal Truth-in-Lending Bill had no such deadline. Mr. Keenan also informed the Governor of the unfounded statement by Mr. Stones before the House Committee that he had received fair

assurance that S. B. 125 would qualify the State of Kansas for exemption. Mr. Keenan referred to the Federal Reserve letter of March 28 (Document 34) which stated that no opinion was asked or given as to whether such legislation would exempt the State of Kansas.

Mr. Keenan then urged the Governor to consider the fact that the State bill, unlike the Federal Bill, required that all creditors not then licensed in the State to pay a $10 notification fee plus additional fees and that the State bill provided no public representation on the regulatory board for the State Truth-in-Lending.

Mr. Keenan ended his letter by listing the organizations in the State of Kansas that publicly proclaimed their opposition to S. B. 125. These included: the Kansas Federation of Labor, Community Action Program Directors, Kansas Home Economics Association, the Kansas Council of Churches, and the Attorney General's Consumer Advisory Council.

Mr. Keenan informed the Governor that various members of the legislature had conducted polls of their districts as regards to S. B. 125 and had found that the polls indicated 80% of those polled were opposed to S. B. 125.

Document 45: (April 3, 1969) Senate Bill 125 as amended by the House Committee.

Document 46: (April 4, 1969) A letter from President James McCain to Dr. Morse thanking Dr. Morse for informing him of the controversy between Dr. Morse and Mr. Stones. Dr. McCain indicated that he was happy that Dr. Morse had

not accepted offers from other universities and was planning to stay at Kansas State University.

Document 47: (April 4, 1969) An article appearing in the Topeka Daily Capital headlined "Keenan Claims Loan Bill Still Permits Hikes" reporting that the amendment during the April 1 meeting of the House Committee which supposedly returned interest rates in the State of Kansas to their then present level was inaccurate. The article quoted Mr. Keenan as saying that the rate under the Consumer Loan Act would still be increased by as much as fifty percent.

Document 48: (circa April 4, 1969) Legislative Report by the Kansas State Federation of Labor, AFL-CIO stating opposition to S. B. 125 because of increased rates.

Document 49: (April 7, 1969) A report from the Research Department of the Kansas Legislative Council for Rep. Keenan on the subject: a questionnaire relative to the effect of S. B. 125. Representative Keenan had requested that information about the number of banks, savings and loan institutions and credit unions in the State of Kansas that would be affected by S. B. 125. The report showed that of the 600 banks in the State of Kansas 429 were State chartered Banks. However, all of the State chartered Banks were at that time supervised by the Federal Reserve System or the F. D. I. C.

Of the 100 savings institutions 71 were State chartered and 60 were under the supervision of either the

Federal Home Loan Bank or the Federal Savings and Loan Insurance Corporation. Thus 11 were not under Federal supervision.

Of the 320 credit unions in the State of Kansas, 244 were State chartered and not under the supervision of a Federal regulatory agency.

The second part of the questionnaire dealt with the amount of revenue to be raised from the $10 annual notification fee and the additional fee of $10 per $100,000 of outstanding loans that would be imposed on the non-licensed creditors in the State of Kansas. The report showed that an original estimate of $61,000 made by the Kansas State Budget Director had been revised downward to $30,000.

Document 50: (April 7, 1969) A letter from Mr. Noble Drake, Executive Secretary of the Kansas Retail Association of the State Chamber of Commerce, Mr. Stanley Lind, Executive Director of the Kansas Consumer Finance Association, and Mr. Harold Stones, Research Director of the Kansas Bankers Association to Members of the House of Representatives of the State of Kansas. The letter, delivered to the members of the House on the morning of the debate, read:

> Dear Representative:
>
> We certainly do thank you for your affirmative response to S. B. 125, which may be voted on today by the House Committee of the Whole.
>
> We would like to accept the House Committee's amendments, and resist all other floor amendments. At the present time, 74 representatives have stated an indication to do so also many

> others have given a probable affirmative. Unfortunately time has not permitted all House members to be contacted.
>
> Thank you very much.
>
> Sincerely,
>
> Noble Drake
> Stanley Lind
> Harold Stones

Document 51: (April 7, 1969) An unsigned letter received by Rep. Jerry Harper on the day of the vote on S. B. 125. A copy of this letter appears on page 50.

Document 52: (April 8, 1969) An article from the Topeka Daily Capital headlined "Interest Rate Bill Tentatively O.K.ed" reporting the four hour debate on the floor of the House over S. B. 125. The article reported on the attempts by Rep. Jerry Harper of Wichita, Rep. Jack Turner of Wichita, both Republicans, and Rep. Robert Keenan Democrat of Great Bend, who voiced strong opposition to S. B. 125. The article stated that Rep. Harper offered at least ten unsuccessful amendments to the bill such as:

> . . . a proposal which would have deleted interest rate increase provisions from the measure and let the Truth-in-Lending portion as a separate piece of legislation.

The article quoted Rep. Keenan as stating with reference to Document 50, the letter circulated the morning of the debate by the lobbyists favoring S. B. 125:

> If the special interests can predict the fate of a bill before it has even been argued on this House floor; if this is so, then we (House members) need to move the lobbyists in here and we ought to go out into the halls.

SENATE BILL 125

As Amended by House Committee

MAXIMUM INTEREST RATE COMPARISON

Present rates for Retail Instalment Sales allowed by law as of May 14, 1958 are set forth below. SB 125 does not in any way change these rates retailers can charge, and have been able to for 11 years.

Rates for Motor Vehicles	Rates for Other Goods and Services
New motor vehicles-----$7 per hundred 2 yr. old motor vehicles -----$10 per hundred Used motor vehicles over 2 yrs. old--------$13 per hundred (SB 125 makes no change in any way with these rates having to do with Motor Vehicles)	First $300----------$12 per hundred $300 - $1000---------- $9 per hundred Over $1000---------- $8 per hundred

THE ONLY INTEREST RATE CHANGE OFFERED BY SB 125 IS TO ALLOW LENDERS TO USE THESE SAME "OTHER GOODS AND SERVICES" RATES NOW AVAILABLE TO RETAILERS SO AS TO AUTHORIZE PRESENT REVOLVING CREDIT PRACTICES IN THE NEW LIGHT OF IMPENDING FEDERAL REGULATIONS.

AS A PRACTICAL MATTER-----

If SB 125 passes, the Kansas Consumer will pay no more for credit than if it fails. Refrigerators, TV sets, etc., purchased on credit from Retailers are already subject to these same maximum rates. Small loan companies rates for licensed lenders are not affected by SB 125. Other lenders, such as banks, will simply be allowed to continue present practices which the Federal Act places in jeopardy. Maximum rates are not now charged by banks-----why assume they will be in the future?????

If SB 125 fails, Kansas Consumers are likely to be notified that their credit cards allowing retail credit purcheses are null and void. Kansas will have no statutory authority for these cards after July 1, 1969, in the event that either the Federal Act, or Part I of this bill only comes into effect. DO KANSAS CONSUMERS WANT THIS?????????????????

The article also quoted Rep. Turner as stating:

> The outcry for this bill hasn't come from the people, it's come from a coalition of lobbyists.

Are we going to put up with this just because it's the Bankers? Representative William Fish, Republican of Leawood, the floor leader for S. B. 125 was quoted as saying:

> What this raises, and the only thing it raises, is Bank interest rates.

The article reported that the outcome at the end of the four hour debate was that S. B. 125 was passed on a margin of 87-38.

Document 53: (April 8, 1969) An article in the Hutchinson News headlined "Interest Rate Bill Has First Approval," an A. P. story describing the debate and outcome of the House Action on S. B. 125.

Document 54: (April 8, 1969) An article from the Wichita Eagle, headlined "Truth-in-Lending Bill Wins House Prelim" reporting on the four hour debate in the House on S. B. 125. It included two interesting quotes:

> Asked if he thought Governor Robert Docking would veto the bill when it reaches his desk, Rep. Frank Gaines, Democrat, Augusta, minority party policy committee chairman, said "I know he will."
>
> Representative Richard C. (Pete) Loux, Democrat, Wichita, minority floor leader, indicated the stage was being set for a veto.

Document 55: (April 8, 1969) An article appearing in the Kansas City Times headlined "Interest Hike Passes House" reporting the debate in the House of Representatives

over S. B. 125.

