

MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS COMMITTEE

The meeting was called to order by Chairman Ray Cox at 3:30 P.M. on February 9, 2005 in Room 527-S of the Capitol.

All members were present except:

Anthony Brown- excused

Pat George- excused

Committee staff present:

Melissa Calderwood, Kansas Legislative Research Department

Michele Alishahi, Kansas Legislative Research Department

Bruce Kinzie, Revisor of Statutes Office

Patti Magathan, Committee Secretary

Conferees appearing before the committee:

Matt Goddard, Heartland Community Banking Association

Kathy Olsen, Kansas Banking Association

Kevin Glendenning, Office State Banking Commission

Ron Gaches, Gaches, Braden, Barbee & Associates

Patrick DeLapp, Public

Others attending:

See attached list.

Chairman Cox called the meeting to order. He asked if there were any bill introductions. There were none.

Representative Grant moved to approve, as written, the minutes of the February 2, 2005. Minutes were accepted without objection.

Chairman Cox opened the hearing on **HB 2205 - Prohibiting unauthorized use of lender's name, trade name or trademark.**

Proponent **Matt Goddard**, representing Heartland Community Banking Association (H.C.B.A.), testified that the misleading, if not outright deceptive, use of certain information in solicitations for mortgage loans and related insurance products is of growing national concern.

These solicitations are generally mailings, which might include information regarding the customer's loan, and imply that they are associated with the existing lender, prominently display the name or logo of the recipient's lender, or otherwise imply an affiliation with the lender. The most common complaint our members receive from their customers regarding these solicitations is that the customer thinks their financial institution provided this other company with their loan information. The company making the solicitations generally gets their information from public records, although the information can also be gathered from credit reports.

HB 2205 takes three steps to limit the use of a consumer's loan information in a solicitation. First it prohibits the use of any non-public loan information. Second, the bill prohibits the use of loan information acquired from public records if its use would violate K.S.A. 45-230. Finally, the solicitor must make a clear and conspicuous disclosure that the solicitation is not authorized by the lender and that the lender did not provide the loan information.

HB 2205 makes exceptions to allow comparisons, and to exempt communications by a lender or its affiliates with a current customer or someone who was a customer during the immediately preceding eighteen months.

Similar legislation has been passed in Colorado and Missouri. (**Attachment 1**)

Proponent **Kathy Taylor Olsen**, representing the Kansas Bankers Association, stated that **HB 2205** would provide a pathway to stop the practice of unauthorized use of a lender's name in a solicitation for products or services. Ms. Olsen stated that misleading direct mail marketing has grown exponentially since restrictions

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have been placed on telemarketing. She said that the Kansas Bankers Association supports **HB 2205** in its effort to stop these practices which can be very damaging to a lender's reputation. **(Attachment 2)**

Chairman Cox invited the committee to address their questions to either Mr. Goddard or Ms. Olsen.

Representative Dillmore asked how this bill would be enforced were it passed. Mr. Goddard replied that this is a tough issue. Language in this bill is similar to that used in another state. Representative Dillmore also asked about the phrase in the bill, "presumed harm," and if this language is used anywhere else. Mr. Kinzie replied that this language is used today in other bills.

Representative Cox asked if there were means in place to enforce this bill. Mr. Glendening responded that the Banking Commissioner's office has some resources in place to stop deceptive practices, and do routinely take action.

Representative Burroughs asked if lender agents are selling information. Mr. Goddard replied that there is no reason to suspect that is the case. Information is mainly public record.

Representative Goico asked if these solicitations imply that there is a partnership with the lender when there is not. Mr. Goddard replied that, yes, they frequently imply partnership. He further explained that the offers are not always legitimate offers and will frequently display the loan number on the outside of the mailing envelope.

Representative Dillmore asked what, on the example provided by H.C.B.A., would be different with this bill. Mr. Goddard stated that the bank name would be removed and would be included in disclosure.

Chairman Cox closed the hearing on **HB 2205** and opened the hearing on **HB 2276 - Fees for transmission of money.**

Proponent **Ron Gaches**, representing Western Union, asked the committee to pass **HB 2276** which would clarify his customer's ability to charge an additional fee to their customers who contract the service either on the internet or by telephone using a credit card. Mr. Gaches noted that credit card transactions are more expensive to process than the traditional cash transaction. Today eleven states have credit card surcharge statutes. **(Attachment 3)**

Opponent **Kevin Glendening** of the State Banking Commissioner's Office stated their opposition to **HB 2276** as written. Mr. Glendening contends that the language in the bill is contradictory stating that the fee is based on the mode of transmission used but will be in no way dependent upon the method of payment. However, the bill also states that the transactions are exempt from K.S.A. 16a-2-403 which prohibits charging more for a particular method of payment. Mr. Glendening offered a proposed rewording of the bill if the committee decides to advance it. **(Attachment 4)**

Chairman Cox asked Mr. Gaches and Mr. Glendening to come to a consensus on the bill wording and present it when the bill is worked.

Chairman Cox closed the hearing on **HB 2276** and opened the hearings on **HB 2277 - Credit card or debit card receipts, business name.**

Mr. **Patrick DeLapp** appeared as a proponent for **HB 2277**. Mr. DeLapp proposed that credit card purchases should reflect the same business name on the card statement as the business where the transaction was made. Mr. DeLapp stated that this isn't an isolated occurrence and provided two examples of companies doing business using one or more names and whose charge appears on the credit card statement using a different business name. Mr. DeLapp concluded by stating that in the current climate of credit card fraud and identity theft it would be an additional measure of security for consumers to have their credit card statements more accurately reflect where they are shopping. Mr. DeLapp also offered a wording change in the amendment to replace the word "or" with "and" on line 32. **(Attachment 5)**

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Representative Humerickhouse asked if there would be enough room on the Credit Card machine for this information. Mr. DeLapp replied that yes, it would simply require a tax rate change on the credit card machine.

Representative Dillmore asked if the proposed wording change would be an issue. Mr. Kinzie replied that it would not present a problem.

Representative Olson asked if the address would be enough to clarify the bill if the names are different. Mr. DeLapp replied that the address is not always included.

Chairman Cox closed the hearings on HB 2277 and opened hearings on HB 2278 - Uniform consumer credit code, alternative finance charges for certain loan.

Proponent **Ron Gaches**, representing Security Finance, informed the committee that HB 2278 would allow his customer and other similar businesses to compete for the business of the consumer needing a small short-term loan. Security Finance does not currently do business in Kansas since the current authorized fee structure does not fit their business model, however they have processed loans for Kansas residents thru their offices in Missouri. HB 2278 would create a statutory framework for the Kansas Bank Commissioner's Office to license, regulate, audit, and enforce Kansas law over business operations of providers of short-term small consumer loans.

Mr. Gaches explained that the financial services market in the United States is changing rapidly. Many products and services are being developed to meet the legitimate needs of the consumer with less than perfect credit or who chooses not to borrow from family or friends. The Kansas Universal Consumer Credit Code (U.C.C.C.) provides very little flexibility since it was written with a different customer model and transaction in mind. (Attachment 6)

Mr. **Kevin Glendening**, opponent, stated that HB 2278 proposes to create a series of exceptions to existing rules and safeguards in the U.C.C.C. and appears to create the perfect environment to facilitate and even encourage loan "flipping." Flipping is a predatory loan practice in which a lender entices or deceives a borrower into repeatedly refinancing their loan so the lender can obtain fees associated with each refinance. Mr. Glendening concluded by saying that the proposed amendments are incompatible with the purpose and structure of the U.C.C.C. and raise serious concerns for potential abusive lending practices. (Attachment 7)

Representative O'Malley asked if data is available for this type of loan. Mr. Glendening replied that the data is not available in one place. There are a number of reports and studies by various Universities and consumer groups. The practice of flipping is considered to be universally abusive. This is an installment loan and there are already methods in place for consumers to obtain an installment loan.

Representative Dillmore commented that the existing system is failing to serve persons of low economic means who have limited financial access. He expressed the thought that if there were community reinvestment activities to address the issue within the existing financial framework, we would not be hearing these requests. Mr. Glendening agreed. Mr. Gaches added that the U.C.C.C. model does not fit the clientele of Security Finance, and any comparison of this product to the U.C.C.C. model is not a fair comparison.

Chairman Cox asked Mr. Gaches if he had comment regarding the newspaper article about a lawsuit against his client in Oklahoma. Mr. Gaches replied that the case is currently on appeal and the involved employee has been terminated.

Representatives Dillmore, Faust-Gadeau, Goico, and Thull asked several questions about addressing loans for low income people within the existing financial framework.

Representative Brunk questioned the importance of loans being a minimum of four months. Mr. Philip Holt, of Security Finance, responded that their budget portfolio begins at four months in order to keep rates down. The minimum might be adjusted, but the business model is based on four months. When the minimum time

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is reduced, it becomes closer to the PayDay Loan product. He added that Security Finance provides a service to their clients since they report to three credit reporting services, allowing their customers to build a credit rating and get back on track.

