Approved: March 11, 2004
Date

MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

The meeting was called to order by Chairperson Ruth Teichman at 9:30 a.m. on February 18, 2004 in Room 234-N of the Capitol.

All members were present except:
Senator David Adkins- Absent

Committee staff present:
Bill Wolff, Legislative Research
Ken Wilke, Office of the Revisor of Statutes
Nancy Shaughnessy, Committee Secretary

Conferees appearing before the committee:
Kathy Olsen,KBA
Carmen Aldritt, Dept. Of Motor Vehicles
Tom Whitaker,KS..Motorcarriers Assoc.
Bill Henry, KS. Credit Union
Jeff Witherspoon, Consumer Credit Counseling
Todd Bruner,Consumer Credit Counsleing
Kevin Glendening, Kansas Banking Commission

Others attending:
See Attached List.

The Chair opened the hearing on **SB 380–Liens for wrecker and towing services; notice to lienholder**, and introduced Kathy Olsen of the KBA as a proponent on the bill.(Attachment 1)

The goal in drafting the bill was to provide a more timely notice to lienholders once a vehicle in which the lienholder had a security interest had been towed. The KBA has worked with the towing industry and the Division of Motor Vehicles and brings forward amendments which will create a uniform system of notification procedures that all persons who tow vehicles could rely on and which all owners and lienholders would be timely notified.

Carmen Aldritt, Division of Motor Vehicles testified (Attachment 2) as a proponent of **SB 380**. The Division supports the bill with no reservations. They believe it is a win-win situation for all involved.

Tom Whitaker with the KS Motor Carriers Association testified (Attachment 3)as a proponent. KMCA has worked with the Banker's Association on this and supports the legislation with the indicated amendments.

Bill Henry of the Kansas Credit Union Association testified as a proponent on **SB 380**. (Attachment 4) The uniformity in this legislation is probably the most outstanding part of the bill. It is helpful to all parties concerned.

Hearing no questions, the Chair closed the hearing on **SB 380** and opened the hearing on **SB 509–Credit Service organizations; inclusion of debt management services.**

Kevin Glendening of the State Banking Commission, testified as a proponent on the bill. (Attachment 5) **SB 509** is intended to update and expand the protections contained in our present credit services organization(CSO) law to better address and, reduce or prevent potential problems reflective of how these programs are marketed in today's environment.. The Bill1) will expand the definition of a CSO 2)establishes the terms and conditions under which a CSO may engage in debt management activities with a consumer and 3)strengthens the enforcement tools available to foster compliance with the law.

Jeff Witherspoon, of Consumer Credit Counseling Service of Salina/Wichita.(Attachment 6) The agency serves over 1200 clients in debt management. There is a problem which is occurring in the debt management programs coming in from out of state. They are not nonprofit organizations and are

presenting themselves as such to consumers. The passage of this legislation would allow our agency to charge a nominal fee for services and regulate the industry to protect the State consumers.

Todd Bruner, Bd. Chair, CCS of Salina/Wichita(Attachment 7) testified as a proponent on **SB 509**. He is a consumer advocate and has twenty years experience. The bill will level the playing field and make all organizations accountable for the services they provide.

Senator Barnett inquired about what the fee structure looked like. Mr. Glendening indicated there was no fee cap on current law, due to the very sparse type of regulation that has occurred to date.

SenatorBuhler had a question regarding when "debt management service" turned into "asset management." His concerns were about how many persons/organizations might be able to call themselves a "debt management service" under this new legislation.

Mr. Glendening responded that point had been considered and their intent was not to cast a broad net. The bill has been worded to refer to a "business" rather than an individual.

Senator Salmans inquired as to whether passage of this bill would require the Commission to hire another FTE to monitor this legislation. The short answer is No to that question, however the Commission is in need of additional manpower whether this legislation is passed or not.

The Chair closed the hearing on **SB 509**. She then called for additional discussion on **SB 392–Authorizing the Committee on surety bonds and insurance to competively negotiate certain contracts,** and asked Dr. Wolff to comment on meeting updates with Senator Oleen who brought the bill to the Committee. (Attachment 8)

Dr. Wolff commented that there were three statutes that needed to be cross-referenced with language in **SB 392** so that there would be no problems with the other statutes. The revisor will also be working on some language in the first line that would define the agencies that can purchase insurance.
The Chair indicated that as soon as those changes were made and brought to the Committee, they would take action on the bill.

Senator Helgerson requested that when the amendments are prepared, he would like a copy to the Committee and a day or so to look it over before there is a vote.

The Chair then indicated that she wished to discuss **SB 347–Prohibiting counting an insurance related inquiry as an insurance claim.** The Chair stated that there had been some questions and some concerns and that she had asked the two parties(KID and Industry lobbyists) to meet and create some language that works for everyone. The Chair further indicated that the Commissioner wanted to stand on her bill as it is and asked Jarrod Forbes, KID if she was correct in her statement. He answered in the affirmative.

The suggested changes the insurance lobbyists were proposing had to do with adding definitions for consumer, reporting agency and to amend section B to make the language more broad. Additionally,how to distinguish between an inquiry and a claim and the undue restrictions on underwriting.

The Chair stated that the Insurance Commissioner feels that the way the bill is presented provides excellent protection for the consumer and it is a consumer friendly bill. She concluded her remarks by stating that she was ready to entertain a motion.

Senator Steineger made a motion to move the bill out favorably. Senator Helgerson seconded. The entire Committee did not vote and the Chair asked for a show of hands. All in favor, four; all opposed to moving the bill out 4. The Chair voted in favor of moving the Bill out. The motion passes.

Senator Helgerson stated he seconded the motion as a courtesy, but was unhappy that the two parties involved had not worked harder to make this work. Senator Buhler concurred and stated that a 5-4 vote out of Committee going to the floor would be headed for trouble.

MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE at 9:30 a.m. on February 18, 2004 in Room 234-N of the Capitol.

The Chair also indicated that she was disappointed there was not some movement and expressed her concern to the Industry and the Kansas Insurance Department.

The meeting adjourned at 10:45 AM

The next meeting is scheduled for Feb. 18th, 2004 approximately 4:00 pm

SENATE FINANCIAL INSTITUTIONS & INSURANCE

Date: 2-18-04

Name:	Representing:
Kathy Olsen	Ks Bankers Assn.
[signature]	KID
CARMEN ALDORETT	KDOR
Bill Sneed	KCUA
Matt Goddard	HCBA
Danny J. Vaped	Office of the State Bank Comm.
Com. Clancy Norris	"
Deputy Com. Kevin Glendening	"
Sonya Allen	"
JEFF WITHERSPOON	CONSUMER CREDIT COUNSELING SERVICE
Katy Lenahan	Housing + Credit Counseling, Inc.
Karen Hiller	Housing + Credit Counseling, Inc
Todd Bowner	Consumer credit conseling Service
David Dick	KS Credit Union Assoc.
Lee Wright	Farmers Ins
Bill Sneed	State Farm
David Hanson	Ks Insur Assns
Dana Grauerholz	Gaches Braden Barbo Assoc

The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

February 18, 2004

To: Senate Committee on Financial Institutions and Insurance

From: Kathleen Taylor Olsen, Kansas Bankers Association

Re: SB 380: Notice to Lienholders of Towed or Impounded Vehicles

Madam Chair and Members of the Committee:

Thank you for the opportunity to appear before you today in support of **SB 380**. This bill amends several sections of state law that describe the procedures for giving notice to the owners of vehicles and to lienholders when a vehicle has been towed or impounded.

Our goal in drafting **SB 380** was to provide a more timely notice to lienholders once a vehicle in which the lienholder had a security interest had been towed. Current law provides that a lienholder will get notice no sooner than 45 days after the vehicle is towed. The law requires towers to request from the Division of Motor Vehicles verification of the owner of the vehicle and any lienholders of record between 45 and 60 days after towing the vehicle. Once the verification is delivered to the tower, a notice to the owner and lienholder must be sent within 10 days.

We have been working with the towing industry to determine whether this time period could be shortened without unduly burdening their industry. In addition, we have worked with the towing industry and the Division of Motor Vehicles to see whether the turn-around time for the verification process could be shortened. (i.e., Once the verification of owner and lienholder is sent from the tower to the DMV and the DMV processes it and sends it back to the tower.)

We do believe we have reached an agreement with the towing industry to shorten the time period in which the verification request is sent. Attached to my testimony, you will find amendments that we would like to suggest be made to **SB 380**. In these amendments, we have provided that the tower must send the verification to the DMV within 30 days of towing the vehicle. This will get the whole notification process started sooner – in some cases by as much as 30 days sooner. Once the verification is returned to the tower, the notification provisions in current law remain the same. While there is nothing we can do statutorily to shorten the turn-around time for the verification to be processed, we have had positive conversations with the Director of the DMV in that direction.

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Senate F I & I Committee
Meeting Date: 2-18-04
Attachment No.: 1

The amendments we have requested also address the treatment of vehicles valued at less than $1,000. Current law treats these vehicles differently from all other towed vehicles. As the interested parties discussed these provisions, we all agree that there should be one, uniform rule to be applied to all vehicles. This prevents the towing agencies from having to try to determine a vehicle's "value", and makes the whole system more reliable by providing one rule to be applied in all cases.

It is with uniformity in mind that the amendments we are suggesting also address the situation where a vehicle has been abandoned on a highway or public property and the vehicle is then impounded. These procedures appear in K.S.A. 8-1102, and it is our request that the same verification and notification to the owner and any lienholder be applied in these circumstances. Current law does require notice to the owner and lienholder, but there is no time period within which to give the notice. Our amendments are designed so that the entire process mirror that being suggested for vehicles that are towed.

In conclusion, we have tried to create a uniform system of notification procedures that all persons who tow vehicles could rely upon, and upon which all owners and lienholders would be timely notified. The KBA respectfully requests that the Committee act favorably on **SB 380,** incorporating the amendments that we have attached.

Kansas Bankers Association
Requested Amendments to SB 380

8-1102. Motor vehicle abandoned on public highway or property open to use by public; public agency may impound; disposition; motor vehicle abandoned on private property; criminal trespass; impounding and disposition of vehicle. (a) (1) A person shall not use the public highway to abandon vehicles or use the highway to leave vehicles unattended in such a manner as to interfere with public highway operations. When a person leaves a motor vehicle on a public highway or other property open to use by the public, the public agency having jurisdiction of such highway or other property open to use by the public, after 48 hours or when the motor vehicle interferes with public highway operations, may remove and impound the motor vehicle.

(2) Any motor vehicle which has been impounded as provided in this section for 30 days or more shall be disposed of in the following manner: If such motor vehicle has displayed thereon a registration plate issued by the division of vehicles and has been registered with the division, the public agency shall ***request verification from the division of vehicles of the last registered owner and any lienholders, if any. Such verification request shall be submitted to the division of vehicles no more than 30 days after such agency took possession of the vehicle. The public agency shall*** mail a notice by certified mail to the registered owner thereof, addressed to the address as shown on the certificate of registration, and to the lienholder, if any, of record in the county in which the title shows the owner resides, if registered in this state. ***The notice shall state*** ~~stating~~ that if the owner or lienholder does not claim such motor vehicle and pay the removal and storage charges incurred by such public agency on it within 15 days from the date of the mailing of the notice, ~~that~~ it will be sold at public auction to the highest bidder for cash. ***The notice shall be mailed within 10 days after receipt of verification of the last owner and any lienholders, if any, as provided in this subsection.*** ~~The public agency shall inquire by mail of the division of vehicles the last registered owner and any lienholders, if any.~~

After 15 days from date of mailing notice, the public agency shall publish a notice once a week for two consecutive weeks in a newspaper of general circulation in the county where such motor vehicle was abandoned and left, which notice shall describe the motor vehicle by name of maker, model, serial number, and owner, if known, and stating that it has been impounded by the public agency and that it will be sold at public auction to the highest bidder for cash if the owner thereof does not claim it within 10 days of the date of the second publication of the notice and pay the removal and storage charges, and publication costs incurred by the public agency.