Document 56: (April 8, 1969) A short article appearing in the Manhattan Mercury headlined "Truth-in-Lending Bill Passes the House 81-28."

Document 57: (April 9, 1969) An A. P. article appearing in the Manhattan Mercury headlined "As Passed by House, Credit Bill has Built-In Lobby." The story reported that 62 members of the Senate and House of Representatives in the State of Kansas had a vested interest of at least 5% ownership in banks, savings and loan associations, credit unions or finance companies or received at least $1000 a year compensation from such firms. The article reported that there were 17 members of the 40 member Kansas Senate and 45 of the 125 members of the Kansas House of Representatives with such interests. Included in the tabulations were members of the Kansas legislature who were attorneys who represented or were members of legal firms representing various forms of the consumer credit industry. The story reported that in the 1967 legislature the House of Representatives had adopted a rule which read:

> No member shall vote on a question in which we have a special, personal or pecuniary, as distinguished from the general interest that other legislators have.

The article also stated that earlier in the session on a vote concerning accelerated highway construction, a member of the House, Rep. Raymond King of Hesston, had refused to vote on the highway bill on the grounds that he

had an interest in a highway bridge construction firm. The House of Representatives excused him from voting on this because of his pecuniary interest in such legislation.

Document 58: (April 10, 1969) A letter from Dr. Morse to Governor Robert Docking, thanking him for signing the Senior Citizens Month Proclamation and having the opportunity of attending a meeting held in Governor Docking's office concerning S. B. 125. Dr. Morse raised certain constitutional questions about S. B. 125, and questioned the need for State action and the probability of exemption for the State of Kansas as a result of S. B. 125.

Document 59: (April 10, 1969) An article from the Topeka Daily Capital headlined "Committee to Ask Reductions in Interest Rates" reporting that the Senate House Conference Committee was planning to recommend reducing the interest rate increases in S. B. 125. The article reported:

> It was learned that Governor Robert Docking, himself a Banker, has let it be known that he considered the proposed increases to be too great and asked the Conference Committee to reduce them.
>
> The sources declined to go so far as saying Docking threatened to veto the measure unless the rates were cut back but they said it was made plain that the bill's chances for veto would be lessened if the rates were reduced.

Document 60: (Undated) Conference Committee Report on S. B. 125 in which they lowered the rates.

Document 61: (April 12, 1969) A telegram from the Kansas Home Economics Association to Governor Robert Docking asking him to veto S. B. 125.

Document 62: (April 18, 1969) An opinion by the Attorney General of the State of Kansas, Kent Frizzell to Governor Robert Docking regarding the constitutionality of S. B. 125. The Attorney General gave the opinion that S. B. 125 was constitutional with certain reservations regarding pending action by the Kansas Supreme Court. However, it was the opinion of the Attorney General that there were not adequate enforcement provisions in S. B. 125 to gain exemption for the State of Kansas from Federal Truth-in-Lending.

Document 63: (April 19, 1969) An article in the Hutchinson News headlined "Says Lending Bill Only Raises Rates" reporting that despite the Attorney General's opinion Governor Docking would sign S. B. 125. The article reviewed the major points of the Attorney General's opinion and stated that in an interview with the Attorney General:

> Asked if it could be deduced from his opinion that the bill does nothing more than raise interest rates and legalize revolving credit, Frizzell said: "If my answer to the Governor's question is held proper by the courts- and in this case it would be a Federal decision- then that would be the net effect of the bill, yes.

Document 64: (April 19, 1969) A press release by Governor Robert Docking. The Governor stated his reasons for signing the bill and his reservations about its enforcement sections. The Governor stated:

> The bill is, however, necessary as a step forward in consumer protection. Kansas must have some type of Truth-in-Lending legislation enacted by July 1, 1969 or consumer installment sales will automatically be under the control of the Federal

> officials in Washington D. C. This would include hospitals, morticians, physicians, dentists, veterinarians, and many others.
>
> By signing this bill into law Kansas will preserve a portion of her States rights in this area. The deficiencies contained in this bill can be corrected.

He went on to state that he had contacted the Speaker of the House and the President Pro Tem of the Senate and asked them to confer with the Attorney General and develop appropriate additional legislation that would "shore-up the weaknesses of this law."

Document 65: (April 20, 1969) An article in the Manhattan Mercury headlined "Docking Signs Lending Legislation" reporting on Governor Docking's press release.

Document 66: (April 21, 1969) A letter from Governor Robert Docking to Dr. Morse, thanking him for providing the Governor with information about S. B. 125.

Document 67: (April 21, 1969) A Topeka Daily Capital article headlined "Truth-in-Lending Measure Assailed" included an interview with Dr. Morse as Chairman of the Kansas Consumer Advisory Council with regard to Governor Docking's statement upon signing S. B. 125 into law (Document 64). Dr. Morse questioned the Governor's statement that the State of Kansas had to act before July 1, 1969. He also questioned why the Governor chose to sign an imperfect bill and then ask the legislature to clean it up. He stated: "It is the legislature's job to write correct bills in the first place . . ." Dr. Morse also questioned Governor Docking's

statement that S. B. 125 would preserve a portion of Kansas State's rights. He said, the only thing the bill will do is, "add an extra layer of government." Dr. Morse pointed out that there were no banks in the State of Kansas that would be exempted from Federal supervision by S. B. 125, and indicated that the bankers real interest in the bill is the hike in interest rates rather than the empty issue of obtaining State supervision for banks.

Document 68: (April 22, 1969) An article in the Hutchinson News headlined "Truth Bill Falls Short." This was a highly critical editorial concerning S. B. 125. The opening paragraph of which reads:

> Before the Kansas legislature enacts a Truth-in-Lending law, it will have to establish a Truth-in-legislating policy.

The editorial went on to blast the legislators and the Governor, for passing the bill called Truth-in-Lending when, in fact, the editorial stated:

> The bill, in fact, only raises the legal interest rates on most bank loans and allows revolving credit.

Document 69: (April 24, 1969) An article appearing in the industry newspaper, The American Banker, headlined "Controversial Truth Bill Signed in Kansas." This article contained several pertinent pieces of information. In the lead paragraph of the article a statement that:

> Kansas' Governor Docking, a Banker, who at one point had threatened a veto, had signed the bill.

This was the first indication that the Governor had, in

fact, threatened a veto at some point in the controversy over S. B. 125. The article was written by Mr. Harold Stones of the Kansas Banker's Association. In the article, Mr. Stones pointed out that Governor Docking was President of the Union State Bank, Arkansas City. Mr. Stones described the actions of the opponents to S. B. 125 as:

> Their main goal was to win the battle through the press. Their accomplishments were seen almost daily.
>
> Because of the amount and type of publicity received, this writer concludes that most people do not at all understand the nature of credit and the factors governing its competitive cost.

Document 70: (April 25, 1969) An editorial appearing in the Kansas State Collegian headlined "Find the Truth in Truth-in-Lending." The editorial states that the fifty-page document, S. B. 125, was a legal maze and questioned how many legislators had actually read the bill. The editorial stated that the bill had been quickly passed and signed into law because it looked good. The editor noted that Governor Docking asked the legislature to reconsider the bill when it returned for the final day of the 1969 session. The editorial ended by stating: "Hopefully, they will do away with the increased interest rates and stick to Truth-in-Lending."

Document 71: (April 27, 1969) A letter from Representative Lutz to Dr. Morse in which Rep. Lutz stated he could not find a copy of the letter from the Federal Reserve Bank of Kansas City which he had read during the floor

debate on S. B. 125. According to Rep. Lutz the letter stated that the Federal Reserve had given fair assurance of exemption for the State of Kansas upon passage of S. B. 125.

Document 72: (April 30, 1969) An article appearing in the Kansas State Collegian headlined "S. B. No. 125 May Hurt Consumers." It quoted Dr. Morse and Rep. Keenan on various aspects of the Truth-in-Lending Bill. The article pointed out the increased cost to the consumer and the increased cost to retailers in the State of Kansas as a result of S. B. 125.

Document 73: (May 1, 1969) A statement for release by the Department of Family Economics showing a comparison of the cost of credit and between rates then in effect, and those under S. B. 125.

Document 74: (May 1, 1969) A letter from Dr. Morse to Rep. Lutz regarding Rep. Lutz's reading of a letter during a floor debate on S. B. 125 (Document 71). In the letter Dr. Morse asks Rep. Lutz if he would request a copy of the letter from the General Counsel of the Kansas City District of the Federal Reserve Bank.