Representative Vickery asked if it is conceivable that prepayment charges could only be applied to new loan amounts. Mr. Holt replied that they would take that under advisement.

Chairman Cox closed the hearings on **HB 2278**. He stated that we would work the bills heard today at the next meeting, Monday, February 14. On Wednesday, February 16 we will work **HB 2143**, and we will work **HB 2099** on Monday, February 21.

Meeting was adjourned at 5:15 P.M.

HOUSE FINANCIAL INSTITUTIONS COMMITTEE GUEST LIST

DATE: 2-9-05

NAME	REPRESENTING
Patrick DeLapp	Public
Kathley Olsen	Ks Bankers Assn
Kevin Glendenning	OSBC
Ron Caches	CBBA
Carrie Coulson	Rep Vick
Adam Courtney	OSBC
Sonya Allen	OSBC
Tom Hudgins	SECURITY FINANCE
Philip Holt	SECURITY FINANCE
Charne Ann Rower	KS GOVT Consulting
Matt Goddard	Heartland Community Bankers Assoc.
David Damm	Intern Rep. Gr. 20
Wesley Damm	
LARRY DAMM	CONSTITUTOR CASSIA CREDIT UNION
Katie Gonzales	Federico Gonzales
Bell Jenny	Ks Credit Union Assn
Reno Murray	CBA



Matthew S. Goddard, Vice President

700 S. Kansas Ave., Suite 512
Topeka, Kansas 66603
Office (785) 232-8215 • Fax (785) 232-9320
mgoddard@hcbankers.com

To: House Financial Institutions Committee

From: Matthew Goddard
Heartland Community Bankers Association

Date: February 9, 2005

Re: House Bill 2205

The Heartland Community Bankers Association appreciates the opportunity to appear before the House Financial Institutions Committee to express our support for House Bill 2205.

House Bill 2205 provides a solution in Kansas law for a growing nationwide problem. The problem is the misleading, if not outright deceptive, use of certain information in solicitations for mortgage loans and related insurance products. These solicitations prominently display the name or logo of the recipient's lender or otherwise imply an affiliation with the lender even though they typically have no relationship or connection to the lender whose name or logo is being used. The solicitations also often include loan information that gives the recipient the impression that their lender is involved with the solicitation. Examples of these solicitations are attached.

Most mortgage lenders have earned a high level of credibility with their customers. By implying that a solicitation is in some way associated with the lender, the companies making these solicitations are preying on these lender-borrower relationships. The mailings often reference the original lender's name and use words such as "authorized" and "endorsed" to promote products and services. The solicitation also includes the recipient's loan amount and sometimes even their loan number. Without these deceptive techniques, most consumers wouldn't give the solicitations a second thought.

The most common complaint our members receive from their customers regarding these solicitations is that the customer thinks their financial institution provided this other company with their loan information. The companies making the solicitations generally get their information from public records, although the information can also be gathered from credit reports. Some solicitations already disclose that loan information came from the public record. Unfortunately, K.S.A. 45-230 already makes it unlawful to receive information from public records "for the purpose of selling or offering for sale any property or service to the persons listed therein..." This would appear to make it illegal under Kansas law to use information acquired from a public record to sell a product or service. It is the understanding of HCBA that this statute is not actively enforced.

As shown by the attached examples, these solicitations take a number of different formats. Some disclose that the solicitor is not affiliated with the consumer's lender while others acknowledge that the loan details were obtained from public records and not their lender. However, these disclosures are inconsistent and there is no uniform standard for the disclosures. Based on the responses of customers who call with questions or complaints, the disclosures are not always effective.

What the Bill Does

House Bill 2205 takes several different approaches to address the problem of these misleading solicitations. First, it requires that the person making the solicitation get the consent of a lender before using the lender's name, trade name or trademark. This requirement also applies to names, trade names and trademarks that are similar to that of the lender mentioned in the solicitation. A person can still use the lender's name without its consent if they clearly and conspicuously state in bold type that the solicitation is not authorized by the referenced lender, but the referenced lender must be identified by name in the statement. The statement must also include the name, address and telephone number of the person making the solicitation and state that any loan information referenced in the solicitation was not provided by the lender. Please note that HB 2205 does not apply to advertisements and solicitations that make comparisons between lenders so long as the person making the comparison clearly identifies itself.

House Bill 2205 takes three steps to limit the use of a consumer's loan information in a solicitation. First, it prohibits the use of any loan information that is not publicly available. This would preclude the use of information culled from credit reports. Second, the bill prohibits the use of loan information acquired from public records if its use would violate K.S.A. 45-230. Finally, if there is still any other public loan information that can be used, the solicitor must make a clear and conspicuous disclosure that the solicitation is not authorized by the lender and that the lender did not provide the loan information.

The envelopes or mailing labels used with these solicitations often use the name of the recipient's lender or use other information to give the mailing a sense of urgency. House Bill 2205 prohibits the use of an existing lender's name without that lender's permission and prohibits specific loan information from being visible on the outside of a mailing.

As is the case with K.S.A. 45-230, enforcement is an issue with any laws targeting these solicitations. They do not pose a threat to public safety and therefore do not warrant the involvement of law enforcement and regulatory bodies such as the Office of the State Bank Commissioner claim they lack the appropriate staff for enforcement. House Bill 2205 allows the lender whose name, trade name or trademark is used to seek a court injunction against the person who violates the law. The bill provides that the lender seeking the injunction does not have to prove actual damages and irreparable and interim harm to the lender are presumed. The lender seeking the injunction may also seek to recover actual damages and any profits the defendant made resulting from the violation.

In addition to making an exception for comparisons, House Bill 2205 also exempts from its provisions communications by a lender or its affiliates with a current customer or someone who was a customer during the immediately preceding 18 months.

House Bill 2205 will help curtail the use of these deceptive and misleading business solicitations. Unfortunately, their use is a national trend that, absent legislative action, we do not expect to subside. States across the country have passed legislation similar to HB 2205, including Colorado and Missouri in our own region. Kansas can protect its consumers and lenders by being the next and passing HB 2205.

We respectfully request that the House Committee on Financial Institutions recommend HB 2205 favorable for passage.

Important Notice: Michael [REDACTED]

You can eliminate an average of **8 years** off your **\$93,000** loan with **Lasalle Bank NA**.

Fixed Rate, Adjustable Rate, ARM, Balloon, Interest Only, and all other types of loans.
30 year, 20 year, 15 year or any other term loan.

Lender: (listed for loan reference only)
Lasalle Bank NA

To Borrower:

Michael [REDACTED]

[REDACTED]
Shawnee Mission, KS 66205-2757

RE: Bi-Weekly ID#: 05-0316TM2
Customer ID#: AYCS4347



Dear Michael [REDACTED]:

Many homeowners are requesting that Weekly and Bi-Weekly payments be made available as an option for paying mortgage payments. Most people do not get paid monthly, but get paid either Weekly or every two weeks/Bi-Weekly. Weekly and Bi-Weekly payments have become easier forms of budgeting because the payments are much smaller. And, if you get paid Weekly or every two weeks/Bi-Weekly, your payments can be debited on or around the same days you get paid. (A small transfer fee is added to each bi-weekly/weekly payment to cover processing.) Since your \$93,000 loan with Lasalle Bank NA is one of the largest bills you have to pay, it makes sense to use an easier and faster way to pay it off. We give you the ability to do just that. (Eliminate an average of 8 years and \$32,736 in interest charges off your loan just by adjusting the way you make your payments from monthly to bi-weekly. It's so simple.)

Michael [REDACTED], compare the advantages of Weekly and Bi-Weekly payments to a typical Monthly payment:

Weekly & Bi-Weekly Payments (sample comparison)	Sample Comparison		
<ol style="list-style-type: none"> Smaller Payments. (\$198 weekly or \$395 bi-weekly) Can be set up to match your pay schedule. Budgeting is easier because a smaller amount can be taken from each pay period. 			
Monthly Payment	Payment Amount	Years To Pay	Interest Savings
<ol style="list-style-type: none"> Larger payments. (\$790 monthly). Does not match most pay schedules. Budgeting requires you to put money aside throughout the month for a larger payment. 	Monthly: \$790	30	\$0
	Bi-Weekly: \$395	22.8	\$32,736
	Weekly: \$198	22.7	\$33,108
	Compare adding a little extra to your payment		
	Payment Amount(+)	Years To Pay	Interest Savings
	Monthly: \$790 + \$40	24.8	\$24,552
	Bi-Weekly: \$395 + \$20	19.8	\$46,686
	Weekly: \$198 + \$10	19.7	\$47,058

*Sample comparison information: \$93,000, 30 year term, 6.5% fixed rate, \$790 monthly payment (estimated escrow included)

- As shown above, you could eliminate 10-12 years and \$47,058 in interest off your loan with Lasalle Bank NA just by adding a little extra to your Weekly or Bi-Weekly payments.