SB 380

K.S.A. 8-1102(a)(2), cont.

If the motor vehicle does not display a registration plate issued by the division of vehicles and is not registered with the division, the public agency after 30 days from the date of impoundment, ***shall request verification from the division of vehicles of the last registered owner and any lienholders, if any. Such verification request shall be submitted to the division of vehicles no more than 30 days after such agency took possession of the vehicle. The public agency shall mail a notice by certified mail to the registered owner thereof, addressed to the address as shown on the certificate of registration, and to the lienholder, if any, of record in the county in which the title shows the owner resides, if registered in this state. The notice shall state that if the owner or lienholder does not claim such motor vehicle and pay the removal and storage charges incurred by such public agency on it within 15 days from the date of the mailing of the notice, it will be sold at public auction to the highest bidder for cash. The notice shall be mailed within 10 days after receipt of verification of the last owner and any lienholders, if any, as provided in this subsection.***

After 15 days from date of mailing notice, the public agency shall ~~may~~ publish a notice in a newspaper of general circulation in the county where such motor vehicle was abandoned and left, which notice shall describe the motor vehicle by name of maker, model, color and serial number and shall state that it has been impounded by said public agency and will be sold at public auction to the highest bidder for cash, if the owner thereof does not claim it within 10 days of the date of the second publication of the notice and pay the removal and storage charges incurred by the public agency.

When any public agency has complied with the provisions of this section with respect to an abandoned motor vehicle and the owner thereof does not claim it within the time stated in the notice and pay the removal and storage charges and publication costs incurred by the public agency on such motor vehicle, the public agency may sell the motor vehicle at public auction to the highest bidder for cash.

(3) After any sale pursuant to this section, the purchaser may file proof thereof with the division of vehicles, and the division shall issue a certificate of title to the purchaser of such motor vehicle. All moneys derived from the sale of motor vehicles pursuant to this section, after payment of the expenses of the impoundment and sale, shall be paid into the fund of the public agency which is used by it for the construction or maintenance of highways.

(b) Any person who abandons and leaves a vehicle on real property, other than public property or property open to use by the public, which is not owned or leased by such person or by the owner or lessee of such vehicle shall be guilty of criminal trespass, as defined by K.S.A. 21-3721, and amendments thereto, and upon request of the owner or occupant of such real property, the public agency in whose jurisdiction such property is situated may remove and dispose of such vehicle in the manner provided in subsection (a), except that the provisions of subsection (a) requiring that a motor vehicle be abandoned for a period of time in excess of 48 hours prior to its removal shall not be applicable to abandoned vehicles which are subject to the provisions of this subsection. Any person removing such vehicle from the real property at the request of such public agency shall have a possessory lien on such vehicle for the costs incurred in removing, towing and storing such vehicle.

SB 380

K.S.A. 8-1102, cont.

(c) Whenever any motor vehicle has been left unattended for more than 48 hours or when any unattended motor vehicle interferes with public highway operations, any law enforcement officer is hereby authorized to move such vehicle or cause to have the vehicle moved as provided in K.S.A. 8-1103 *et seq.*, and amendments thereto.

8-1103. Towed motor vehicles, lien thereon; procedure; personal property; providing notice of fee. (a) Whenever any person providing wrecker or towing service, as defined by law, while lawfully in possession of a vehicle, at the direction of a law enforcement officer or the owner, renders any service to the owner thereof by the recovery, transportation, protection, storage or safekeeping thereof, a first and prior lien on the vehicle is hereby created in favor of such person rendering such service and the lien shall amount to the full amount and value of the service rendered. The lien may be foreclosed in the manner provided in this act. If the name of the owner of the vehicle is known to the person in possession of such vehicle, then within 15 days, notice shall be given to the owner that the vehicle is being held subject to satisfaction of the lien. ~~***In addition, notice shall be given to any lienholder of record within 15 days after such person has taken possession of the vehicle.***~~ Any vehicle remaining in the possession of a person providing wrecker or towing service for a period of ~~60~~ ***30*** days after such wrecker or towing service was provided may be sold to pay the reasonable or agreed charges for such recovery, transportation, protection, storage or safekeeping of such vehicle and personal property therein, the costs of such sale, the costs of notice to the owner of the vehicle and publication ~~as required by this act, except that any such vehicle and personal property of a total value of less than $1,000 may be sold at any time,~~ after giving the notices required by this act, unless a court order has been issued to hold such vehicle for the purpose of a criminal investigation or for use as evidence at a trial. If a court orders any vehicle to be held for the purpose of a criminal investigation or for use as evidence at a trial, then such order shall be in writing, and the court shall assess as costs the reasonable or agreed charges for the protection, storage or safekeeping accrued while the vehicle was held pursuant to such written order. Any personal property within the vehicle need not be released to the owner thereof until the reasonable or agreed charges for such recovery, transportation or safekeeping have been paid, or satisfactory arrangements for payment have been made, except that personal medical supplies shall be released to the owner thereof upon request. The person in possession of such vehicle and personal property shall be responsible only for the reasonable care of such property. Any personal property within the vehicle not returned to the owner shall be sold at the auction authorized by this act.

(b) At the time of providing wrecker or towing service, any person providing such wrecker or towing service shall give written notice to the driver, if available, of the vehicle being towed that a fee will be charged for storage of such vehicle. Failure to give such written notice shall invalidate any lien established for such storage fee.