Document 75: (May 1, 1969) A letter from Dr. Morse to the editor of the Kansas State Collegian acknowledging President McCain's support during the controversy with Mr. Stones of the Kansas Bankers Association and thanking President McCain for upholding academic freedom at Kansas State University.

Document 76: (May 5, 1969) A letter from Dr. Morse

to Attorney General Kent Frizzell commenting on the Attorney General's opinion of S. B. 125. In the letter Dr. Morse again raised questions about the constitutionality of S. B. 125 and the probability of exemption for the State of Kansas.

Document 77: (May 8, 1969) Dr. Morse's letter (Document 75) as appeared in the section of the Kansas State Collegian "Letters to the Editor," headlined "Academic Freedom Meaningful Here."

Document 78: (April 25, 1969) Senate Bill 388 as enacted on the last day of the 1969 Kansas legislature. Senate Bill 388 was enacted by the legislature in an attempt to strengthen the enforcement sections of S. B. 125 as suggested by the Governor and the Attorney General. The Bill amended section 8 of S. B. 125 which is the enforcement provisions. In essence it provides the commissioners and administrators, charged with the enforcement of S. B. 125, authorization to exercise the same powers and authority of enforcement as those provided the Attorney General under the 1968 Buyer Protection Act of Kansas. Senate Bill 388 also provides that the Attorney General, at his discretion, could assume enforcement of S. B. 125 if he felt that any of the commissioners or enforcement agencies were not adequately enforcing the provisions of S. B. 125.

Document 79: (May 9, 1969) A letter from Mr. Dale W. Bruce, General Counsel of the Kansas Credit Union League with regards to the fifty cent minimum charge contained in

the open-end credit sections of S. B. 125. Mr. Bruce stated that as he read S. B. 125 the creditor could impose a fifty cent minimum charge plus the legal maximum rate. Whereas, the Federal Law simply said that a fifty cent minimum charge could be imposed. Mr. Bruce stated:

> So, under Kansas law and the Federal Disclosure, a revolving lender may charge 18% and not to exceed fifty cents per month and under "Truth," call it 18%, but must show the fifty cent in the periodic statement. The fifty cent charge will not alter the permissive truth of 18%.

Document 80: (May 22, 1969) A letter from Mr. Robert J. Klein, Economics Editor of the Consumer's Union to Dr. Morse. Mr. Klein gave his interpretation of the fifty cent minimum rule under the Federal Truth-in-Lending Law. Mr. Klein stated that under the Federal Truth-in-Lending the fifty cent minimum charge simply meant that if a fifty cent minimum charge was imposed the regular annual percentage rate was required to be quoted.

Document 81: (May 22, 1969) A letter from Mr. Charles M. Cline, a Wichita attorney, to Dr. Morse requesting copies of a chart showing a comparison of the Kansas rates prior to S. B. 125 and the effect that S. B. 125 would have on the legal maximum rates in the State of Kansas.

Document 82: (May 26, 1969) A letter from Dr. Morse to Mr. Cline enclosing the requested charts.

Document 83: (May 26, 1969) A letter from Dr. Morse to Mr. Dale Bruce. A summary of Dr. Morse's findings with regard to the fifty cent minimum charge under S. B. 125 and

under the Federal Law.

Document 84: (May 26, 1969) A letter from Dr. Morse to Mr. Roger Guffey, General Counsel and Secretary of the Federal Reserve Bank of Kansas City. Dr. Morse requested a copy of the letter supposedly sent to Rep. Lutz which Rep. Lutz read during the debate on the floor of the House over S. B. 125 (Document 71). With the letter Dr. Morse enclosed a transcript of a portion of the tape recorded debate of S. B. 125 in which Rep. Lutz referred to the letter from the Federal Reserve Board.

Document 85: (July 9, 1969) A copy of the script used by Mr. Roger N. Wilson, WIBW Television, Topeka, Kansas, in a broadcast on the aftermath of Truth-in-Lending nine days after it went into effect in the State of Kansas.

> The problem began way back last winter, even before the so called Truth-In-Lending law was signed by Governor Robert Docking.
>
> Before signing it, the Governor asked for an Attorney-General's opinion as to its constitutionality. The Attorney General said it was constitutional, all-right, but there were some flaws. The chief flaw, said Attorney General Kent Frizzell, was enforcement.
>
> Docking asked the legislature to strengthen the enforcement clauses, which they did on the final day of the session, but not apparently strong enough.
>
> Now the problems are haunting the office of the Consumer Credit Commissioner who has responsibility for implementing and enforcing the major part of the law.
>
> The immediate problem is to fulfill the first requirement of the law, registration of all those who come under the act.

There are 26 thousand retail businesses in the state, the Commissioner figures, who must register. In addition, there are an unknown number of other businesses, mostly in the service category, who also ought to register since they help arrange consumer credit.

Then there are the banks, and the loan companies and the savings and loan associations.

Supposedly, they are already registered under previous laws.

It's the retail and service businesses that are the Commissioner's headache.

The legislature didn't provide funds to publish rules and regulations or to print registration forms. The legislature did, however, specify a 10 dollar registration fee.

But the Consumer Credit Commissioner's budget doesn't have that kind of money in it, so a loan was made from the state's general fund to cover the cost of printing and postage.

But there's a fear that even the 10 dollar registration fee won't cover the cost.

And then, there's the matter of rules and regulations . . . Fifty or sixty pages of them, which landed on the desk of Assistant Attorney General Ed Collister yesterday.

Collister says he's waved his magic wand, but so far that's done no good in determining if the rules and regulations are adequate, legal, and realistic.

Born in controversy, Truth-in-Lending seems to be coming of age in adversity.

Add to all this the fact that the law also permitted an increase in interest rates. There are a lot of people griping about that, as well as the fact that they cannot register in compliance with a law which has been in effect for 9 days.

Miscellaneous Documents

During the course of the controversy over S. B. 125,

several documents were used at various times and carried no specific date.

Document 86: (Undated) Dr. Morse's commentary on S. B. 125 which was used at various times when he was asked to comment publicly on S. B. 125.

Document 87: (Undated) A document prepared by this writer dealing with the cost of credit in Kansas. This document was prepared for Representative Keenan, who requested some information on the possible cost of credit in the State of Kansas.

Document 88: (Undated) Senate Bill 125 as passed by the Kansas legislature.

Document 89: (Undated) Senate Bill 388 as passed by the Kansas legislature.

Document 90: (Undated) Constitution of the State of Kansas (with amendments as of March 1968).

Document 91: (Undated) Kansas Consumer Loan Act and Kansas Sales Finance Act.

Document 92: (Undated) A letter from Mr. David Lee, Office of Technical Assistance to the Governor, to Dr. Morse including a 26-page commentary on S. B. 125.

ANALYSIS OF SELECTED ISSUES

Introduction

The main issues in the debate over the enactment of Truth-in-Lending, S. B. 125, in the State of Kansas have been singled out for separate analysis. Each individual who has studied or become involved in the controversy over Truth-in-Lending in Kansas might have a different list of issues or place a different set of priorities on these issues. In the opinion of this writer, those selected seemed most critical in the debate or were of greatest significance to the consumer. No attempt was made to list every individual issue or to ascribe any priority to the issues selected.

Exemption

From What Parts Can a State Be Exempted?

The Federal Act contains five titles: Title I deals with Consumer Credit Cost Disclosure and has as its short title, "Truth-in-Lending." It contains three chapters: Chapter 1, General Provisions; Chapter 2, Credit Transactions; and Chapter 3, Credit Advertising.

Reference to exemption for substantially similar State law is derived from Section 123 of Chapter 2, Title I of the

Federal Truth-in-Lending Bill, which states:

> Exemption for State regulated transactions:
>
> The Board shall by regulation exempt from the requirements of this chapter any class of credit transactions within any state if it determines that under the law of that State that class of transaction is subject to requirements substantially similar to those imposed under this chapter, and that there is adequate provision for enforcement.

This clearly means that a State could become exempt from Federal regulations of only Chapter 2 of Title I of the Federal Truth-in-Lending Bill. A State cannot gain exemption of the advertising provisions which are Chapter 3.