The Weekly and Bi-Weekly programs are offered and administered by Nationwide Biweekly Administration, Inc. Your funds are mailed from the administrator directly to Lasalle Bank NA on or before the due date. No changes are made to your existing Lasalle Bank NA loan. All extra funds collected are directed toward the principal of your loan.

To switch to a Weekly or Bi-Weekly payment for your \$93,000 loan with Lasalle Bank NA or to get information on how much money and how many years you can save, call us at 1-888-234-1813. Please respond no later than **March 16, 2005**. There is a one-time non-refundable setup fee for the Weekly and Bi-Weekly program. Be sure to have your Customer ID# and your Lasalle Bank NA monthly mortgage statement or coupon book available, when you call.

Lasalle Bank NA - \$93,000 - Michael [REDACTED] - [REDACTED], Shawnee Mission, KS 66205-2757

Nationwide Biweekly Administration, Inc. is located at 855 Lower Bellbrook Rd., Xenia, Oh 45385 and is not affiliated, connected, associated with, sponsored, or approved by the lender. Information concerning your loan was obtained from public record. The Lenders name listed above is included for loan identification purposes only. © Nationwide Biweekly Administration, Inc. Sept 2004.

Nationwide Biweekly Admin.
855 Lower Bellbrook Road
Xenia, OH 45385

PRESORTED
FIRST CLASS



Mortgage Information Enclosed

Regarding Loan With:

For use only (please refer to loan reference only)

Lasalle Bank NA

To Borrower:

Michael [REDACTED]

Shawnee Mission, KS 66205-2757



From Michael [REDACTED]



PLEASE READ ENTIRE DOCUMENT CAREFULLY

You originally obtained a mortgage from **CAPITOL FEDERAL**

Therefore you are one of a select group of homeowners who is eligible to take part in an exclusive mortgage rate reduction program. The authorized financial institution listed below is able to convert your existing mortgage to a newer lower fixed rate or adjustable rate mortgage. Upon qualification, your *monthly payments could be substantially lower, and you could save thousands of dollars over the term of the loan.

**See new mortgage calculations.*

Please call the phone number listed below, and give the necessary information to qualify.

Loan information obtained through public record. Lender name listed for loan reference identification and comparison purposes only.

CURRENT MORTGAGE INFORMATION

\$180,000.00
ORIGINAL LOAN AMOUNT

\$1,079.19
CURRENT ESTIMATED PAYMENT

AUTHORIZED PROGRAM PROVIDER

MISSION MORTGAGE, L.L.C.
200 NE Missouri Dr
Lee's Summit, MO 64086

Contact: Anthony Atkins
816-916-1690

PREFERRED EQUITY BUILDER PROGRAM	
ORIGINAL LOAN AMOUNT	\$180,000.00
PROPOSED PAYMENT RATE	1.95 %
PROPOSED MONTHLY PAYMENT	\$660.82
MONTHLY SAVINGS	\$418.37

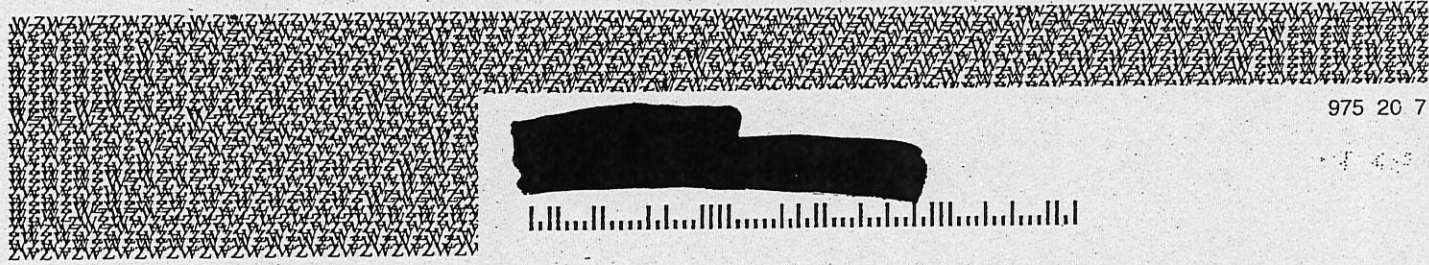
- **NO UP FRONT FEES**
- **DEBT CONSOLIDATION**
- **HOME IMPROVEMENT LOANS**

APR rates are approximate and are quoted as examples. Rates, items and loan amounts may vary on each loan, subject to equity and qualification.

Interest Rate Reduction Notification

PRSR STD
U.S. POSTAGE
PAID
SHAWNEE MSN KS
PERMIT NO. 636

PERSONAL & CONFIDENTIAL



RE: CAPITOL FEDERAL

Important Notice to Shawn [REDACTED] Complete and Return

Reference Loan With

Lot:85	Block:0
Date: 5/20/03	

*****AUTO**3-DIGIT 941
 Lender: Wells Fargo Hm Mtg Inc 149
 Borrower: Shawn [REDACTED]
 [REDACTED]
 San Francisco CA 94117-4227
 [REDACTED]

Dear Shawn [REDACTED]

You are invited to participate in Affiliated Mortgage's low cost Mortgage Life Insurance Protection Program which can protect your [REDACTED] loan in case of an unexpected tragedy. Without this plan, your family would still have to make your monthly payments.

Dear Shawn [REDACTED] : your benefits can include:

- **DEATH** – Pays off your [REDACTED] loan in the event of your death.
- **DISABILITY** – Provides cash to make your mortgage payment if you cannot work.
- **UNEMPLOYMENT** - Pays your policy premium for up to six months.
- **CRITICAL ILLNESS** – Can pay a portion of your death benefit if you're diagnosed with a covered critical illness.
- **LEVEL PREMIUM** – Cost do not increase.
- **MONEY BACK OPTION** – Returns all of your premiums if benefits are not used.
- **KNOWING THE [REDACTED] FAMILY WILL NOT LOSE THEIR HOME.**

For complete details at no cost or obligation please complete and return this form in the enclosed postage paid envelope.

Shawn [REDACTED] San Francisco CA 94117		Loan Amount: [REDACTED]		
Lender : Wells Fargo Hm Mtg Inc				
	Borrower		Spouse/Co-borrower	
Date of Birth	_____		_____	
Sex	Male <input type="checkbox"/>	Female <input type="checkbox"/>	Male <input type="checkbox"/>	Female <input type="checkbox"/>
Height	_____ ft.	_____ in.	_____ ft.	_____ in.
Weight	_____ lbs.		_____ lbs.	
Smoker?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Have you ever had:				
1. High Blood Pressure/High Cholesterol?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
2. Heart Attack, Stroke or Cancer?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
3. Diabetes?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4. Smoked cigarettes in the past 12 months?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Occupation:	_____		_____	
Phone # (_____) _____	Work # (_____) _____			
Best time to call: _____	Home <input type="checkbox"/>	Work <input type="checkbox"/>		
First Name of the person completing this form:	_____		5/20/03	

Carriers to obtain coverage will vary and are not underwritten or affiliated with the lender. Products and rider availability varies from state to state. Plans include Term, Universal Life and Disability Income. Information obtained only thru public record by Affiliated Mortgage Protection P.O. Box 798 Newark, N.J. Copyright 2001 AMP CA License# OD00933

EXAMPLE 2

1-7

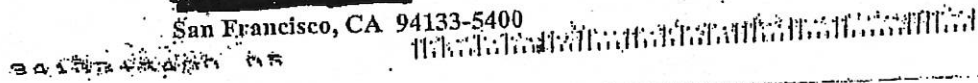
Loan Services
3535 Ross Ave St 100
San Jose CA 95124



**VERY IMPORTANT INFORMATION REGARDING
YOUR RECENT ADJUSTABLE RATE LOAN WITH UNION BANK OF CALIFORNIA
PROPERTY LOCATED AT [REDACTED] SAN FRANCISCO CA 94133-5400
IT WILL COST YOU \$672 THIS MONTH NOT TO ACT TODAY!**

Michael [REDACTED]

[REDACTED]
San Francisco, CA 94133-5400





Very important information regarding your
recent loan with Union Bank of California

Call (800) 316-1002 Now!

Monday, May 19, 2003

Property Address: [REDACTED] San Francisco CA94133-5400

Dear Michael

IT WILL COST YOU \$672 THIS MONTH NOT TO ACT TODAY!