8-1104. Sale of vehicles and personal property; verification; notice. Before any such vehicle and personal property is sold, the person intending to sell such vehicle shall ~~***send notice of sale to the owner and any lienholder of record, if any.***~~ request verification from the division of vehicles of the last registered owner and any lienholders, if any. Such verification request shall be submitted to the division of vehicles ~~no less than 45 days~~ nor more than ~~60~~ ***30*** days after such person took possession of the vehicle. ~~except that if the value of the vehicle and personal property is less than $1,000, the verification request shall be submitted to the division of vehicles within 60 days after such person took possession of the vehicle.~~ Notice of sale, as provided in this act, shall be mailed by certified mail to any such registered owner and any such lienholders within 10 ~~***no sooner than 30***~~ days ~~***nor more than 45***~~ days after receipt of verification of the last owner and any lienholders, if any. ~~***such person took possession of the vehicle.***~~ The person intending to sell such vehicle and personal property pursuant to this act shall cause a notice of the time and place of sale, containing a description of the vehicle and personal property, to be published in a newspaper published in the county where such sale is advertised to take place, and if there is no newspaper published in such county, then the notice shall be published in some newspaper of general circulation in such county. Notices given under this section shall state that if the amount due, together with storage, publication, notice and sale costs, is not paid within 15 days from the date of mailing, the vehicle and personal property will be sold at public auction.

K A N S A S

JOAN WAGNON, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

DEPARTMENT OF REVENUE
DIVISION OF VEHICLES

Testimony on SB380
to
The Senate Committee on Financial Institutions and Insurance

by Carmen Alldritt
Director of Vehicles
Department of Revenue

February 18, 2004

Chairwoman Teichman and Members of the Committee:

The Division of Vehicles supports Senate Bill 380. The Division has been working with the Kansas Bankers Association and through them the towing industry to shorten the timeframe of notification and streamline the verification of the owner/ lienholder. With the verification amendments, the Division's revenue issues are resolved. This would also bring some amount of revenue to various County Treasurers offices throughout the state.

Current process requires verification application be mailed directly to the state. This bill allows the tower to make application for verification directly at the County Treasurers office. If the Treasurer is unable to supply the information, the request is sent with the Treasurer's daily report and received within a few days at the Division of Vehicles. Upon receipt we are able to verify the request and it is mailed directly back to the customer. This procedure tightens the timeframe considerably, allowing the tower to make a more timely notification to the owner/lienholder, resulting in lower storage cost to the owner/lienholder.

It's not every day we can be involved in a win/win situation. With the committees favorable action on Senate Bill 380 this would be the case. Thank you for the opportunity to speak with you today and I would be happy to address any specific questions you may have.

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LEGISLATIVE TESTIMONY
by the
Kansas Motor Carriers Association

Presented before the
Senate Financial Institutions and Insurance Committee
Senator Ruth Teichman, Chairman
Wednesday, February 18, 2004

MADAM CHAIRMAN AND MEMBERS OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE:

I am Tom Whitaker, executive director of the Kansas Motor Carriers Association. I appear here this morning representing our more than 1,200 member companies and specifically our 78 member towing companies. KMCA supports the amendments to SB 380 offered by the Kansas Bankers Association to K.S.A. 8-1103 and 8-1104, requiring that a tow operator request verification of the owner and any lienholders within in 30-days of taking possession of a vehicle

The Towing and Recovery Lien Law was placed into law during the 1987 Session of the Kansas Legislature. The law was in response to a Kansas Court of Appeals case. The case was, Hartford Insurance Company v. Overland Body Tow, Inc., 11Kan.App. 373 (1986).

In that case, law enforcement authorities directed a tow operator to tow a car which had been stopped, resulting in the arrest of the driver. The tow operator towed the car to his place of business and stored it. Eventually the insurance company, which had taken title to the car, demanded that the tow operator release the car. The tow operator demanded payment of its towing and storage charges, and refused to deliver the car until such charges were paid.

The insurance company sued the tow operator for possession of the car, and lost the case at the District Court level. Upon appeal to the Kansas Court of Appeals, the District Court decision was reversed, and the Court of Appeals held that a lien relationship was not created between the owner of the car and the tow operator, as law enforcement authorities, and not the owner, had directed the tow operator to take possession of the vehicle.

The Towing and Recovery Lien law corrected that problem. The law specifically established a lien with a vehicle tow is requested by the owner or law enforcement if such vehicle is towed by a lawfully registered towing company. Further, Kansas law spells out notification and publication requirements before a vehicle may be sold.

Currently, K.S.A. 8-1104 requires the towing company, for vehicles with a value of less than $1,000, to request from the Division of Vehicles within 60-days verification of the last registered owner and any lienholders. For vehicles with a value of $1,000 or more, the request is required to be made between the 45th and the 60th day. The tow operator is required to send by certified mail notice within 10-days after receipt of the information from the Division of Vehicles notice that the vehicle will be sold if payment is not received.

The Kansas Bankers Association approached KMCA to shorten the time that tow operators are required to verify the last registered owner and any lienholders and send notice to such owners or lienholders. This could reduce the possible storage costs for the vehicle. The 30 day requirement is workable for the towing industry and the banking industry. Making the 30-day verification requirement apply to all vehicles, regardless of value, will eliminate confusion or missed deadlines for the towing companies.

KMCA supports SB 380 with the amendments offered by the Kansas Bankers Association. We appreciate the opportunity to appear before you and would be pleased to respond to any questions you may have.

Kansas Motor Carriers Association
PO Box 1673
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KANSAS CREDIT UNION ASSOCIATION

Testimony On SB 380

Madam Chairman, members of the committee, I am Bill Henry, Director of Governmental and Regulatory Affairs for the Kansas Credit Union Association. I appear before you today in support of SB 380 and the amendments offered to the measure by the Kansas Bankers Association.