Misunderstanding over what parts of the Federal Bill the States could become exempt begins in Mr. Lind's comparison of the Federal Truth-in-Lending Bill with Kansas Credit Statutes (Document 1). In Mr. Lind's statement of the objectives of this paper he states:

> . . . The Federal Act specifically provides that the Federal Reserve Board and the Secretary of Labor are authorized to certify that a particular State has laws which are "substantially similar" to that of the Federal Act, and that by reason there of, control of the name subject matter may revert to the State named rather than remain under the control of the Federal Government.

Mr. Lind erroneously believed that all sections of Title I of the Federal Act would have to be incorporated into State statutes in order for a State to gain exemption from Federal Truth-in-Lending.

An example of the misunderstanding can be found on page 61 of his comparison:

Chapter 3 — Credit Advertising

Section 141 Catalogs and Multi-Page Advertisements

IV

Will provision of this section of the Federal Act have to be incorporated into the Kansas Statutes in order for them to be substantially similar:

Answer: Yes. This will have to be amended into the four Credit Regulatory Acts or adopted as a part of one Act with reference to the four Regulatory Acts.

Another example of misunderstanding on the part of Mr. Lind is to be found in the statement of objectives of his paper. He stated that the Federal Reserve Board and the Secretary of Labor were authorized to exempt a State. However, Section 123 states: "The Board shall by regulation exempt," and Section 103 states: "The term Board refers to the Board of Governors of the Federal Reserve System." Therefore Mr. Lind was incorrect in two instances. First that the State of Kansas could become exempt from anything other than Title I, Chapter 2, of the Federal Act and incorrect in his statement that the Secretary of Labor would be involved in State exemption.

One cannot state with any certainty the reasons for his error, but several alternatives might seem plausible. Mr. Lind simply did not understand the Federal Act or the provisions thereof, or he did not want to have the exemption provisions of the Federal Bill fully understood or comprehended by those relying on his report. This misunderstanding of what could be exempted from the Federal Act continued

throughout the controversy and even in the bill as passed by the legislature of the State of Kansas. It contains provisions for regulation of credit advertising at the State level which under no circumstances could become exempt from the Federal law. Therefore, if indeed it was the intention of the drafters of S. B. 125 to gain exemption from Federal Regulation then there was no necessity for the inclusion of the sections on credit advertising as the State could never become exempt from Federal regulation of advertising under any circumstances.

On March 27, 1969, the Federal Reserve Board issued proposed regulations for exemption of States from the Federal Truth-in-Lending Law (Document 33). The last paragraph of the opening section states:

> An exemption may only be granted with respect to the disclosure and rescission provisions of the law. Under the law, advertising of credit must remain subject to Federal jurisdiction.

It should be noted that on March 27, the Kansas Truth-in-Lending Bill was still awaiting action by the House Committee on Commercial and Financial Institutions. However, there is no record that Mr. Lind or any of the proponents of the Kansas Truth-in-Lending Bill (S. B. 125) ever appeared before the Committee to explain that under no circumstances could Kansas become exempt from the advertising regulations of the Federal Truth-in-Lending law.

Which Kansas Creditors Could Become Exempt?

As of the January, 1970 writing of this paper, or as

late as six months after enactment of S. B. 125 the question of who (or what creditors) shall be exempt from Federal Truth-in-Lending has not been resolved. However, from the beginning of the controversy over Kansas Truth-in-Lending it was implied that all creditors in the State of Kansas were to gain exemption from Federal Regulation.

Mr. Harold Stones, of the Kansas Bankers Association, appeared before the House Committee on Commercial and Financial Institutions representing the Kansas Bankers Association and other creditors of the State of Kansas to ask that S. B. 125 be passed so that creditors in the State of Kansas could become exempt from Federal regulation. Representative Keenan later questioned this allegation and requested a report from the Kansas Legislative Council Research Department as to the status of Kansas banks and credit unions, the two major creditors under state and/or Federal jurisdiction. The report (Document 49) notes that no banks in the State of Kansas were without supervision by some Federal Regulatory authority. There is no provision in the Federal Act for any Federal authority to give up its statutory obligation to regulate the individuals or businesses under its authority, but in fact an explicit recognition of the Federal agencies' responsibility to continue regulation. For example the National banks in Kansas can never be relieved from regulation by the Comptroller of the Currency who bears full responsibility for and is explicitly named in the Statutes. However, it is doubtful that any Kansas banks could be

exempted.

During the debate on the floor of the House of Representatives of the State of Kansas, Rep. Keenan charged that the bankers of the State of Kansas would not become exempt from Federal Regulation under any circumstances and questioned whether the bankers were not using Truth-in-Lending simply to gain increased interest rates in the State of Kansas.

Rate Structures

The controversy over the increased rates embodied in S. B. 125 escalated during the debate over S. B. 125 as the press and the public came to recognize and understand the significance of the proposed law. The increase in rates was probably the main thrust of S. B. 125 because of the necessity to legalize the then prevailing rate of 18% on revolving loan and charge accounts.

The legality of revolving charge accounts and the 18% annual rate commonly charged on them in the State of Kansas rested on a 1961 Attorney General's opinion. This allowed for the blending of rates under the Kansas Sales Finance Act to achieve an 18% rate on principal balances not exceeding $800. (Kansas Attorney General Opinion, 1961, #61-131)

Therefore, S. B. 125 was needed to give statutory authority to revolving loans and charge accounts and also to gain undisputed statutory authorization for 18% on

revolving credit.

At no time did the proponents, that is, the consumer finance industry in the State of Kansas ever attempt to justify publicly the rate increases embodied in S. B. 125. Indeed the only attempts at justification came during the floor debate in the House on S. B. 125 when proponents of the bill simply stated that the price of everything was going up and implied that this was justification for the increase in interest rates. They also cited recent picketing by the poor who resented not being given credit cards.

Senate Bill 125 contained two sections dealing with rates: New Section 37 of S. B. 125 which replaced Section 16-202 of the Consumer Loan Act of the State of Kansas, and Section 52 as an amendment to K. S. A. 16-508 of the Kansas Sales Finance Act. As shown in Table 1 under K. S. A. 16-202 of the Kansas Consumer Loan Act the rates were $8 per hundred dollars on the first $1000 and $6 per hundred on loan amounts above $1000. The rates under K. S. A. 16-508 were $12 per hundred on the first $300, $9 per hundred on the next $700 and $8 per hundred on all loan balances above $1000.

As Introduced

Senate Bill 125 replaced K. S. A. 16-202 with a new section 37 providing rates of $12 per hundred dollars or 1.81% per month on the first $300, $10 per hundred or 1.5% per month on the next $700 and $8 per hundred or 1.23% on

Table 1.--Rate provisions of Senate Bill 125 and 1968 Kansas Statutes.

1968 Kansas Statutes	S. B. 125 as introduced	S. B. 125 as passed by Senate	S. B. 125 as passed by House	S. B. 125 as passed by Legislature
K.S.A. 16-202	New Section 37 replacing K.S.A. 16-202			
$8/$100 for first $1000	$12/$100 or 1.81% on first $300	$12/$100 or 1.78% on first $300	$12/$100 or 1.78% on first $300	$10/$100 or 1.5% on first $1000
	$10/$100 or 1.5% on next $700	$10/$100 or 1.5% on next $700	$9/$100 or 1.35% on next $700	
$6/$100 over $1000	$8/$100 or 1.23% over $1000	$8/$100 or 1.2% over $1000	$8/$100 or 1.2% over $1000	$8/$100 or 1.2% over $1000
K.S.A. 16-508	Section 52 amending K.S.A. 16-508			
$12/$100 on first $300	$12/$100 or 1.81% on first $300	$12/$100 or 1.78% on first $300	$12/$100 or 1.78% on first $300	$12/$100 or 1.78% on first $300
$9/$100 on next $700	$10/$100 or 1.5% on next $700	$10/$100 or 1.5% on next $700	$9/$100 or 1.35% on next $700	$9/$100 or 1.35% on next $700
$8/$100 over $1000	$8/$100 or 1.23% over $1000	$8/$100 or 1.2% over $1000	$8/$100 or 1.2% over $1000	$8/$100 or 1.2% over $1000

Notes: 1. Rates expressed in dollars are per year on each $100 of the initial principle amount of credit; rates expressed in percentages are per month on the unpaid balances.

2. This Table does not include statutory rates not affected by S. B. 125: specifically, the rates applicable to motor vehicle financing under K. S. A. 16-508, rates for credit unions under K. S. A. 17-2204, or the general usury rate of 10% per annum.

anything over $1000 (See Table 1).