When you secured your mortgage 11/1/2002 in the amount of \$995,000 with Union Bank of California, your interest rate of 5.25% and payment of \$5,494 was probably very attractive. If you refinance your original loan of \$[REDACTED],

YOUR NEW PAYMENT FOR THE NEXT THREE YEARS WILL DROP TO 4,822

EVEN IF YOU RECENTLY OBTAINED YOUR CURRENT LOAN!

FIXED RATE FOR 3 YEARS THEN 6 MONTH ADJUSTABLE

4.125% A.P.R. 3.98%*

Call for pricing for 2,5,7 15 and 30 year fixed

THIS IS AN ABSOLUTELY NO CLOSING COST LOAN - 0 POINTS 0 FEES

No closing costs of any kind! You can't lose!

IT'S FAST, EASY AND STREAMLINED!

CALL NOW! (800) 316-1002

Sincerely,

David A. Morgensen

David A. Morgensen

FOR AN IMMEDIATE RESPONSE CALL (408) 761-0147

Presented by Loan Services 3535 Ross Ave St 100. San Jose CA 95124 - www.loan-services.net Licensed through the California Dept of Real Estate. Minimum credit and seasoning requirements apply. This letter is not a guarantee of extension of credit. Rates are subject to change without notice.

Attention Daniel

EXAMPLE 3



Questions about your loan?
For quick answers call...1-800-371-9939
8 a.m. - 5 p.m. Mon. - Fri. Pacific Time

|||||
Duane
Pittsburg, CA 94565-6453

Consolidating your existing World Savings 1st mortgage of \$2,000 and 2nd mortgage of \$1,000, could significantly reduce your total monthly mortgage payment. Your new 1st mortgage will be \$1,359.73, and you will have the benefit of the same flexible payment options; plus you will eliminate your 2nd mortgage.

The Minimum Payment on your new mortgage coupon could look like this:

1 PAYMENT OPTIONS

Select your option on the Payment Coupon below.

Option 1 - Minimum Amount Due \$1,359.73

Option 2 - Interest Only	\$1,398.42
Option 3 - Principal & Interest	\$1,776.32
Option 4 - 15-Year Payment Plan	\$2,595.63

Or, you can choose a 30 year fixed rate loan and your new payment would be \$2,105.25.

Call our Customer Service Department at (800)371-9939, and get your free Mortgage Analysis and Estimated Property Value Evaluation. We look forward to serving your real estate finance needs.

In service,

Customer Service Department

Licensed by the California Dept. of Real Estate License # 01007333. APR's not calculated.



EXAMPLE 4



WORLD SAVINGS

HOW MAY WE HELP YOU?

FREE APPRAISAL

FREE APPRAISAL

FREE APPRAISAL

Call to lock in Today's LOW LOW Rates..... While they last.

LOWER YOUR CURRENT MORTGAGE PAYMENT

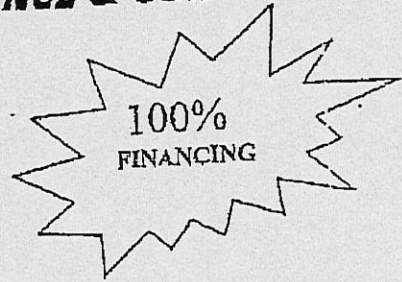
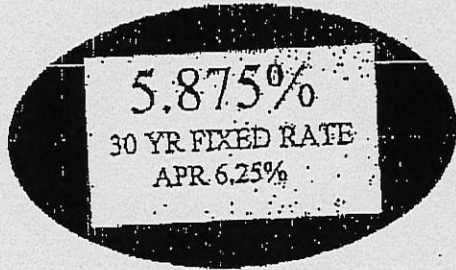
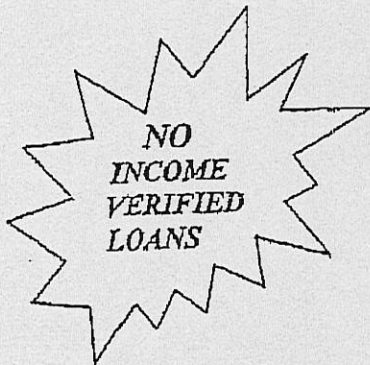
OR

REDUCE 30 YEAR TERM TO 15 YEARS!!!!

30 YEAR FIXED 5.875% / 15 YEAR 5.25%

PURCHASE NOW!!

REFINANCE & CONSOLIDATE...



CASH OUT & LOWER PAYMENTS

Consolidate all your bills into one low monthly payment
ASK US ABOUT OUR 100% NO EQUITY LOANS & HOME EQUITY 2ND TRUST DEEDS

Big Savings!

COMPARE THE PAYMENT AFTER YOU PAY OFF ALL YOUR DEBTS

Apply over the phone in just 5 minutes.....

ASK FOR DAVID:

Voice mail pager (888) 525-2109 (24 hrs)



WE WILL SAVE YOU MONEY GUARANTEED!!
"LENDING MILLIONS TO HOMEOWNERS FOR OVER 15 YEARS"

RATES AND TERMS SUBJECT TO CHANGE WITHOUT NOTICE. MORTGAGE LENDER LICENSED BY THE CALIF. DEPT. OF REAL ESTATE (1132559)
CALIF. REAL ESTATE (916) 227-0931



The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

February 9, 2005

To: House Committee on Financial Institutions

From: Kathleen Taylor Olsen, Kansas Bankers Association

Re: HB 2205: Unauthorized Use of Lender's Name

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today in support of **HB 2205**, which would provide a streamlined pathway to stop the practice of the unauthorized use a lender's name in a solicitation for products or services. As you can see by the examples that I have attached to my testimony, the use of the lender's name in these solicitations is misleading to the recipient who is a current customer of the lender.

Misleading direct mail marketing has grown exponentially since both Congress and the Kansas legislature (along with many other state legislatures) have enacted tough restrictions on telemarketing. The confusion that is caused by a document with the lender's name prominently displayed at the top is two-fold:

- 1) The customer is led to believe that the document is from the lender or someone related or affiliated with the lender; or
- 2) The customer is led to believe that the lender disclosed sensitive personal information to another company to allow the other company to solicit business from the customer.

While some of the solicitations for products indicate what company the solicitation is from and that the loan information was obtained through public record, these disclosures are usually at the bottom in miniscule typeset. These solicitations result in the lender named having to handle many phone calls from customers who are either confused about the source of the solicitation, or from customers who are very angry that the lender would share sensitive personal information with another entity.

We believe **HB 2205** addresses this problem in two ways. First, it attempts to regulate these types of solicitations by requiring either the consent of the lender to the solicitation or in lieu of consent, a clear and conspicuous statement in bold-faced type of the origin of the solicitation.

Secondly, the bill provides a streamlined mechanism for stopping any entity that is in violation of these restrictions by providing that in an injunction action, the lender will not have to prove actual damages. Harm to the lender is presumed, and the bill provides for the award of attorney fees and costs to the prevailing party.

In conclusion, we support **HB 2205** for addressing a problem, the incidence of which has grown very recently and which can be very damaging to a lender's reputation. Thank you and we ask that you act favorably on **HB 2205**.

TO: [REDACTED]
[REDACTED]
[REDACTED]

RE: The University National Bank

Dear [REDACTED]

Upon review of your mortgage information, we have determined that you are now eligible to reduce your mortgage payment, and may have the potential to receive cash back. A reduced rate mortgage would provide an immediate savings of approximately \$254.28¹ per month, or more importantly \$91,540.19² over the lifetime of the loan.

In addition, we may be able to save you hundreds of dollars every month by eliminating expensive credit card debt and hefty automobile payments. It is likely that we can also put thousands of dollars into your pocket immediately, greatly improving your cash position.³

We are excited to inform you that there are **No Up Front Costs** and **No Out Of Pocket Expenses** for this refinancing of your home loan. This is very important because it enables you to enjoy substantial and immediate savings.

Please call (913) 515-1503 so that you can start saving today!

Yours truly,



Dana Self
Loan Officer

P.S. Please mention 'Reduced Rate Mortgage Offer' when calling.

Reis Enterprises, Inc., 6800 West 64th Street, Suite 104, Shawnee Mission, KS 66202 Phone: (888) 439-0036
License Numbers: MO 04-1019 / KS 2004-4590

¹Approximate savings due to constant fluctuation in interest rates and credit. Exact savings to be determined at the time of loan approval. ²Assuming performing loan held to term with typical interest rate. ³Assuming sufficient home equity and suitable debt to income levels.

from Mortgage Protection Insurance Svs.
Complete and Return

Lender:
CENTRAL NAT'L BK

On the web at:
www.ehomeguard.com

To Borrower:



[Redacted Borrower Name]

Dear [Redacted Name]

You are entitled to participate in a low cost Mortgage Protection Program which can protect your \$121,100.00 Loan in case of an unexpected tragedy. Who would pay your house payment if you or a co-borrower died? Your family would still have to make your monthly mortgage payments without this type of plan from Mortgage Protection Insurance Svs. SEE BELOW Plans can include a choice of Life benefits with or without money back options

[Redacted Name] your benefits can include:

- **Death** - Pays off your \$121,100.00 loan in the event of your death from Accidental or Natural Causes
- **Return of premiums** - Returns your premiums if the benefits are not used by the end of the mortgage term
- **Knowing the [Redacted Name] family will not lose their home no matter what the tragedy**

For complete details at no cost or obligation complete and return this form in the enclosed postage paid envelope or go to www.ehomeguard.com for information & quotes.