Credit unions operating throughout the state have had difficulty with recovering vehicles which their member owners have lost due to impoundment by towing companies.

In some cases these vehicles may be low in value and their member-owners for some reason can't pay the restitution necessary to release the vehicles.

With the notices set out in the KBA amendments the credit union lienholder could act to pay the necessary towing and storage fees and return the vehicle to the member who needs it to travel to his or her work place while paying back the fees the credit union paid to release the vehicle.

The financial institution lien holder does not get a free ride to recover the vehicle property, because the primary lien established for the tow operator for storage and towing by statute must be paid before the vehicle can be released to the owner or the lien holder financial institution.

Respectfully Submitted,

Bill Henry

Bill Henry, February 18, 2004

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KANSAS

OFFICE OF THE STATE BANK COMMISSIONER
CLARENCE W. NORRIS, Bank Commissioner

KATHLEEN SEBELIUS, GOVERNOR

February 18, 2004

Senate Committee on Financial Institutions and Insurance

Testimony on SB 509

Madam Chairman and members of the committee:

In combination with increasing levels of consumer debt in this country, there has been a proliferation in companies and organizations purporting to help those consumers "get out of debt". Some of these organizations have come under scrutiny by both State and Federal regulators questioning these organizations' business practices and methods of operation. Complaints by consumers who believe they were misled by some of these organizations have also increased nationally. SB 509 is intended to update and expand the protections contained in our present credit services organization (CSO) law to better address and, reduce or prevent, potential problems reflective of how these programs are marketed in today's environment. The amendments contained in SB 509 lay a good foundation to address these concerns and can be summarized in three areas as follows:

First, the present definition of a CSO would be expanded to encompass those "debt management" activities commonly offered by credit counseling businesses and organizations.

Second, the bill establishes the terms and conditions under which a CSO may engage in debt management activities with a consumer. The bill requires the agreement between the consumer and the CSO be in writing and clearly explain the responsibilities of the CSO and the rights of the consumer. The bill also requires the CSO to take reasonable steps to identify all of the consumer's creditors and prepare a realistic budget plan, as well as itemize any fees to be paid by the consumer per the agreement. The CSO must also report to the consumer, at least quarterly, progress in meeting the agreed upon plan. In addition, the bill establishes parameters on allowable charges and how funds received from consumers for distribution to creditors are maintained and disbursed. The bill also contains various restrictions designed to reduce the potential for deceptive schemes. Among these are prohibitions on structuring an agreement that would result in negative

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amortization of a consumer's debts, requiring or soliciting a consumer to purchase any other product or service in connection with providing debt management services, or purchasing any debts of the consumer.

The third area addressed by the bill pertains to strengthening the enforcement tools available to foster compliance with the law. In addition to registration requirements, the bill would give our agency specific authority to examine the CSO, issue administrative orders, and levy fines of up to $10,000 for violations of the law.

This bill, in my opinion, represents a proactive step in the right direction that should help to ensure Kansas consumers receive both adequate information concerning what can and cannot be done in regard to their credit situation, and protections against deceptive practices. I believe the provisions contained in this bill encourage legitimate practices among the providers of these services and will help ensure consumers who may be struggling to meet their financial obligations, and who seek assistance, are not placed in further financial peril. Thank you for your favorable consideration of this bill.

Respectfully,

Kevin Glendening
Deputy Commissioner

The New York Times

October 14, 2003

Not-for-Profit Credit Counselors Are Targets of an I.R.S. Inquiry

By JENNIFER BAYOT

The Internal Revenue Service is investigating the business practices of nonprofit credit counseling services, which advise millions of people in debt.

The investigation could jeopardize the agencies' nonprofit status and upend the industry just as a proposed change in federal bankruptcy law stands to steer many thousands more people to debt counseling. As nonprofit concerns, the agencies are now exempt from dozens of state and federal regulations.

The I.R.S., the Federal Trade Commission and state regulators plan to issue an unusual joint advisory today warning consumers to be wary about the total costs when seeking help from tax-exempt credit counseling organizations.

"Consumers need to know not to read too much into not-for-profit status — that's no guarantee that someone is legit," said C. Steven Baker, director of the Federal Trade Commission's Midwest operations. "A lot of these credit counseling companies are using tax-exempt status as a get-out-of-regulation-free card. That's why we're teaming up with the I.R.S. on this issue."

Consumer advocates say the actions are long overdue, and many credit counselors say they welcome the scrutiny because they believe that some new entrants are giving the entire industry a bad name.

An estimated nine million people sought the help of credit counseling services last year, according to the National Consumer Law Center and the Consumer Federation of America. From these and earlier inquiries, at least one million people have consolidated their debts, and are now making a single payment each month to the agencies, which in turn distribute the money to creditors.

The I.R.S. declined to identify the agencies it was investigating. In a rare disclosure about its enforcement efforts, though, the tax agency said it was auditing "a significant number" of credit counselors and is conducting a more rigorous review of new ones that apply for tax exemption. The agency is examining the fees charged consumers, the salaries paid to officers and a host of transactions with for-profit companies.

Illinois and Missouri have sued AmeriDebt, one of the biggest agencies, saying it charges excessive fees and diverts money to companies that are affiliated with it.

A close look at tax records and other documents shows that some executives of Cambridge Credit Counseling and Consolidated Credit Counseling Services also have relationships with companies that they pay for various services. Cambridge and Consolidated say that there is nothing improper about their business relationships and that they have been examined by independent parties.

If any of these companies are found to be improperly benefiting for-profit companies, they risk losing their nonprofit status.

"We take a dim view of the use of the tax code by credit counseling groups to game the system, and are concerned by recent developments," said Mark W. Everson, the I.R.S. commissioner. "Those groups that are using the tax code to skirt consumer protection laws should think twice. We will work with other federal agencies and state regulators to combat abuse in this area."