Section 52 of S. B. 125 as introduced, amended the rates in K. S. A. 16-508 to $12 per hundred or 1.81% on the first $300, $10 per hundred or 1.5% on the next $700 and $8 per hundred or 1.23% on anything over $1000. The increased rate would accommodate the general practice of charging 1½% on revolving charge account balances up to $1000. (See Document 3 for an opinion regarding these rates.)

As Passed by Senate

Senate Bill 125, as passed by the Senate, contained the same dollar add-on rates. However, the monthly equivalents of the add-on rates were changed from 1.81% to 1.78% per month on the first $300 and from 1.23% to 1.2% on all loan balances over $1000. These changes made the monthly percentage rates one-twelfth of the annual actuarial equivalent of the dollar add-on rates. The reason for the problem of assigning monthly or annual percentage equivalents to a fixed dollar add-on rate is the fact that annual percentage equivalents are a function of time and dollar cost rate. However, if the rate is fixed as a stated dollar amount in relation to the initial balance then the percentage rate on the successive unpaid balance must vary with time. For example if a dollar rate of $12/$100 is used, the annual equivalent rate is: 20½% at 6 months, 21½% at 12 months, 21 3/4% at 18 months and back to 20½% at 36 months. These are rounded to the nearest quarter in accordance with the

official tables of the Federal Reserve System, Truth-In-Lending Regulation Z, Annual Percentage Rate Tables, Volume I, pp. FRB-104-m, FRB-105-M.

One can only assume that Mr. Lind took Dr. Morse's explanation (Document 3) and explained to the Senators on the Senate Committee the problem involved and amended S. B. 125 in the Senate to bring the monthly equivalents in line with the annual percentage rate for a 12 month loan for the given dollar add-on rate.

As Passed by House

The rate sections were again amended in the House by the House Committee on Commercial and Financial Institutions. On April 1, an amendment was introduced by Senator Shelby Smith of Wichita purportedly to return the rates to their level before the introduction of S. B. 125. This, however, was not the case because it returned the rates in section 52, and not those in new section 37.

The rates as amended and passed by the House for new section 37 were: $12 per hundred or 1.78% on the first $300, $9 per hundred or 1.35% on the next $700, and $8 per hundred or 1.2% per month on all loan balances over $1000.

As Passed by Full Legislature

Senate Bill 125 as passed by the legislature again carried significant changes in the rates from those found in S. B. 125 as passed by the House.

On April 10, the Topeka Daily Capital in an article

headlined "Committee to Ask Reductions in Interest Rates" (Document 59) reported that Governor Robert Docking had let it be known to the Conference Committee that he felt the increased interest rates embodied in S. B. 125 were too high. Confirmation of this appeared in the American Banker (Document 69).

New section 37 of S. B. 125 was amended by the conference committee to read: $10 per hundred or 1.5% on the first $1000, $8 per hundred or 1.2% on loan balances over $1000, thus still giving legal authority to charging 18% on revolving credit for amounts up to $1000.

Section 52, the amendment to K. S. A. 16-508, was not changed because the rates would allow charging up to 18% on sales up to $800.

The final results were to increase rates under the Consumer Loan Act from $8 per hundred to $10 per hundred on the first $1000, and from $6 per hundred to $8 per hundred on all loan balances over $1000. This was a 25% increase in the rate on loans under $1000 and a 33% increase in the rates on loan balances over $1000. The rates under the Kansas Sales Finance Act, K. S. A. 16-508 were not changed by S. B. 125.

At no time were any substantial reasons given by the credit industry for the increase in rates they sought.

Revolving Credit

Prior to S. B. 125 there was no statutory authority

for anyone in the State of Kansas to engage in revolving credit. However, this did not necessarily make it illegal to do so and revolving credit operated under a 1961 Attorney General's opinion permitting irregular payments and the blending of rates under the Kansas Sales Finance Act to provide 18% rates on amounts up to $800.

The arguments used by the proponents in the four hour debate on the floor of the House that if the revolving loan and the revolving charge account sections 2, 3, 4, and 5 were not enacted by July 1, 1969, the date for implementation of the Federal Truth-in-Lending Bill, all revolving credit in the State of Kansas would cease. As was pointed out by Mr. Moline in the House Committee Hearings and Mr. Keenan and Mr. Harper on the floor of the House, this was not true.

The fact was that there had been several public statements by the Federal Reserve Board to the effect that the advent of Federal Truth-in-Lending Law would make nothing legal or illegal within the States as far as rates and types of credit extended that the State did not consider legal or illegal prior to Truth-in-Lending. The Federal Reserve Board stated on various occasions that the intent of the Federal Truth-in-Lending Act was to establish a standard language for credit and to require that that language be disclosed in a prescribed manner. However, the credit industry in the State of Kansas continued to insist that revolving charge and revolving loan accounts would become

illegal upon the implementation date of the Federal Truth-in-Lending Law.

Conflict of Interest

Types of Conflict

The question of conflict of interest was raised in three different areas: (1) within the regulatory agencies, (2) within the legislature and (3) within the Governor's office.

Within the Regulatory Agencies

The question of conflict of interest was first raised by Rep. Moline during the House hearings on S. B. 125. Representative Moline repeatedly asked Mr. Stones, the representative of the Kansas Bankers Association, what were the requirements for selection of the agencies' heads that would enforce S. B. 125. Mr. Stones repeatedly answered that the agencies' heads served at the pleasure of the Governor. The point that Rep. Moline was trying to make was that all of the agencies' heads must, by Kansas law, have worked for a number of years in the field they are to regulate. As an example, the Consumer Credit Commissioner of Kansas must by law ". . . be a person with actual practical experience of at least three (3) years in the operation and management of a consumer loan company, ..." (K. S. A. 16-403(a)) The question Rep. Moline raised was whether the heads of such

agencies can represent the public interest as well as that of the credit industries they represent.

Within the Legislature

Conflict of interest in the legislature was documented publicly in only one instance (Document 57). This article, headlined in the Manhattan Mercury, "As Passed by the House, Credit Bill Has Built-In-Lobby" was an Associated Press release which appeared in most major papers throughout the state. More papers carried this article than any other news story on S. B. 125, according to a thesis in process by Reisig on "Kansas Daily Newspaper Coverage of S. B. 125 Truth-in-Lending." (Reisig, 1970)

This article carefully researched by the Kansas staff of the Associated Press points out the serious problem of conflict of interest with regard to credit legislation in the State of Kansas involving 62 members of the Senate and House.

As reported in the article, the House adopted in 1967 a conflict of interest voting rule. This rule stated that any member who had an interest of at least 5% or received income in the amount of $1000 per year from a business that would be affected by a particular piece of legislation would not be allowed to vote on that piece of legislation. The article stated that 17 of the 40 members of the Kansas Senate and 45 of the 125 members of the House of Representatives had such interests. One might wonder why this rule

was not called to the attention of the Speaker of the House. The arithmetic of the situation is that it would not have made any difference in the outcome of the passage of S. B. 125 unless the debate on this issue would have broken the solid front of endorsement built by the finance industry supporters.

The vote in the House was 81-28 in favor of passage of S. B. 125. Assuming that all 45 members in the House who had a statutory conflict of interest had not voted, the outcome would have been 36 votes in favor and 28 votes opposed to S. B. 125 in the House. Also, several of the 28 members who voted against S. B. 125 were among those who received at least $1000 a year compensation from either a bank, savings and loan, credit union or finance company. Therefore, in the final analysis, it would appear that the invoking of the rule which would have required them not to vote would not alone have changed the outcome on S. B. 125. What is not known is what the effect on the other members of the House would have been if those 45 votes had not been cast.

The Governor

There is no rule or statute covering conflict of interest with regards to the Governor of Kansas. It could be assumed, however, that the Governor of Kansas had such a conflict. As pointed out in the article in the American Banker (Document 69), the Governor of the State of Kansas is president of the Union State Bank of Arkansas City. However,

at no time, during the controversy over S. B. 125, was the issue of the Governors conflict of interest publicly raised.

Another problem that was not strictly categorized as conflict of interest, but which nevertheless provided an interesting conflict was fact that the bill generally was opposed by the Democratic members and favored by the Republican members. The Governor of Kansas, a Democrat and a banker, with a Republican Attorney General presented a potential for conflict. The Governor asked the Attorney General for an opinion as to the constitutionality and enforceability of S. B. 125. If the Attorney General had given the opinion that the bill was unconstitutional, he would have had to go against his party which controlled, with almost a two-thirds majority, the House and the Senate. The Governor was put in the position of signing the bill or going against his Democratic minority party.