DATE OF BIRTH

SEX

HEIGHT

WEIGHT

SMOKER?

Have you ever had:

High Blood Pressure/High Cholesterol?
Heart Attack, Stroke or Cancer?
Diabetes?

Borrower

Male Female

ft. in

lbs.

Yes No

Yes No

Yes No

Yes No

Spouse/Co-borrower

Male Female

ft. in

lbs.

Yes No

Yes No

Yes No

Yes No

Occupation: _____

Occupation: _____

Phone #: () _____

Work # () _____

Best time to call: _____

Home Work

*Your first Name : _____ Cellular # (Optional): _____

(EHOME-Douglas County)

CENTRAL NAT'L BK - \$121,100.00 - [Redacted]



02-03-04

On the web at www.ehomeguard.com

*Available in most states. All coverage information provided by Mortgage Protection Insurance Svs. Lic. OC28287
6939 Sunrise Bl Citrus Heights, Ca 95610 Fax 916.723.8770. Not affiliated with any lending institution. Benefits and carriers will vary for coverages, and are subject to underwriting approval, product limitations and availability.

February 10, 2004

Eliminate years and thousands off your loan!

*Listed for loan reference only.

Call for your free benefits summary!

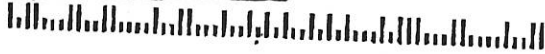
CENTRAL NAT'L BK*

One time offer: **\$200 off enrollment**



100/7/123

Offer code: **P-0326-12772783 NP**
Expires: **March 26, 2004**



Loan Amount: **\$121100**

Attention Borrower:

For most people, their mortgage is their largest monthly expense. However, the majority of people are not paid on a monthly basis. Many new and existing homeowners are requesting the option of a bi-weekly payment schedule.

Listed below are some of the advantages:

Bi-Weekly Payment	Monthly Payment
<ol style="list-style-type: none"> 1. Smaller payments. (ex. \$500 Bi-Weekly) 2. Can be set up to match your pay schedule. 3. Save thousands over the term of the loan. 	<ol style="list-style-type: none"> 1. Larger payments. (ex. \$1,000 Monthly) 2. Does not match most pay schedules. 3. No savings without additional commitment.

- Most homeowners do not pre-pay their mortgages. It takes self-discipline and consistency. The **Bi-Weekly Mortgage Program** is safe, automatic, and easy to budget. Stop writing checks. No more stamps or visits to the mailbox. No more worries about forgetting to make a mortgage payment.
- The bi-weekly program is a **simple, logical** option to reduce the term of your loan while building equity faster. There are 26 biweekly periods in a year, which will be equivalent to one extra mortgage payment per year. Every penny goes to reduce your principal. 52 weeks → 26 biweekly drafts → 13 payments = **\$\$ SAVINGS!**
- The Bi-Weekly Mortgage Program is offered by Home Mortgage Services. The funds are **FDIC Insured** and paid from the administrator to the lender on a monthly basis.

Here are some comparisons of our program to others:

Ours	Theirs
<ol style="list-style-type: none"> 1. \$195.00 one time offer after special. 2. Program transfers to any lender at no cost. 3. Annual mortgage summary available. 	<ol style="list-style-type: none"> 1. \$195.00 - \$595.00 2. Limited transferability. 3. Minimal availability.

To take advantage of the Bi-Weekly Mortgage Program savings and the limited time, non-refundable processing fee of \$195.00, call an Enrollment Specialist at **1-800-251-1315** weekdays from 8:00 AM to 9:00 PM (CST). With one phone call, you could enroll today and be on your way to reducing the life of your loan. After choosing your start date, your bi-weekly payment will be automatically withdrawn from your designated bank account with a standard \$2.95 transfer fee. Compare this small charge to the thousands of dollars you can save by participating in this program. Have your monthly mortgage statement, coupon book or original loan documents available and begin your mortgage savings process today!

*** \$195.00 OFFER EXPIRES MARCH 26, 2004**

(SEE BACK)⇒

*Notice: Information provided by Home Mortgage Services, 1400 Santa Fe Drive, Weatherford, Texas 76086. HMS is not affiliated, connected, associated with, or sponsored by the lender. Loan information obtained through public record. Lender name listed for loan reference identification purpose only.



GACHES, BRADEN, BARBEE & ASSOCIATES
PUBLIC AFFAIRS & ASSOCIATION MANAGEMENT

825 S. Kansas Avenue, Suite 500 ♦ Topeka, Kansas 66612 ♦ Phone: (785) 233-4512 ♦ Fax: (785) 233-2206

**House Financial Institutions Committee
Testimony of First Data Corporation/Western Union
Regarding HB 2276 – Concerning Transmission of Money
Presented by Ron Gaches
Wednesday, February 9, 2005**

Thank you Chairman Cox for the opportunity to support passage of HB 2276, introduced at the request of First Data Corporation. First Data owns Western Union, a worldwide leader in transmission of money services.

As a licensed, world-wide money transmitter, Western Union's money transfer services are available to consumers at over 200,000 locations in over 195 countries and territories. Consumers who need to send money to one another through Western Union can do it one of three ways: (1) using a walk-up location, (2) using the telephone, and (3) using the Internet.

Consumers who use a walk-up location must pay cash. Credit and debit cards are typically not accepted. The telephone and Internet services require the customer to pay for the transaction with their credit or debit card.

The bill is intended to clarify that the credit card surcharge statute contained in our Kansas Uniform Consumer Credit Code was not meant to apply to the different methods consumers use to send money through a money transmitter (phone, Internet or walk up), so long as the price charged is consistent within each method of delivery. For example, the price charged for conducting a money transfer transaction over the phone could be different than the price charged at a walk up location, so long as the credit card or debit card user pays the same price when using the phone service.

The price differential for these services is reasonable. Telephone and Internet transactions are more expensive to conduct for several reasons: (1) the expense incurred to verify the consumer's identity, (2) the expense incurred to authenticate the consumer's credit or debit card and availability of funds, and (3) the additional exposure to fraud due to the anonymity associated with transactions that take place over the telephone and Internet.

As a result, telephone and Internet money transfers are subject to additional procedures that make them more costly and riskier to provide than walk-up transactions. At walk-up locations, cash is the only accepted method of payment.

Only 11 states in the nation have credit card surcharge statutes. First Data is in the process of asking states to clarify their laws to make clear that the surcharge statutes don't apply to the transmission of money. Three have made the change to date. I urge your support of this bill.



GACHES, BRADEN, BARBEE & ASSOCIATES

PUBLIC AFFAIRS & ASSOCIATION MANAGEMENT

825 S. Kansas Avenue, Suite 500 ♦ Topeka, Kansas 66612 ♦ Phone: (785) 233-4512 ♦ Fax: (785) 233-2206

A bill to be entitled

An act relating to the Chapter 9, Article 5 Kansas Statutes,
amending section 9-510; permitting credit cards to be used to pay
for business conducted by telephone and the Internet.

Be It Enacted by the Legislature of the State of Kansas:

K.S.A. 9-510, Section 1, is amended by adding:

(1) Any person complying with the provisions of this Act may charge a different price for a transmission of money service based on the mode of transmission used in the transaction, so long as the price charged for a service paid for with a credit card is not greater than the price charged for such service if paid for with currency or other similar means accepted within the same mode of transmission.

Section 2. This act shall take effect July 1, 2005.

SUMMARY

Permitting the use of credit cards for money transmission services
that occur over the phone or the Internet.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



KANSAS

KATHLEEN SEBELIUS, GOVERNOR

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

February 9, 2005

HOUSE FINANCIAL INSTITUTIONS COMMITTEE

Mr. Chairman and Members of the Committee:

My name is Kevin Glendening, and I am the Deputy Commissioner of the Consumer and Mortgage Lending Division with the Office of the State Bank Commissioner. I am also the Administrator of the Kansas Uniform Consumer Credit Code. Our agency is opposed to HB 2276 as written.

As we understand it, the purpose of the bill is to give money transmitters the ability to charge more for transactions conducted via the Internet or telephone rather than in person.

The bill states that the fee for transmission of money may be based on the mode of transmission used and the amount of money transmitted, but the fee shall in no way depend upon the method of payment for such service. However, the bill also states that the transactions are exempt from K.S.A. 16a-2-403. This is a statute which prohibits charging more for a particular method of payment, namely, a credit card. It seems inconsistent to on the one hand state in the bill that the fee to be paid shall in no way depend upon the method of payment for such service, but on the other hand, in the next sentence, to say that the prohibition against charging more for use of a credit card would not apply.