To be exempt from taxes, a credit counseling agency must limit its services to poor customers or must primarily provide education and counseling to the public, the I.R.S. said. Simply enrolling people in payment plans is not enough.

The industry has changed drastically in the last decade from mostly small local organizations to very visible national operations that advertise aggressively. These big companies have ushered in some welcome improvements, like 24-hour customer service lines and electronic payments.

But consumer advocates say that some agencies seem more intent on making money by overcharging their customers or by funneling money to related companies rather than acting in the best interests of their clients.

A potential for conflicts of interest has existed since the industry's beginnings in the 1960's. Credit counselors receive contributions from credit card companies, which provide incentives to push people into repayment plans — even people who need only budgeting tips or who might be best served by bankruptcy protection. Recently, though, the contributions from credit card companies have been shrinking, and consumers are being asked to pay more for the help.

"Because of the work that we do, we have to be an arbiter for both sides, and I do think some tension comes from that," said Suzanne Boas, president of the Consumer Credit Counseling Service of Greater Atlanta. "But if you're very clearly focused on providing value for consumers, I think that's a tension that can be resolved."

Credit counseling helps many people find a way to regain their financial footing. They learn to trim costs and stick to a budget and determine whether bankruptcy is a reasonable option. Clients who enroll in the agencies' payment plans may benefit because the agencies can negotiate lower interest rates, smaller minimum payments and the elimination of late charges.

Many Americans are struggling to pay their bills, and those out of work find job opportunities bleak. Research by the Federal Reserve indicates that household debt has risen to a record 14 percent of disposable income. Personal bankruptcies are on track this year to surpass last year's record of 1.5 million, according to the American Bankruptcy Institute.

Bankruptcy legislation passed by the House could steer even more people to counseling agencies. It would require, among other things, that anyone who wants to file for personal bankruptcy consult first with a credit counselor.

"You're going to have people forced en masse to become victims due to Congress's beneficence," predicted Stephen Gardner, a lawyer in Dallas who has served as an assistant attorney general for consumer protection in Texas.

A look at some of the big agencies' practices and financial statements shows a variety of complicated fee structures and a quagmire of related companies.

The credit agencies say that they are generally asking for higher fees because of the smaller contributions from credit card companies and that their fees are strictly voluntary. But consumer advocates say that some agencies fail to mention that the fees are optional or pressure customers to pay them, pointing out that the agencies are nonprofit.

The Consumer Federation of America says a reasonable setup fee should not exceed $50.

AmeriDebt — which is based in Germantown, Md., and has close to 100,000 clients — retains 3 percent of customers' overall debt, typically the equivalent of a month's worth of payments, as an initial voluntary contribution. It then collects $7 a month for each credit card account it handles, at a minimum of $20 a month per consumer.

"It has been AmeriDebt's longstanding policy to provide its services to all consumers who ask for our help, whether or not they make a voluntary contribution," the company said in a statement.

AmeriDebt emphasized that the fees are voluntary and that it can reduce people's monthly payments by roughly 50 percent.

Cambridge Credit Counseling, which is one of the country's five largest credit counselors and is adding 4,000 customers a month, initially consolidates payments and then deducts the equivalent of one month of the consumer's payment under the new plan. It also charges maintenance fees of 10 percent of each month's payments or $25, whichever is greater. Cambridge, which is based in Agawam, Mass., says the enrollment fees help people stay committed to the repayment programs.

Furthermore, customers who stick to their payment plans for six months can claim half of any contributions that Cambridge receives from their creditors, thus recouping some fees. The company says that since 1996 it has returned close to $12 million to its customers through this program.

While it is evaluating fees in the industry, the I.R.S. is looking at what counseling agencies do with money they receive. Many are paying what seem like excessive salaries, it said. Some owners of the nonprofit concerns also own stakes in profit-making companies, which they send business to in various ways, prompting further investigation by the I.R.S. Again, the agency declined to identify the companies, but complicated business dealings are common in the industry.

The lawsuits filed by the Illinois and Missouri attorneys general say that AmeriDebt operates more like a for-profit enterprise, and both suits accuse the company of charging excessive fees.

Over the last three years, AmeriDebt has paid $75 million to have its customers' accounts managed by companies owned by Andris Pukke, the husband of its founder, Pamela Shuster, and a former officer.

AmeriDebt said "it would cost millions of dollars to invest in the same technology and personnel that are available at less cost from vendors."

Mr. Pukke, 34, left AmeriDebt three years ago, the company said, and has since had no affiliation with it.

Cambridge Credit manages its own accounts. But it pays much of its revenues to for-profit companies owned by its founders, John and Richard Puccio, who are brothers.

Tax returns show that it paid millions during its fiscal year ended July 31, 2002, to a debt-referral company owned by John Puccio.

Cambridge also paid the brothers $984,000 last year toward its $14.1 million purchase of two other for-profit credit counseling companies that the Puccios founded. The sale price, said Cambridge's lawyer, Paul Kaplan, was independently reviewed and approved by the accounting firms BDO Seidman and KPMG. Cambridge said that its executives' salaries had also been reviewed and approved by an outside firm. John and Richard Puccio earn six-figure salaries from either Cambridge or two related companies, adding up to more than $500,000 a year for each, according to tax returns.

Last year, a report by a Massachusetts Senate committee expressed concern about Richard Puccio, noting that the Securities and Exchange Commission barred him for five years from the securities industry in 1996 for "engaging in high-pressure, fraudulent sales tactics in utter disregard of his obligations to customers and their welfare."

Mr. Kaplan, Cambridge's lawyer, said no regulators had objected to Mr. Puccio's role at the group. "He sits on the board, but he has no office or title, and he doesn't deal with consumers," Mr. Kaplan said.

On its most recent tax return, Consolidated Credit Counseling in Fort Lauderdale, Fla., another of the biggest agencies, lists five for-profit businesses as related organizations.

