



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

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MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 89- 54

Judith Bravence-Stringer
Consumer Credit Commissioner
Landon State Office Building
900 Jackson, Room 352
Topeka, Kansas 66612

Re: Consumer Credit Code--Finance Charges and Related Provisions; Consumer Credit Transaction; Other Charges and Modifications--Additional Charges; Blanket Single Interest Insurance Programs

Synopsis: A charge for single interest insurance may be excluded from the finance charge pursuant to the Uniform Consumer Credit Code if all appropriate disclosures are made, the insurer waives rights to subrogation against the consumer, and the consumer is allowed to choose the insurer. K.S.A. 16a-2-501(2). The term "single interest insurance," for purposes of this statute, includes protection against physical property damage, confiscation and skip. Cited herein: K.S.A. 16a-1-301; 16a-2-501; 16a-4-106; 16a-4-302; 10 U.S.C. §1605; 12 C.F.R. §226.4.

* * *

Dear Commissioner Bravence-Stringer:

You request our opinion regarding the sale of insurance in connection with consumer credit transactions. Specifically you question whether charges for certain types of coverage contained in a blanket single interest insurance program may be passed on to the consumer as an additional charge or must

be included in the finance charge. The types of coverage in question are 1) all risk physical damage installment loan insurance and 2) confiscation and skip insurance.

The information you have provided indicates that the physical damage insurance indemnifies the creditor against all risks of physical loss or damage, with certain exceptions, to vehicles held as collateral by the creditor for a consumer loan. The confiscation and skip insurance indemnifies the creditor against loss by reason of the creditor's inability to locate either the debtor or the vehicle or by reason of the confiscation of the vehicle by a public official.

The federal reserve board has advised that the federal truth-in-lending act, 15 U.S.C. §16059(c), and regulation Z, 12 C.F.R. §226.4(d)(2), authorize charges for these types of coverage to be excluded from the finance charge if the consumer has the option of obtaining the insurance from a person of the consumer's choice, such option is disclosed to the consumer, other required disclosures are made, and the insurer waives any right of subrogation against the consumer. Official Staff Commentary §4(d)9 and 10. The question thus becomes whether the Kansas uniform consumer credit code (U3C) also authorizes charges for such insurance coverage to be excluded from the finance charge.

K.S.A. 16a-1-301(18) provides in part:

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

"(i) All charges payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit, including any of the following types of charges which are applicable; . . . premium or other charge for any guarantee or insurance protecting the creditor against the consumer's default or other credit loss

. . . .

"(b) The term does not include:

"(i) . . . additional charges (section 16a-2-501). . . ."

The pertinent provisions of K.S.A. 16a-2-501 state:

"In addition to the finance charge permitted by the parts of this article on maximum finance charges for consumer credit sales and consumer loans (parts 2 and 4), a creditor may contract for and receive the following additional charges in connection with a consumer credit transaction:

. . . .

"(b) charges for insurance as described in subsection (2)

. . . .

"(2) An additional charge may be made for insurance written in connection with the transaction, including vendor's single interest insurance with respect to which the insurer has no right of subrogation against the consumer but excluding other insurance protecting the creditor against the consumer's default or other credit loss:

"(a) With respect to insurance against loss of or damage to property, or against liability if the creditor furnishes a clear and specific statement in writing to the consumer setting forth the cost of the insurance if obtained from or through the creditor and stating that the consumer may choose the person through whom the insurance is to be obtained. . . ."

The National Conference of Commissioners on Uniform State Laws in its final draft recommended a different version of this provision:

"(2) An additional charge may be made for insurance written in connection with the transaction:

"(a) with respect to insurance against loss of or damage to property, or against

liability arising out of the ownership or use of property, if the creditor furnishes a clear, conspicuous, and specific statement in writing to the consumer setting forth the cost of the insurance if obtained from or through the creditor and stating that the consumer may choose the person through whom the insurance is to be obtained;

. . . .

"(c) with respect to vendor's single interest insurance, but only (i) to the extent that the insurer has no right of subrogation against the consumer, and (ii) to the extent that the insurance does not duplicate the coverage of other insurance under which loss is payable to the creditor as his interest may appear, against loss of or damage to property for which a separate charge is made to the consumer pursuant to paragraph (a), and (iii) if a clear, conspicuous, and specific statement in writing is furnished by the creditor to the consumer setting forth the cost of the insurance if obtained from or through the creditor and stating that the consumer may choose the person through whom the insurance is to be obtained." Uniform Consumer Credit Code (CCH) §2.501(2) (Final Draft 1974).

The comment to this provision states:

"Another variation from Truth in Lending is the treatment of vendor's single interest insurance (V.S.I.). Federal Reserve Interpretation 226.404 allows exclusion of the premium for V.S.I. insurance from the finance charge. Paragraph (c) of subsection (2) adopts a more sophisticated test and allows the premium to be treated as an additional charge in limited situations in which the vendor's single interest coverage does not duplicate the coverage of other insurance under which loss is payable to the

creditor as his interest may appear, against loss of or damage to property for which a separate charge is made to the consumer. In this case, the charge is sufficiently beneficial to the consumer to justify classifying the premium as an additional charge."

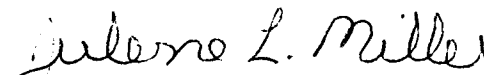
K.S.A. 16a-2-501(2) more closely parallels the federal truth-in-lending act and regulation Z than the recommended version of the U3C. Apparently the legislature felt that waiver of the insurer's rights to subrogation, and thus satisfaction of the consumer's obligation, was benefit enough to the consumer for purposes of excluding charges for single interest insurance from the finance charge. See also K.S.A. 16a-4-302, Kansas Comment, 1973; K.S.A. 16a-4-106(1)(a).

Since K.S.A. 16a-2-501(2) so closely parallels §226.4(d)(2) of regulation Z, and since the term "single interest insurance" is not defined in the U3C, we believe the definition given in the official commentary to regulation Z may be used to determine the types of coverage contemplated in K.S.A. 16a-2-501(2). The definition specifically includes "protection of tangible property against normal property damage, . . . confiscation, . . . and skip." It is therefore our opinion that charges for "all risk physical damage installment loan insurance" and "confiscation and skip insurance" may be excluded from the finance charge if all applicable provisions for disclosure are met, the consumer has the option of choosing the insurer, and the insurer waives its rights of subrogation against the consumer.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General