I've read background information concerning the specific proponent's business, and they assert that consumers using their walk-up service must pay in cash - debit and credit cards are not accepted. However, if another company accepts either cash or payment by credit or debit card for walk-up money transmission service, the language in the bill stating, "Any transaction involving payment by credit card pursuant to this section shall not be subject to the provisions of K.S.A. 16a-2-403" would mean that the company could charge these walk-up customers more for the privilege of using a credit card than if they paid in cash. We are opposed to this practice, and would view this "carve out" for money transmitters as only the beginning in a long line of merchants who would attempt to get an exemption from the statute.

Finally, I believe there is no need for legislation to address the issue of being able to charge different fees based on the mode of money transmission, or, in other words, the way in which the consumer accesses the money transmission service. It is my opinion that the Code does not prohibit merchants from charging more, for example, for the same product when it is sold through the mail or the Internet, than when it is sold in a store. As Administrator of the Code, I have the ability to issue "administrative interpretations" of the Code, which provide legal protection from liability for anyone who follows them. (See K.S.A. 16a-5-201 (9), which states, "A creditor who in good faith complies with a written administrative interpretation shall not be subject to any penalties under this section for any act done or omitted in conformity with such written administrative interpretation.") I have discussed with the proponent of the bill that I would be willing to issue his client an Administrative Interpretation that states charging different fees based on the mode of transmission rather than the method of payment would not constitute a surcharge under the Code. Therefore, I do not believe this bill is necessary.

House Financial Institutions

February 9, 2005

Attachment 4

However, in the event the committee believes the bill should be advanced, I would like to offer the following amendments:

- On line 15, strike "transmission used" and insert "access to the transmission service".
- On lines 17 through 19, strike the language that states, "Any transaction involving payment by credit card pursuant to this section shall not be subject to the provisions of K.S.A. 16a-2-403, and amendments thereto."
- On line 22, strike the words "transmission of money" and insert "Kansas money transmitter".

I would be happy to address any questions from the committee.

Office of the State Bank Commissioner Proposed Amendments

HOUSE BILL No. 2276

By Committee on Financial Institutions

2-3

AN ACT concerning transmission of money; relating to the use of credit cards.

Be it enacted by the Legislature of the State of Kansas:

Section 1. Any person complying with the provisions of this act may charge a fee for the service of transmission of money. Such fee for transmission of money may be based upon the mode of ~~transmission used~~ access to the transmission service and the amount of money transmitted. The fee to be paid shall in no way depend upon the method of payment for such service. ~~Any transaction involving payment by credit card pursuant to this section shall not be subject to the provisions of K.S.A. 16a-2-403, and amendments thereto.~~

Sec. 2. K.S.A. 9-508, 9-509, 9-510, 9-511, 9-512, 9-513 and section 1 and this section, and amendments thereto, shall be known and may be cited as the Kansas money transmitter ~~transmission of money~~ act.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

HB 2277

What this bill proposed to do, is correct a problem of, not being able to properly identify businesses where consumers made purchases on a credit or debit card, when reviewing their monthly statement.

The problem is some companies use a different name than is posted on the business to bill when using a Credit or debt card. This has caused much confusion, time lost in trying to find out what this charge is for, and stress when thinking someone has inappropriately been using your card or card number. The problem normally is encountered when the monthly statement arrives from VISA, MASTER CARD, etal..

I have had personal experience concerning this issue this past summer.

I received my monthly credit charge statement from VISA and on it was a charge from a company called "CRESCENT". I did not recognize the business name and even tried to look up the number in the telephone book.

No listing was given for a business called CRESCENT. There was a listing for Crescent Limousines, but I know I have rented a Limousines for close to 14 years, and that was on my wedding day.

I got concerned that someone had gotten a hold of my credit card number and was using it without my permission. I called the bank and talked to them. They advised me to write them a letter explaining the problem and why I believed the charge to be invalid.

At that time the bank did not think the card number was stolen because of lack of other charges that I considered wrong.

A formal inquiry was then made.

With-in the allowed time period, the Merchant who used the name CRESCENT did send to the bank the receipt that I had signed authorizing this charge. I did recognize the signature as being mine.

However, the receipt that I signed had a different name on it than CRESCENT. On the receipt was the name DIAMOND SHAMROCK. Nowhere on the receipt was the name CRESCENT and nowhere on the building was posted the name CRESCENT. (See exhibit #1)

This is not an isolated incident of business billing under different names than what is posted on the signs to the business.

Another example is one which I did not contest the charge because I was paying close attention to not only the amount that I was being charged but the business name on the receipt I was about

to sign. In this case I bought gasoline at a Phillips 66 station. The receipt I signed said AC INC.

On my monthly, statement from VISA it did reflect the same name as what was on the receipt that I signed, but the name that Merchant used to bill was not displayed anywhere on the business that the general public could clearly see. Signs that were clearly visible at this business were 4 They were as follows: Phillips 66, Phillips foodmart, Spot free rinse, and AJ's express. Nothing was said about AC inc. (See exhibit #2)

I do recall the JONES STORE at one time causing a similar problem. When they were bought by FAMOUS BAR, they started to use that name on the Credit charge statements, but not the receipt they gave you at the store. This caused much confusion to some of their customers. They were responsive to the customers and made changes to accurately reflect where the customer believed they were shopping.

The intention of this bill is to require the merchant to more accurately reflect where the customer believes they are shopping.



Patrick DeLapp
1013 SW 11th
Topeka, KS 66604
(785) 357-6007

Recommended amendment to proposed wording would be to line 32.

On this line replace the word, "or", with "and"

11s UNDER CROSCENT

EXHIBIT # 1



Customer Service
PO Box 8982
Madison, WI 53708-8982
1-800-600-5249, FAX: 1-727-570-8810

EDUCATIONAL CU

Account Number: ~~XXXX XXXX XXXX 6212~~

Case Number: ~~0123456789~~

September 30, 2004



874

PATRICK C DELAPP
1013 SW 11TH ST
TOPEKA KS 66604-1107



RE: EDUCATIONAL CU Dispute

Dear PATRICK C DELAPP:

Thank you for your recent inquiry concerning the charge(s) referenced below.

We recently received your request for a copy of the sales draft, or we are required to obtain a copy of the sales draft in order to conduct a proper investigation of your dispute.

Transaction Date	Merchant Name	Transaction Amount	Case Number
072904	CRESCENT 4174	\$27.23	0123456789

A copy of the sales draft has been requested from the financial institution representing the merchant. We are waiting for them to provide us with a copy. When we receive the sales draft, we will send it to you for review. This process may take up to sixty (60) days. Please retain any additional documentation you may have that concerns this dispute.

We appreciate the opportunity to be of service.

Sincerely,

D. Holton

D. Holton
Customer Service Associate



BIN - 466128

Transaction Data

Cardholder Number: [REDACTED]

Currency Code: 840

Transaction Amount: 27.23

Acquirer Reference Number: 2-445501-4212-21249617066-9

Issuer Control No.: 001260749

Retrieval Request ID: 314276077968

Transaction Id.: 094211531786148

Request Reason: 28

Advice CPD: 10/01/04

Request Type: Copy

Requested Fulfillment Method: Automated

Established Fulfillment Method: Automated

Routing Tier: Domestic

Merchant: CRESCENT 4174

City: TOPEKA

State/Prov: KS

Zip Code: 0

Country: US

Merchant Category Code: 5541

Purchase Date: 07/29/04

Current Status: Fulfillment Received

Last Update: 10/28/04

Fulfillment

Fulfillment Date: 10/28/04

EXHIBIT
2

4 Different ADVERTISED NAMES

NONE OF WHICH SHOWS UP
ON RECEIPT

XXXX XXXX XXXX [REDACTED] VISA 01/19/05

D755 INVOICE 155148

01-8913 AUTH 00-558364 REF 901 44-023

00279927 1611 SE 29TH

AC INC. TOPEKA KS

PRODUCT	QUANTITY	PRICE	AMOUNT
UNL	P3 14.2340	\$1.799	25.61

H5HRJ9H7GJW9 TOTAL \$25.61

THANK YOU

CUSTOMER COPY





GACHES, BRADEN, BARBEE & ASSOCIATES

PUBLIC AFFAIRS & ASSOCIATION MANAGEMENT

825 S. Kansas Avenue, Suite 500 ♦ Topeka, Kansas 66612 ♦ Phone: (785) 233-4512 ♦ Fax: (785) 233-2206

**House Financial Institutions
Testimony of Security Finance
In Support of HB 2278 – Concerning Small Consumer Loans
Presented by Ron Gaches
Wednesday, February 9, 2005**

Thank you Chairman Cox for the opportunity to speak on behalf of Security Finance in support of HB 2278, a bill authorizing small consumer loans.