Conflict Over Faculty Involvement in Public Issues

Dr. Morse's and Mr. Stones' Confrontation

The attempts to end opposition to S. B. 125 are most pronounced in the case of the dispute between Mr. Stones and Dr. Morse. During the House Hearings Dr. Morse was questioned by Rep. Fish if he was representing the Board of Regents of the State of Kansas. Dr. Morse stated that he was appearing as an individual and not representing any particular group. Also after the Hearings, Mr. Stones wrote a letter questioning Dr. Morses' appearance before the House

Committee and about a radio news broadcast Dr. Morse had given concerning S. B. 125. He sent a copy to President McCain of Kansas State University, the Chairman of the Board of Regents, and other persons (Document 27). Dr. Morse replied to Mr. Stones' allegations and gave his letter the same public coverage as Mr. Stones had given to his (Document 32).

At this point the controversy was picked up by Mick Rood of the Topeka Daily Capital who contacted President McCain and questioned him about Dr. Morse's appearance. President McCain advised the press that Dr. Morse was well within his rights and duties to appear before the House Committee in an area of his academic interest (Document 36). Although the controversy was short-lived, it points out the lengths to which the opposition went in trying to discredit the opponents of the Kansas Truth-in-Lending Bill.

Constitutionality of Senate Bill 125

Dr. Morse's Involvement

The question of the constitutionality of S. B. 125 did not arise until after the bill had been passed by the legislature and sent to the Governor. On April 10, in a letter to Governor Docking (Document 58), Dr. Morse raised two constitutional questions with regards to S. B. 125. The first question was:

> Does the title of S. B. 125 conform to the Constitution of the State of Kansas?

Dr. Morse followed this question by quoting from Article 2, paragraph 16 of the Constitution which read:

> . . . no bill shall contain more than one subject, which shall be clearly expressed in its title, . . .;

All State bills are written, as required by the Constitution, with a title which is intended to clearly and explicitly state what is contained in the bill. The question arose because nowhere in S. B. 125 could be found any section that dealt with:

> . . . providing for consumer loans payments in accordance with the borrowers income.

He also pointed out that the title failed to include reference to Section VIII of S. B. 125 pertaining to credit unions. The second question Dr. Morse asked was:

> Would the Supreme Court of Kansas rule that S. B. 125 should be put to the voters in a referendum?
>
> The Constitution of the State of Kansas (Article 13, paragraph 8) requires: no banking law shall be enforced until the same shall have submitted to a vote of the electors of the State at some general election . . .;

Senate Bill 125 places requirements on the banks of Kansas and requires in Section 8 that:

> . . . compliance with the requirements imposed under this act shall be enforced under . . . the Kansas Banking Code, in the case of State Banks, by the State Banking Commissioner.

Dr. Morse was referring to the fact that S. B. 125 placed requirements upon the banks of the State of Kansas and therefore conceivably could be construed to be a banking law.

Attorney General

Governor Docking, on April 10 and April 16, according to Document 62, requested an opinion of the Attorney General with regard to the constitutionality and adequacy of the enforcement provisions of S. B. 125. The Attorney General's opinion regarding the necessity of submitting S. B. 125 to a vote of the people of the State of Kansas was that Article 13 of the Constitution of the State of Kansas, dealing with banking laws, had been interpreted by the Supreme Court of the State of Kansas in 1875 as applying only to banks of circulation and did not apply to legislation concerning banks of deposit or banks of discount. The Attorney General did state, however:

> Our Court today, in considering an 1887 decision, and comparing that to the specific language of Article 13, paragraph 8, might not feel absolutely bound to repeat the conclusion.

One can only assume that if the Supreme Court decides to overrule the 1875 Court then at that time S. B. 125 would be ruled unconstitutional until such time as it had been put to a vote of the people of the State of Kansas. The Attorney General went on to state:

> . . . At least a portion of it (S. B. 125) constitutes what would be considered a "banking law."

With regards to the constitutional question of whether S. B. 125 contains more than one subject which is clearly expressed in its title, the Attorney General stated:

> I do not believe the title of S. B. 125 is so deceptive as to not generally inform its readers of the subject contained in the act itself.

The Attorney General ended his opinion regarding the constitutionality of S. B. 125 by stating:

> Therefore, in view of the foregoing, it is my opinion that Senate Bill 125 is constitutional.

The importance of this opinion and an indication of how easy it would have been to have found the title of S. B. 125 defective is contained in the opinion itself. He pointed out that in 1958 a bill passed by the legislature which would have imposed an annual privilege tax on persons engaging in the producing or severing of oil and gas had been ruled unconstitutional because the title did not clearly state the purpose of the bill. The title of the severance tax bill had stated: "a tax on the gross value of certain products." On this technicality the Supreme Court of the State of Kansas found the severance tax bill to be unconstitutional.

However, it was the opinion of the Attorney General that the inclusion in the title of S. B. 125, that would have ". . . provided for consumer loan payments in accordance with the borrowers income" and the omission in the title of any reference to Part 7 on Credit Unions, was not sufficiently misleading as to find S. B. 125 unconstitutional.

This brief flurry of activity over the constitutionality of S. B. 125 lasted approximately ten days from the

time the questions were raised until the Attorney General's opinion was published on April 18, 1969.

To this date no attempt to test the constitutionality of S. B. 125 has been made.

Enforcement

Introduction

From the very opening of the controversy over S. B. 125 the question of adequate enforcement became one of the main issues. This question had several facets: Was the enforcement authority adequate to gain exemption from Federal enforcement? Were the enforcement tools adequate to provide proper protection to the people of Kansas. Was there proper representation of the public?

Enforcement Questioned

As early as October 28, 1968, Dr. Morse, in commenting on Stanley Lind's comparative analysis of the Federal Truth-in-Lending and Kansas Statutes, raised the question of adequate enforcement provisions:

> I suggest that a review of section 108 of the Federal Bill be made for a pattern to be followed in the State of Kansas where we differentiated enforcement between Banks, Credit Unions, Finance Companies and allow the general usury statute either to be administered by the Consumer Credit Commissioner as you suggest, or by the legal officer of the State, the Attorney General. I suggest you give special attention to the last phrase of section 123. (Document 2)

Here Dr. Morse was pointing out that there were not adequate provisions for enforcement and reminding Mr. Lind that the

last phrase of section 123 of the Federal Bill gave exemption to the State only if they had substantially similar legislation with adequate enforcement.

Also, in his letter to Mr. Lind of February 5 (Document 8) and his statement before the Senate (Document 14), Dr. Morse raised the question of adequate provisions for enforcement. He specifically questioned the enforcement provisions of Section 8 of the Kansas Truth-in-Lending Bill and questioned the multiplicity of administrative enforcement, between the Banking Commissioner, the Consumer Credit Commissioner, the Credit Union Commissioner, etc. He also questioned the advisibility of not having public representation on the proposed State Commission that would administer the Kansas Truth-in-Lending Bill.

On April 3, 1969, Mr. Keenan raised the question of enforcement of S. B. 125 in a letter to Governor Docking (Document 44). He also questioned the lack of public representation on State regulatory agencies for financial institutions pointing out that in Section 8 of S. B. 125.

> There is no assurance that the public's interest would be better served by State regulatory agencies, beholden to the interests they regulated than by Federal regulatory agencies.

The question of adequate enforcement had been raised, as pointed out, in the Senate Committee hearings. It was also raised during the House Committee hearings. However, no changes were made in the regulatory provisions in S. B. 125 by either.

Several representatives made repeated and futile attempts during the floor debate in the House to amend Section 8 of S. B. 125 to strengthen the regulatory authority and to include public representation. One example is the unsuccessful amendment introduced by Rep. Keenan to gain public representation on The Consumer Credit Commission, to give the Commission a public interest responsibility, and to give the Commission power to function effectively:

SENATE BILL NO. 125, BE AMENDED:

On page 9, by striking lines 23 through 28, by inserting: mission, and an equal number of public representatives to be appointed by the governor. The public representatives shall be without vested interests in any company or organization that engages directly or indirectly in consumer credit. These public representatives shall not be in greater number from any political party as to give any party a plurality of more than 2 on the commission, and whose terms shall be for 3 years or until replaced with terms of office beginning July 1, 1969 or 2 representatives for 3 years, 2 for 2 years and one for one year. The chairman shall be appointed by the governor. A quorum shall consist of six members with at least three public representative members present.

