Kansas Bankers Association

February 11, 2019

To: House Committee on Judiciary

From: Kathy Taylor, Kansas Bankers Association

Re: HB 2162: Amending the Kansas Consumer Protection Act

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you with neutral testimony on HB 2162. The Kansas Bankers Association (KBA) is a nonprofit trade organization whose membership includes 232 of the commercially chartered banks headquartered in Kansas. Our membership also includes 19 out-of-state commercial banks and 7 savings and loans operating in Kansas. We are pleased to support 99% of the industry in the state. Our member banks employ more than 13,000 Kansans that provide financial services in more than 400 towns and cities across Kansas.

We are testifying as neutral today to give some background on the need for the language that is being struck and because we are unsure about how the proposed new language will affect bank practices going forward.

The Kansas Consumer Protection Act (KCPA) defines "supplier" as a "manufacturer, distributor, dealer, seller, ***lessor***, assignor, or other person who, ***in the ordinary course of business***...engages in consumer transactions..." The bill we requested in 2005 amended this definition to exempt banks and other lenders who are already subject to state or federal regulation regarding the sale of repossessed collateral.

In 2005, the KBA was contacted by a member bank that had had a lawsuit brought against them for selling a repossessed vehicle that ended up needing repairs. The lawsuit claimed that the bank had not conducted an inspection, etc., before selling the vehicle and so was in violation of the KCPA, even though it had advertised the sale of the vehicle "as is".

We believed then and still do today, that lenders who are having to sell repossessed property that was offered to them as collateral for a loan, are not selling that property ***in the ordinary course of business***, and should not be held to the same standard as others who do sell property for profit on a regular basis.

The business model of every KBA member institution relies on the fact that the loans being booked at that institution do not fail. On the occasion when there is a failure and property has been pledged as security for that loan, the lender has to repossess that property and conduct its sale to recoup

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what they can of the loaned amount. Property sold in this manner is sold "as is" and generally, brings a lower sale price if there is no warranty or guarantee to accompany it.

In addition, there are state laws that prevent a lender from regularly engaging in the sale of any type of collateral:

- KSA 9-1112 states that no bank shall buy, sell or trade personal property as a business.
- KSA 9-1102 states that banks must sell property within one year of the bank acquiring such property in the collection of its debt.
- KSA 9-1102 also states that no bank shall buy or sell real property as a business.
- A violation of these provisions would result in disciplinary action being taken by the State Bank Commissioner against the bank or savings and loan.

The intent of the amendment to the definition of "supplier" that the KBA supported and that was passed in the 2005 legislative session was carefully crafted to be a narrow exception to the definition for those occasional instances where repossessed property had to be sold. The purpose was to prevent lenders from being held to the same standard as those entities that sell vehicles or real estate for a profit.

If there are instances where this language is being used on a broader basis, that was not the KBA's intention. We are just not certain that the proposed amendment to the definition of "consumer transaction" will curtail that activity while keeping intact the intent of the 2005 legislation.

Thank you for your time today in understanding the KBA's interest in this bill.