The small installment loan industry provides consumers with a lending option for short-term, small consumer loans. There is a large and growing consumer demand for short-term, small consumer loans, but the current market provides only limited options for these consumers.

Security Finance is among the nation's leaders in short-term, small consumer loans, with operations in 18 states across the country. Security Finance does not operate in Kansas, because their business model does not fit the fee structure currently authorized under the Kansas Uniform Consumer Credit Code. Passage of HB 2278 would allow Security Finance and other firms to compete for the business of the consumer needing a short-term, small loan.

Unlike other competitors servicing similar customers, small installment loan companies, like Security Finance, offer several advantages to consumers:

- Test the ability to repay the loan by working out a budget with borrowers
- Allow the borrower to reduce the principal each month through monthly installments
- Participate and invest in Financial Literacy programs such as Jump\$tart and MoneySKILL, sponsored by the American Financial Services Association
- Report good and bad credit experience to Credit Bureaus, helping consumers establish a stronger credit record
- Provide competitive, economic rates
- Do not require post-dated checks
- Do not take possession or title to any collateral
- Do not use credit scoring
- Do not inflict prepayment penalties

The provisions of HB 2278 would create a statutory framework for the Kansas Bank Commissioner's Office to license, regulate, audit and enforce Kansas law over the operations of Security Finance. Key provisions of the bill provide:

- Authorized loans would be no less than \$100 and no more than \$1,500
- An acquisition charge for making the loan could not exceed the lesser of 10% of the amount financed or \$75
- Monthly installment account handling charges that do not exceed the amounts detailed in lines 22-27, page one of the bill
- The minimum term of a loan under this provision would be four months, and the maximum term 18 months
- And favorable prepayment terms if a consumer decides to pay off the loan before the end of the original term

The short-term, small installment loan market is growing rapidly. The typical consumer is not able to obtain a short-term, small loan from a traditional bank or make use of credit cards. They desire or need a longer term than provided by a Pay Day loan and may not have a car with clear title on which to obtain a car title loan.

More importantly, they are attracted to the relatively favorable terms of the Security Finance product, which can be much less expensive than the options currently available in the marketplace.

Short-term, small installment loans are growing rapidly in number. In each of the ~~20~~¹⁸ states where Security Finance currently conducts business, they make thousands of consumer loans each year. The typical loan is for a few months, and the average loan is for just a few hundred dollars.

Consumers obtain short-term, small loans for the purposes you would expect: car and home repairs, medical bills and prescriptions, emergency travel, school supplies, children's clothes, and Christmas gifts are all typical examples.

The financial services market in the United States is changing rapidly. Most of the changes we hear about, insurance products with multiple options, security and real estate services from traditional banks, and low interest mortgage rates are designed for the middle class or those well-to-do. But not all consumers fit that profile.

New services are being developed to meet the legitimate needs of the consumer with less than perfect credit record, or who chooses not to borrow from family or friends. Unfortunately, our current Uniform Consumer Credit Code doesn't recognize these new financial service models. In fact, our Kansas UCCC provides very little flexibility. It was written with a particular type of financial customer and transaction in mind.

Several years ago the legislature saw that it was appropriate to make special provision in the UCCC for Pay Day loans. We believe it is time to authorize short-term, small installment loans as well. Doing so will increase competition in the marketplace and provide consumers with more flexible and less expensive options for credit.

I urge your support of HB 2278.



KANSAS

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

KATHLEEN SEBELIUS, GOVERNOR

House Committee on Financial Institutions

February 9, 2005

Re: House Bill 2278

Mr. Chairman and members of the Committee:

House Bill 2278 proposes to create what amounts to a series of exceptions to existing rules and safeguards that are presently contained in the UCCC. This Bill would not only permit the lender to charge, in some instances, double or even triple or more the legal interest as compared to any other similar consumer installment loan, but goes even further by attempting to gain exceptions to existing requirements in the Code governing such areas as how finance charges are calculated under the law, and limits on prepaid finance charges and other fees already in place for loans of this type.

In addition to these concerns, this Bill also appears to create the perfect environment to facilitate and even encourage loan "flipping". Flipping is a predatory loan practice in which a lender entices or deceives a borrower into repeatedly refinancing their loan so the lender can obtain fees associated with each refinance. This Bill would allow the lender to collect an "acquisition charge" (prepaid finance charge) of up to \$75 for each new loan, and each time a loan is refinanced or consolidated. According to the Bill, the lender would only be required to refund a portion of that fee if the loan is consolidated or refinanced within 60 days. After that time, no refund would be required. Of additional concern, is the possibility a lender could utilize the refund provision of the Bill as an enticement to encourage a borrower to repeatedly refinance a loan.

As described in the attachments to my testimony, the concerns raised by these issues are amplified by the fact the company seeking these troubling amendments was itself recently found to have engaged in fraudulent activities including loan flipping involving a mentally impaired Oklahoma man.

House Financial Institutions
February 9, 2005
Attachment 7

In summary, our agency believes these proposed amendments are incompatible with the purpose and structure of the Kansas UCCC, and raise serious concerns for potential abusive lending practices. The varying fee structures and other exceptions to existing law, whether or not they are intentionally crafted to confuse the consumer, do just that. Predatory loan practices in the consumer loan area are a continuing and growing problem. We urge you not to make the problem worse by supporting this flawed proposal.

Respectfully,

Kevin Glendening
Deputy Bank Commissioner
Administrator Kansas UCCC

Loan Consolidation/Refinance Scenario

1. Initial Loan Date: 01/01/04
Amount Financed: \$300.00
Monthly Installment Account Handling Charge: \$12.50
Acquisition Charge (The lesser of 10% of the Amount Financed or \$75.00): \$30.00
Total Acquisition Charge Collected to Date: \$30.00

2. Assume the consumer obtained a second loan from the lender 15 days later on 01/16/04. The amount financed was \$500.00. The lender collects an Acquisition Charge of \$50.00 bringing the total Acquisition Charge collected from the consumer to \$80.00.

Second Loan Date: 03/06/04
Amount Financed: \$500.00
Monthly Installment Account Handling Charge: \$17.50
Acquisition Charge (The lesser of 10% of the Amount Financed or \$75.00): \$50.00
Total Acquisition Charge Collected from consumer to Date: \$80.00

3. Assume the loans dated 01/01/04 and 01/16/04 were consolidated on 03/20/04. **Although the consumer's total amount financed from the previous two loans didn't increase, the lender collects an additional Acquisition Charge of \$75.00 simply by manipulating the loan structure bringing the total Acquisition Charge collected to \$155.00.**

Refinanced Loan Date: 03/20/04
Amount Financed: \$800.00
Monthly Installment Account Handling Charge: \$20.00
Acquisition Charge (The lesser of 10% of the Amount Financed or \$75.00): \$75.00
Total Acquisition Charge Collect to Date: \$155.00

- In a period of less than four months, the lender made the consumer two loans and then consolidated the two loans. In the four month period the lender collect Acquisition Charges totaling \$155.00 plus collected the Monthly Installment Account Handling Charges of approximately \$67.00.
- Despite the fact that the lender did not increase the amount financed when consolidating the consumers first two loans, the proposed legislation permits the lender to collect an additional Acquisition Charge on the loan consolidation.
- The structure of the proposed legislation benefits a lender who frequently refinances and/or consolidates consumers' loans with the intent of increasing fees.

Loan Consolidation/Refinance w/ Refund Scenario

1. Initial Loan Date: 04/01/04
Amount Financed: \$100.00
Monthly Installment Account Handling Charge: \$12.50
Acquisition Charge (The lesser of 10% of the Amount Financed or \$75.00): \$10.00
Total Acquisition Charge Collected to Date: \$10.00

 2. Assume the consumer obtained a second loan from the lender 10 days later on 04/11/04. The amount financed was \$400.00. The lender collects an Acquisition Charge of \$40.00 increasing the total Acquisition Charge collected from the consumer to \$50.00.

Second Loan Date: 04/11/04
Amount Financed: \$400.00
Monthly Installment Account Handling Charge: \$15.00
Acquisition Charge (The lesser of 10% of the Amount Financed or \$75.00): \$40.00
Total Acquisition Charge Collected from consumer to Date: \$50.00

 3. Assume the loans dated 04/01/04 and 04/11/04 were consolidated on 05/29/04. Since the consumer consolidated the loans within 60 days of the original loan dates, they are entitled to a partial refund of the Acquisition Charge. Regardless of when the loan is refinanced, the lender is allowed to keep a minimum of \$10.00. Since the original loan's Acquisition Charge was \$10.00, the lender is not required to refund any portion of the fee. The consumer would get an Acquisition Charge refund of \$8.00 on the second loan. However, the lender would collect an additional Acquisition Charge of \$50.00 bringing the total Acquisition Charge to \$92.00 after the refund.