On page 9, by inserting a new subsection (f):

(f) The Commission shall study and appraise the functioning and structure of the consumer finance industry, as well as consumer credit transactions generally. The Commission, in its report and recommendations to the State Legislature shall include treatment of the following topics: (1) The adequacy of existing arrangements to provide consumer credit at reasonable rates. (2) The adequacy of existing supervisory and regulatory mechanisms to protect the public from unfair practices, and insure the informed use of consumer credit.

On page 9, by inserting a new subsection (g):

> (g) The Commission, or any three members thereof as authorized by the Commission, may conduct hearings anywhere in Kansas or otherwise secure data and expressions of opinion pertinent to the study. In connection therewith the Commission is authorized by majority vote:
>
> (1) to require, by special or general orders, corporations, business firms, and individuals to submit in writing such reports and answers to questions as the Commission may prescribe; such submission shall be made within such reasonable period and under oath or otherwise as the Commission may determine.
>
> (2) to administer oaths.
>
> On page 9 strike (f) and insert (h).

After the bill had passed the Kansas legislature, the question of adequate enforcement continued. In his letter of April 10, 1969 to Governor Docking (Document 58), Dr. Morse again raised the question of adequate enforcement:

> Furthermore, since the State regulatory agencies are responsible and depend upon those institutions they regulate for operating funds and various prerequisites, the public interest may suffer unless it is identified with the self-interest of the industry regulated.

Attorney General's Opinion on Enforcement

In Governor Docking's request to the Attorney General for an opinion on the constitutionality of S. B. 125 he also asked for an opinion on the adequacy of the enforcement provision of S. B. 125 for gaining exemption for the State of Kansas (Document 62). And indeed half of Attorney General Frizzell's 12 page opinion deals with the matter of enforcement. The opening statement of the enforcement section of the Attorney General's opinion is:

> In my opinion, there is no adequate enforcement provision made in S. B. 125 or any of the companion legislation presently contained in the General Statutes of the State of Kansas to enforce compliance with S. B. 125. Public Law 90-321 (The Federal Truth-in-Lending Bill) specifically states that a State plan may be exempt if, intra-alia, there are adequate enforcement provisions.

The Attorney General then went on for five pages to explain his reasons. These mainly dealt with the fact that the Commissioners and agencies, obligated under Section 8 of S. B. 125, did not have enforcement powers necessary to bring legal steps for the enforcement of S. B. 125.

The Attorney General ended his opinion with a paragraph:

> I must therefore conclude that S. B. 125 would not exempt the State of Kansas from the Federal Truth-in-Lending law, and I could not, as the law now stands, recommend to the Federal Reserve Board that S. B. 125 is substantially similar or may adequately be enforced.

In his news release upon signing S. B. 125 on April 19, 1969, (Document 64) the Governor stated that he was asking the speaker of the House and the president pro tem of the Senate to confer with the Attorney General and develop appropriate additional legislation that would "shore up the weaknesses of this law."

Legislative Action on Exemption

Indeed, the legislature upon meeting on the last day of the session April 25, 1969, passed S. B. 388 which according to its title: ". . . providing certain procedures for the enforcement thereof; defining certain terms;

amending Section 8 of the 1969 S. B. 125 . . . ." With respect to enforcement procedures under Section 8 it gave to the Consumer Credit Commission the same powers as those given the Attorney General in his enforcement of the Buyer Protection Act of 1968.

> Section 1. In addition to the powers and authorities provided in Section 8 of the 1969 S. B. 125, the Consumer Credit Commission established under the provisions of Section 8 of the act, the members thereof and the Commissioners and Administrators upon whom the duty of enforcement of such act has been imposed are hereby authorized to exercise the same powers and authority in the enforcement of 1969 S. B. 125 that the Attorney General is authorized to exercise under the provisions of Article 6 of Chapter 50 of the 1968 Supplement to the Kansas Statutes annotated and the enforcement of the Buyer Protection Provisions of that Act.

The bill then goes on to state that the defenses of any of the enforcement officers of S. B. 125 shall be handled by the Attorney General of the State of Kansas. It ends the Section 1 by stating:

> Provided, however, that all enforcement authority herein conferred upon the Consumer Credit Commission, the members thereof and the Commissioners and Administrators may be exercised by the Attorney General, when, at his discretion, the Attorney General should find that said Commission, and the members thereof and the Commissioners and Administrators are not enforcing the provisions of 1969 S. B. 125.

The last sentence of the section is most important because it gives the final enforcement powers to the Attorney General. This provision of S. B. 125 sets up a check and balance system that most regulatory legislation lacks. If, for example, a consumer believes that he has not had a

fair hearing on his complaint before the Consumer Credit Commission, he may ask the Attorney General to look into the case. The Attorney General may at his discretion take over the case if he finds that the Commissioners have not fully enforced the bill. To the consumer this could mean the savings of legal court fees that he would otherwise have to pay if he did not think the Commissioners had given him fair hearing.

With the passage of S. B. 388, it was hoped that the enforcement provisions of S. B. 125 had been strengthened to the point that the Federal Reserve Board would rule that the State of Kansas had adequate enforcement procedures for its Kansas Truth-in-Lending Bill. However, as late as six months after passage of S. B. 388, no application has been made to the Federal Reserve Board for exemption of the State of Kansas.

THE EFFECT OF SENATE BILL 125 AS PASSED

What is likely to be the effect of S. B. 125, the Kansas Truth-in-Lending Bill, on the parties affected by the bill? This can be answered by viewing the probable effect from the perspective of the various interests involved. Therefore, this section will deal with the impact and implications of the Kansas Truth-in-Lending Bill on banks, finance companies, credit unions, retailers, and consumers.

The Banking Industry

The group most likely to benefit from S. B. 125 will be the bankers of the State of Kansas. Their gains are as follows:

(1) The rate increase of as much as 33⅓ over the rates in the Kansas Consumer Loan Act, K. S. A. 16-202 will authorize them to charge higher rates on consumer loans.

(2) Revolving loans (bank credit cards) are given legitimacy, and revolving sales (retail credit cards) are given statutory recognition.

(3) Retailers who choose to extend credit to their customers through a credit card system will be exempt from the notification procedure under Section 8(f), and the additional fees required for creditors under Section 8(g) if

they use a bank card system.

(4) The banks also benefit from the reinclusion of the 30 month limitation of contracts for those licensed to do business by the Consumer Credit Commissioner under Section 53(a).

(5) They also benefit from the amendment under K. S. A. 16-508 of the Consumer Loan Act (Section 52) by the removal of the term "retail" in the definition of who may charge the $15 minimum finance charge.

(6) Another advantage that the bankers gain upon the enactment of S. B. 125, is the fact that they now can contract to do business with credit unions. It may be questioned what advantage this is; there may, in reality, be no advantage. However, if a credit union contracts to do business with a bank, S. B. 125 will have at least partially established an alliance between the credit union and the bank. Therefore, the credit unions, in future legislative actions, may find themselves in the position, because of their contractual arrangement with banks, of not being able to define clearly their interests.

(7) Because all 600 banks in the State of Kansas are under Federal supervision at the present time, there seems little possibility that they will be exempted from Federal scrutiny and enforcement of Truth-in-Lending. Therefore, the passage of Part 1, the disclosure section, would be of little interest to the banks.

(8) Before S. B. 125, banks could be licensed under

the Consumer Loan Act amendments of 1955 to charge 36% on the first $300 and 10% on balance over $300. With the increases in rates under the installment loan section of S. B. 125, a bank will be able to give up its Consumer Loan License and the fees there involved, and remove themselves from any regulations by the Consumer Credit Commissioner of the State of Kansas.

The Finance Companies

The finance companies of the State of Kansas cannot gain from S. B. 125. Their losses include:

(1) Failure to gain relief from the 30 month limitation on loans (K. S. A. 16-411). This places the finance companies at a disadvantage relative to the banks who now can drop their Consumer Loan License and make loans for any length of time they wish.