Florida public records list Howard Dvorkin, the president of Consolidated Credit, as the sole officer of three of those organizations.

The five companies provide Consolidated with office space, software, accounts processing, marketing and office equipment — often at substantial discounts, Mr. Dvorkin said.

"We've had compensation studies on any related-party transactions," he responded to inquiries. "We have an independent board review them to make sure they're at market or below."

Mr. Dvorkin said that the affiliated companies helped shield Consolidated from various liabilities and that keeping the businesses separate was more efficient. "We don't do anything wrong," he said. "We're a legitimate service."

The draft of the statement to be released by regulators today tells consumers to beware of quick fixes offered by some credit advisers. Among other things, it suggests consumers look at total costs, any voluntary contributions and monthly service charges, which "may add to your debt and defeat your efforts to pay your bills."

Mark Pacella, president of the National Association of State Charity Officials, said, "State charity officials are working with other state and federal agencies to remedy abuses."

THERE ARE 3 RULES FOR SUCCESS....

DO not talk to the creditors!

Do NOT talk to the creditors!!

Do not TALK to the creditors!!!

Let us work for you to help you achieve your financial goals. To accomplish this we need you to stay invisible to your creditors but not to US.

RISE ABOVE

February 18, 2004

Dear Senators:

My name is Jeff Witherspoon and I am the Executive Director of Consumer Credit Counseling Service of Salina/Wichita Kansas. I am speaking today in support of Senate Bill 509.

Our agency currently services over 1,200 clients on a Debt Management Plan. These plans are used by Kansas consumers to help avoid bankruptcy and to repay their debt obligations. CCCS of Salina/Wichita provides confidential, one-on-one/face-to-face counseling to those seeking our help. Last year we helped counsel and educate over 8,000 Kansans through financial counseling and our education programs. CCCS is a not-for-profit agency. In order to retain our not-for-profit status, we must offer educational services in addition to DMP's. We do this by offering a large variety of financial classes to the general public, as well as our clients.

Most of our clients come to us because their bills have gotten out of control and they are scared. Many have defaulted on loan payments including: mortgages, vehicles, student loans, and credit cards. Our clients cover a vast socioeconomic range from the elderly on fixed incomes to the professionals making six figures. It does not matter what you make in life, it depends more on how you spend it.

But, a large problem is now occurring in the credit counseling industry. A "new breed" of credit counseling agencies has emerged. These out of state agencies are taking advantage of Kansas consumers through high fees and inaccurate promises. They do not offer any education programs/services, but present themselves as not-for-profit agencies. Consequently they are violating Kansas law. Currently, Kansas has a law that prohibits agencies from charging a fee for debt adjusting or debt management. My agency has specifically <u>not</u> violated this law throughout its 19 year history.

Take for example the situation with an elderly client named Evelyn. Evelyn came to our agency needing help. She was currently already on debt management plan with on of the "new breed" of credit counseling agencies. Evelyn was on a fixed income; her monthly income was $1861 per month. A very adequate amount for an elderly widow, but there was a problem; she owed over $187,000 in credit card debt. Her minimum payments to the creditors each month was over $3,000. It should have been obvious to the counselor that Evelyn could not make the monthly payments, let alone repay that amount of money. It was more than $1,100 more per month than her income. But, the other counseling agency had told her that she was doing well and signed her up on their Debt Management Plan. Unbeknownst to her, they kept her first $3,000 payment she sent as the start up fee for joining their service. They also planned to keep 10% of her future payments as their monthly maintenance fee. If she would have been able to complete her DMP Plan, she would have paid more than $18,000 in fees. We would have helped her for free. The IRS is currently investigating this company as well as others because they feel they are not legally not-for-profit agencies.

This case, although extreme, is happening every day in Kansas. As debt strapped consumers turn for help, they need to be able to contact true non-profit credit counseling agencies that are designed with the client's best interests in mind. This bill will help to protect Kansans from being taken advantage of by this "new breed" of counseling agency.

This bill will also level the playing field for my agency as well. Because of the current law, we have not been charging our clients a monthly fee, but with passage of the bill my agency would then be able to charge a small nominal fee for our services. I believe strongly that regulation of my industry and consistent enforcement of the laws of the state of Kansas are necessary to make it fair to any agency choosing to do business in our state. I have great faith in the office of the State Banking Commission to help enforce this pending legislation, if passed. Regulation of my industry is imperative to the protection of Kansas consumers and to ensure fair business practices in the credit counseling industry.

Again, I strongly encourage your support of SB 509, and thank you for your time and consideration of my concerns.

Jeff Witherspoon
Executive Director
Consumer Credit Counseling Service, Inc.
1201 W Walnut
Salina Ks 67401
1-800-279-2227

Senate Bill No. 509 02/18/2004

Testimony of;

Todd Brunner
Consumer Credit Counseling Services, Board Chairman

Over the last three to four years the credit counseling industry has been given a "black-eye" by certain national companies who claim to be nonprofit and consumer friendly. Their hook is a promise of an easy way out of debt. Kansas Consumers have unwittingly taken the bait, only to find thousands of dollars in fees, a lack of education and understanding, and little or no support in actually finishing their debt repayment plan.

Consumer Credit Counseling Services (CCCS) is supporting SB 509 in the hopes that Kansas Consumers will be protected from these unscrupulous companies and that the playing field would be level for true credit counseling services.

CCCS is a homegrown (Salina, KS) nonprofit agency, a member of the National Federation for Credit Counseling and accredited by the Council on Accreditation for Children and Family Service. We serve families all across Central, Western and Southern Kansas, with offices in Salina, Wichita, Hutchinson, Hays and Garden City.

Our income is primarily derived from creditors willing to support us by allowing a small "fair share payment" to be deducted from what we collect on their behalf. Over the last three years we have seen this "fair share" income decrease by 15%. This decrease caused a year-end net loss of $6,000.00. Needless to say, the agency cannot stay viable if this trend continues.