Refinanced Loan Date: 05/29/04
Amount Financed: \$500.00
Monthly Installment Account Handling Charge: \$15.00
Acquisition Charge (The lesser of 10% of the Amount Financed or \$75.00): \$50.00
Acquisition Charge Refund: \$8.00
Total Acquisition Charge Collect to Date: \$92.00

 4. Assume the loan dated 05/29/04 was refinanced 47 days later on 07/15/04. The amount financed on the new loan is \$900.00. Since the consumer refinanced the loan within 60 days they are entitled to an Acquisition Charge refund of \$10.83 from the previous loan. The lender again collects an additional Acquisition Charge of \$75.00 on the new loan bringing the total Acquisition Charge collected to \$156.17 after the refund.

Refinanced Loan Date: 07/15/04
Amount Financed: \$900.00
Monthly Installment Account Handling Charge: \$20.00
Acquisition Charge (The lesser of 10% of the Amount Financed or \$75.00): \$75.00
Acquisition Charge Refund: \$10.83
Total Acquisition Charge Collect to Date: \$156.17
- **In the span of three and a half months, the consumer obtained two loans which were consolidated within 60 days of the original loans. The consolidation loan was then refinanced in to a loan with an increased amount financed within 60 days of the loan date. Each time the consumer is given a partial refund from the previous loans Acquisition Charge. Despite the refunds given to the consumers, the lender collected \$156.17 in Acquisition Charges plus the monthly installment Account Handling Charge of approximately \$73.00.**
 - **The partial refunds given to the consumer could be used as a deceptive marketing tool to bring current customers in to refinance or consolidate existing loans sometime within the first 60 days. The consumer is led to believe that they are receiving some benefit or rebate from refinancing or consolidating before 60 days have lapsed.**
 - **The structure of the proposed legislation benefits a lender who frequently refinances and/or consolidates consumers' loans with the intent of increasing fees.**



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Eye-opening

World's Editorial Writers

12/14/2004

Tulsa World (Final Home Edition), Page A14 of Opinion

Tulsan victimized by lenders

A Tulsa man, John E. Gilbert, 56, who was described as mildly retarded and who cannot read, has won a \$1,765,000 judgment against loan companies that trapped him into an endless cycle of debt.

Gilbert at one point stopped paying rent and was made homeless because of spiraling payments on his loans.

Tulsa County jurors last week awarded Gilbert \$15,000 in actual damages and \$1.75 million in punitive damages against Security Finance Corporation of Oklahoma and Maverick Acquisition Corp. South Carolina-based corporations that control operations of the loan agencies also were held liable.

The jury ruled in Gilbert's favor on claims of fraud, breach of an implied covenant of good faith and fair dealing, and breach of a fiduciary duty. Gilbert was victimized by the practice of "flipping" or continually and repeatedly refinancing loans until the amount owed is far more than the original loan amount. Such loans often carry effective interest rates of more than 400 percent.

The amount of punitive damages suggests that jurors were outraged by treatment that Gilbert's lawyers termed "reprehensible."

The verdict should serve as an eye-opener for the Oklahoma Legislature, which in recent years has turned a cold shoulder to the state's most economically vulnerable and unsophisticated citizens when it comes to protecting them against unscrupulous lenders.

Lawmakers in 1997 passed modest reforms in the state's small-loan law which offered scant protections against flipping and other entrapping loan practices. But then in 2003 the Legislature undid even those protections and in addition opened the floodgates to out-of-state lenders that had previously been unable to operate here.

Loan flipping and other potentially harmful practices continue to run rampant in Oklahoma, according to advocates for the poor. John Gilbert's story is perhaps worse than most. But it illustrates what can be done to vulnerable Oklahomans -- with the Legislature's blessing.

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Unlikely loan recipient socked

SHAUN SCHAFER

02/17/2002

Tulsa World (FH Edition), Page A1 of NEWS

John E. Gilbert sits at the end of the couch, quietly watching television. He offers a slight smile as his brother and a visitor talk.

When the conversation turns to Gilbert and his money troubles, he offers a slight smile and shakes his bushy pompadour.

As he speaks, the veneer of normalcy chips away. Ask the 53-year-old man his age -- or when he first hurt his head -- and he answers deliberately, but not reliably. He tries to say what he thinks his inquisitor wants to hear, but even that doesn't always work. Dates will change from one answer to the next, and non sequiturs bubble out.

Ask him to read or write, and he can't do either. Ask him to sign his name and he manages to scrawl some block letters, but usually leaves off the "L" or the "B" in "Gilbert." The courts have declared him mentally incapacitated. He relies on Social Security payments and the sometimes shaky safety net of his family for his survival.

None of these obvious limitations, however, kept at least two Tulsa-area small loan companies from signing him up as a customer, according to a lawsuit filed Monday in Tulsa County. His brother and guardian Gary Gilbert is attempting to recover some of the payments John Gilbert made over the years, and finally free him from the small loan refinancing cycle.

"I can't believe these people," Gary Gilbert said. "I just never dreamed that anyone would loan him money. As best as can be determined, no one ever asked John Gilbert to pay off his loans.

"I never would have thought this was possible."

Social Security declared John Gilbert disabled 10 years ago. A Tulsa County district judge noted the condition when he appointed Gary Gilbert as guardian in November.

It takes less than five minutes talking with him to realize that something is not quite right with John

Gilbert, his brother said.

It also takes less than five minutes to convince John Gilbert that a small loan is just what he needs, attorney Tom Adelson said. "We expect individuals to live by certain values, and companies should live by those values as well," Adelson said. "They should not treat their fellow human beings this way."

Based on his receipts, John Gilbert made payments and refinanced his loan, despite the fact that he couldn't hold a job and relied on public support. His regular payments did him little good. Although he has made more than \$5,200 in monthly payments to these companies during the past three years, his original loans have more than quadrupled.

Gilbert's loan obligations have grown from \$400 to \$1,760, according to the suit. The two firms have assessed him more than \$4,300 in finance charges while loaning him actual cash of \$2,600, according to the filing.

The suit, which seeks more than \$10,000 in damages, accuses Security Finance Corp. and Maverick Acquisition Corp. of fraud, negligence and breach of fiduciary duty in dealing with Gilbert.

Security Finance's Sand Springs office, where Adelson said Gilbert had his loan, referred calls to the company's headquarters in Spartanburg, S.C. General counsel there said the company had not been served with the lawsuit and declined to comment.

A worker at Maverick Finance in Tulsa said no one would be able to comment on the lawsuit. The Oklahoma Department of Consumer Credit lists Maverick Acquisition Corp. as the owner of Maverick Finance. Maverick Acquisition lists the same Spartanburg, S.C., phone number and has the same contact information as Security Finance. As best as can be determined, no one ever asked John Gilbert to pay off his loans. Instead, they were content to keep flipping his account, writing a new loan every two months, Adelson said.

"I can't read or write, they just showed me where to sign," John Gilbert said.

Gilbert, who was living on no more than \$531 per month in disability, would make a payment of \$110 per month for two months on each loan. At the end of that time, loan officers would write a new contract, refinance the loan and refund a percentage of what he paid, according to the lawsuit. Records showed that the amount refunded ranged from \$53 to \$107, depending on what day he was flipped, Adelson said.

With two loans of the same amount outstanding, Gilbert

was paying more than 40 percent of his monthly income to small loan companies. He skipped paying his rent and got evicted, but he never slowed his loan payments, Adelson said. During the four months he was homeless, he kept paying on time. Gilbert said he usually got a ride from a friend to one of the loan offices, except for one time.

"One lady picked me up at the Day Center and drove me out to the loan company in Sand Springs," Gilbert said. "I paid it."

The arrangement ended in July when Gary Gilbert found his brother a new apartment in Tulsa County. John Gilbert moved in on July 1. The next day, Gary Gilbert said he got a call from a loan officer trying to find his brother.

"I found out July 2 that he had these loans," Gary Gilbert said. "I was shocked."

The family had tried to shelter John Gilbert since he suffered a head injury in junior high school, but those efforts had waned over the years, Gary Gilbert said. John Gilbert lived in one half of a duplex, next to his parents from 1977 to the late 1980s. Later, he lived with another brother, who has since died, Gary Gilbert said. "That's when the whole problem started," Gary Gilbert said. "He needs constant supervision."

"He can live by himself as long as somebody takes care of the rent, the phone, helps him with the groceries."

Gary Gilbert said he still didn't understand how someone could have made a loan to his brother, but he hoped the lawsuit would help bring the practice to the end. Other mentally incapacitated people have been found in the same situation as John Gilbert, Adelson said.

"I don't believe these people have any morals," Gary Gilbert said. "I'd like to get rid of these people."

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