(2) Loss of the $15 minimum charge on retail contracts under the Kansas Sales Finance Act, K. S. A. 16-508. This will place a burden on the finance companies in the financing purchase of $100 or less, which many finance companies felt obligated to make in order to provide their customers with the full range of credit services. As K. S. A. 16-508 now reads, a $50 installment contract to be repaid in one year could carry a finance charge of only $6 which, because of the paper work involved would mean a loss for finance companies.

(3) The real loss to finance companies was the fact

that they received no increase in rates from S. B. 125 on sales credit.

(4) With the sizeable percentage increase in loan rates there will be the increased competition from the banks, thus placing the finance companies at a disadvantage.

The only possible advantage the finance companies could gain from S. B. 125 is if the state is exempted the enforcement powers over Kansas Finance Companies with regards to Truth-in-Lending will be vested in the State Consumer Credit Commissioner, who by law, must be selected from within the finance industry. The advantage of this is questionable because in the State of Kansas the reputation of the Consumer Credit Commissioners and their enforcement of the credit laws in the State of Kansas has never been questioned. In fact, leading critics of consumer credit readily admit that among the best enforced credit laws are those enforced by the Consumer Credit Commissioners of Kansas. And the passage of S. B. 125 should not change the strict enforcement of the law by the Consumer Credit Commissioner. Therefore, if anything, the Truth-in-Lending laws will probably be more strictly enforced under the Consumer Credit Commissioner than by Federal Agencies which do not have the staff that the Consumer Credit Commissioner of the State of Kansas has.

Therefore, the time and effort spent by the Kansas consumer credit finance industry and their chief lobbyist, the Executive Secretary of the Kansas Association of Finance

Companies for the enactment of S. B. 125 can only be a wonderment to anyone who studies the bill to try and find what advantage they gained from the time and effort they spent lobbying for this bill.

Credit Unions

The credit unions will gain from S. B. 125 because of the comparative rate advantage that credit unions enjoy over other lending institutions which normally charge the maximum rate authorized by law. Also, they now have the right by statute to contract with banks for the extention of credit card service and check credit plans to their members. Exactly what this involves or means cannot be assertained at this time, as no report of any credit union entering into any agreements with banks is known. However, with the majority of bank credit card plans being financed at annual percentage rates of 18%, the 12% rate of the credit union would give them an apparent advantage over the banks with whom they would contract to do business. Therefore, it is hard to see the banks agreeing to credit card plans with credit unions. However, only time can answer this perplexing question.

Retailers

Retailers who have traditionally engaged in credit with little or no regulation may in the long run become the over all losers from S. B. 125. Under S. B. 125 retailers

who wish to engage in consumer credit business will be required to pay a $10 fee of notification and an annual fee of $10 for each $100,000 of outstanding credit. These fees are not sufficiently high to burden a retailer. However, the keeping of records, filing notifications, and becoming subject to any system which the Consumer Credit Commissioner initiates to insure that the volume of credit reported by the retailer is correct, may become a burden on the retailers of the State of Kansas. And it should be noted that this burden on the retailers was not necessitated by passage of Federal Truth-in-Lending. Federal Truth-in-Lending makes no provisions for notification or any type of fee whatever. It merely requires the retailer to use standard language in communicating with consumers. Therefore, had the State of Kansas chose not to pass its own Truth-in-Lending Bill the retailers in the State of Kansas would still have had to comply with Truth-in-Lending, but would not have been required to make notification, pay fees, and keep records so that their notifications could be checked for validity.

Consumers

What advantage did the consumers of the State of Kansas gain from S. B. 125? In reality, it can only be said that the consumers gained nothing. The consumer finds himself subjected to rate increases of as much as 33% on loans that will be made under the Consumer Loan Act. He will find increased prices from retailers because, of the increase in

the operating costs of retailers for notification fees and the additional costs of labor and capital required to keep records.

Truth-in-Lending came to Kansas on July 1, 1969 as a result of the federal law. It came regardless of the passage of S. B. 125. Since the disclosure requirements portion of S. B. 125 are identical to Title I of the Federal Act, the consumer will not have gained any additional information or protection from S. B. 125 than what he would have had under the Federal Truth-in-Lending Bill.

Conclusion

It is the judgment of this writer that the bankers gained the most from S. B. 125, the finance companies and credit unions either gained or lost slightly, depending on the viewpoint one would take, while the retailers and the consumers of the State of Kansas lost.

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Gratitude is expressed to Mrs. Emma Kent, Miss Joyce Roesler, and Miss Margaret Conrow for their patience and assistance. Appreciation is expressed to my wife, Marsha, for her patience and assistance during the preparation of this manuscript.

Expressions of appreciation would not be complete without acknowledging the time taken from a heavy workload by two Kansas Representatives. They spent many long and sometimes late hours explaining to this candidate the working of the Kansas lawmaking process and the "ins and outs" of the Kansas Legislature. Without their help this manuscript would not be possible. Gratitude is expressed to Representatives Jerry Harper and Robert Keenan.

CHRONOLOGICAL ORDER OF MAJOR EVENTS
RELEVANT TO SENATE BILL 125

May 29, 1968	Public Law 90-321, the Federal Truth-in-Lending Act, signed into law.
October 16, 1969	Federal Reserve Regulation "Z" issued for public comment.
February 5, 1969	The "Kansanized" Truth-in-Lending Act, S. B. 125, introduced in the Kansas Senate.
February 10, 1969	Federal Reserve Regulation "Z" published.
February 17, 1969	Hearings held on S. B. 125 in the Kansas Senate.
March 12, 1969	S. B. 125 passed by the Senate.
March 18, 1969	Hearings held on S. B. 125 in the Kansas House.
March 27, 1969	Proposed Supplement II to Regulation Z, State exemption guidelines issued by the Federal Reserve Board.
April 1, 1969	Hearings held on S. B. 125 in the Kansas House.
April 7, 1969	S. B. 125 passed the Kansas House.
April 12, 1969	S. B. 125 passed the House and Senate as amended by Conference Committee.
April 19, 1969	S. B. 125 signed into law by Governor Docking.
April 25, 1969	S. B. 388 passed by Kansas House and Senate.
July 1, 1969	Federal Public Law 90-321 and Kansas S. B. 125 become effective.
July 2, 1969	Supplement II to Regulation "Z" outlining procedures for applying for State exemption issued by the Federal Reserve Board.

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TRUTH-IN-LENDING IN KANSAS

by

WILLIAM ROBERTS FASSE

B. A., Washburn University, 1968

AN ABSTRACT OF A MASTER'S THESIS

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Department of Family Economics

KANSAS STATE UNIVERSITY
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1970

The 1969 Kansas legislature enacted a "Kansanized" version of the Federal Truth-in-Lending Act. It was promoted jointly by the banks, finance companies, and retailers to gain exemption from Federal authorities and to put enforcement of Truth-in-Lending in the hands of state agencies. The last half of the bill as introduced contained proposals for rate increases of as much as fifty percent and legalization of credit cards.

The purposes of the thesis were to: (1) document the action of the legislature regarding Kansas Truth-in-Lending legislation, (2) discuss the various key issues involved in Truth-in-Lending legislation at the state level, and (3) evaluate the impact of state and Federal Truth-in-Lending on various segments of the credit industry and Kansas consumers.

The documentation of legislative action consisted of collecting all written material available to the Department of Family Economics. It was compiled in chronological order, bound in three volumes, and deposited at Farrell Library, Kansas State University.

The key issues in this legislation were: (1) the possibility of exemption from the Federal law, (2) the proposed rate increases, (3) the necessity of legalizing revolving credit cards in the State of Kansas, (4) the confrontation of faculty members of Kansas State University and the Kansas Bankers Association.

Passage of the Kansas Truth-in-Lending Act resulted in

rate increases of thirty-three percent for Kansas consumers rather than the proposed fifty percent. The various segments of the finance industry were affected differently. Banks benefited from the rate increases and the legalizing of bank credit cards. Finance companies gained nothing and lost on several procedural matters from which they had sought relief, such as the thirty-month limitation on loans and the amendment excluding them from the fifteen dollar minimum charge on retail contracts. Credit unions played a subservient role with no effect resulting to their members. Retailers benefited from the removal of any question concerning the legality of credit cards but were burdened with the paying of notification and annual fees.

The disclosure requirements of the Kansas Act duplicate the Federal Act, which is the "Law of the Land" regardless of any state action. The action taken in Kansas may affect the assignment of enforcement roles, but the action taken in Kansas will afford consumers no additional protection.