Two issues are the cause of our decrease in revenue;

First, Creditors have grown weary of supporting agencies that obviously do not support the long-term success of the borrower or the creditor. Consequently, some creditors are not discerning the good from the bad, and simply halting all "fair share" payments.

Secondly, the same agencies causing the problems are spending millions to market and advertise nationally. As we see Kansas Consumers biting on this advertising we rightly feel that we have an unfair playing field, since we don't have a huge marketing budget supported by excessive fees.

CCCS has upheld the laws of Kansas and stayed true to our nonprofit charter to help those in financial difficulty. We need to remain as a viable source to Kansas Consumers for education, counseling, and as an alternative to Bankruptcy. We would like your help in bringing consumer protection to our industry by passing this bill and insisting on strict enforcement thereof.

Senate F I & I Committee
Meeting Date: 2-18-04
Attachment No.: 7

State of Kansas

LANA OLEEN
SENATOR, 22ND DISTRICT
GEARY AND RILEY COUNTIES
(785) 296-2497

COMMITTEE ASSIGNMENTS
CHAIR: CONFIRMATION OVERSIGHT
STATE-TRIBAL RELATIONS
VICE CHAIR: ORGANIZATION, CALENDAR & RULES
MEMBER: STANDING & JOINT COMMITTEES

Majority Leader
Kansas Senate

SENATE CHAMBER, STATE CAPITOL
TOPEKA, KANSAS 66612-1504

February 17, 2004

Senator Ruth Teichman, Chair
Financial Institutions & Insurance
Rm 143 N, State Capitol Building
Topeka, KS 66612

Dear Chair Teichman,

Thank you for the hearing on Senate Bill 392 regarding changing the state's sealed bid process to one that is competitive and allows negotiation. I believe testimony provided evidence of the possible savings and benefits to the state should this bill pass.

In the process of the hearing, a request was made for more information regarding savings that other states realized using a process such as the one proposed in SB 392. I have enclosed copies of letters that testify to the benefits of an open, competitive bid process. I would also draw your attention back to the testimony provided by Johnson County Community College of the cost savings and benefits it has realized utilizing access to a large pool negotiation contract.

Should you need additional information, please do not hesitate to contact me or Kerri Spielman in my office. Thanks again.

Sincerely,

Lana Oleen

enclosures

cc: Members of the Financial Institutions and Insurance Committee

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Senate F I & I Committee
Meeting Date: 2-18-04
Attachment No.: 8

Division of Management Services

Risk & Insurance Management

6 Clark Hall
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INTERNET ID: paytonw@umsystem.edu

UNIVERSITY OF MISSOURI SYSTEM

February 11, 2004

Senator Lana Oleen
Office of the Majority Leader
Statehouse/Room Number 356-E
300 SW 10th Avenue
Topeka, KS 66612

RE: Midwestern Higher Education Compact (MHEC)

Dear Senator Oleen:

The University of Missouri has participated in several MHEC initiatives over the years. I have personally been involved with the Master Property Program since July 1994. I served as the Chair of the Oversight Committee of the program for nine years and continue to serve on the committee as representative for the State of Missouri.

When the University joined the program in 1994, we enjoyed a 15% reduction from our expiring rate (which had been promulgated in 1991). Three years later we enjoyed another 15% rate reduction. The events of 9/11 and subsequent market issues found us looking at significant increases, but the program still enjoyed a solid and competitive program.

During the spring of 2003 the Master Property Program conducted a market search again and moved in tact to a new market at a savings over our renewal quote of some $4 million. This translated into a $500,000 savings for the University of Missouri and included improved coverage and limits.

In addition we recently received a $65,000 dividend and are scheduled to receive a dividend of over $200,000 late in 2004.

The benefits of the program far exceed the premium savings. We have established a sense of community and have toiled hard as a group through some sensitive times and issues. While I hate to use cliché's, this program has been a win/win situation for the State of Missouri with our premium savings alone overshadowing the cost of the State to be a member of the compact.

Any legislation that will ease the way for Kansas institutions to consider MHEC would be a good thing.

Sincerely,

Wm. A. Payton
Director

c: Mr. Larry Issak, MHEC President

NORTHERN ILLINOIS
UNIVERSITY

OFFICE OF UNIVERSITY LEGAL SERVICES
LOWDEN HALL 302
DEKALB, ILLINOIS 60115-2854
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February 12, 2004

The Honorable Lana Oleen
Office of the Majority Leader
Statehouse/Room Number: 356-E
300 SW 10th Avenue
Topeka, Kansas 66612

Dear Senator Oleen:

I am writing to share with you the experience of Northern Illinois University's participation in the Midwestern Higher Education Commission's (MHEC) Master Property Program. Northern Illinois University, one of nine public universities in the State of Illinois, has, for a number of years, cooperatively purchased property and liability insurance through the Illinois Public Higher Education Cooperative (IPHEC).

All nine members of IPHEC chose to join the MHEC Master Property Program in July of 2002. The decision to join the MHEC program was made in the midst of the recent "hard" insurance market and was based on the stability of the program, the quality of the program's insurance coverage, competitive pricing, the potential for a dividend from the program's loss fund in the event losses were low for a given policy period, the level of service by the program administrator and the commitment of the members of the Master Property Program to risk management principles.

I hope this information is useful as the Senate considers Senate Bill 392.

Very truly yours,

Clair D. Williams
Risk Management Coordinator
Northern Illinois University

and IPHEC Co-representative to the
MHEC Master Property Program
Oversight Committee

copies: Kenneth L. Davidson, General Counsel, NIU
P. J. Kale, Dir., Risk Management, Univ. of Illinois
Mary Feilmeyer, Program and Communication Officer, MHEC
Thomas D. Clayton, Risk & Insurance Manager, Johnson County Community College

8-4