Approved: 1-31-06
Date

MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

The meeting was called to order by Chairman Ruth Teichman at 9:30 A.M. on January 26, 2006 in Room 234-N of the Capitol.

All members were present.

Committee staff present:
Melissa Calderwood, Kansas Legislative Research Department
Terri Weber, Kansas Legislative Research Department
Ken Wilke, Office of Revisor of Statutes
Bev Beam, Committee Secretary

Conferees appearing before the committee:
Kyle Kessler, SRS
Bob Day, Executive Director, Health Policy for KS
Ron Gaches, Gaches, Braden Barbee & Assoc.
Philip Holt, Security Finance
Kevin Glendening, Deputy Bank Commissioner

Others attending:
See attached list.

In the absence of Committee Chair, Vice Chair, Senator Wysong, called the meeting to order.

Bill Introduction

Kyle Kessler, SRS, introduced SRS legislative proposal, Insurance Match and Intercept and General Child Support Enforcement Related Technical Amendments. This proposal expands existing administrative child support enforcement remedies by creating procedures to identify and intercept insurance proceeds otherwise payable to child support debtors. The proposal also amends existing laws to streamline child support enforcement procedures and eliminate ambiguities. Senator Brungardt moved to approve the proposal. Senator Steineger seconded the motion. Motion passed.

Overview - Children's Health Insurance Initiatives, Ages 0 to 5

The Chair called on Dr. Robert M. Day, Director Kansas Division of Health Policy and Finance. Dr. Day gave an overview of the Governor's proposal to provide health coverage to all children through their fifth year. Dr. Day said the Governor has recommended two initiatives to help provide health insurance coverage for these children. (Attachment 1)

The Chair called for approval of the Minutes of January 17, 18, and 19. Senator Steineger moved approval. Senator Brungardt seconded the motion. Motion carried.

Hearing on (**SB 376**) - Consumer credit code; concerning alternative charges on certain consumer loans

Melissa Calderwood, Legislative Research Service, gave an overview of the bill.

The Chair asked to hear from proponents of the bill.

Ron Gaches, Gaches, Braden, Barbee & Associates, spoke on behalf of Security Finance and described their support for (**SB 376**). Mr. Gaches said the bill proposes to amend the Kansas Uniform Consumer Credit Code to authorize a new category of small consumer loans where the consumer pays a monthly installment account handling charge rather than a stated interest rate. Mr. Gaches said consumer interest rates have been deregulated in Kansas since the legislature passed a major reform of the UCCC in the late 1990's. Passage of (**SB 376**) would allow Security Finance to charge consumers a monthly fee rather than an interest rate because it is more easily understood by the consumers who are the market for these small loans, he said. (Attachment 2)

CONTINUATION SHEET

MINUTES OF THE Senate Financial Institutions and Insurance Committee at 9:30 A.M. on January 26, 2006 in Room 234-N of the Capitol.

Mr. Gaches introduced Philip Holt, Vice President Government Relations, Security Finance, and Tom Hudgins, Vice President Security Finance Corporation, to answer any questions.

Following Q and A, the Chair asked to hear from opponents of the bill.

Kevin Glendening, Deputy Commissioner, Consumer Mortgage and Lending Division, Office of the State Bank Commissioner, said the OSBC opposes (**SB 376**) as written. This bill attempts to create an exception to a very important safeguard which currently exists in the law for every other type of consumer loan in Kansas, he said. That safeguard is a prohibition against a predatory lending practice commonly referred to as "loan flipping". Loan flipping is a practice where a borrower's loan is repeatedly renewed by a lender for the primary purpose of generating additional fees. The language of this bill would create a strong incentive for a lender to repeatedly renew these loans. The bill would allow a new "acquisition charge" fee to be assessed with each renewal, in effect, causing the borrower to pay fees over and over for the same loan funds, inflating the actual cost to the borrower, he said. The result would be that borrowers will incur costs far in excess of those indicated by proponents of the bill. (Attachment 3)

The Chair said due to lack of time we will further address this bill another time.

The meeting adjourned at 10:30 a.m. The next meeting of this Committee is scheduled for January 31, 2006.

FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE GUEST LIST

DATE: January 26, 2006

NAME	REPRESENTING
Lindsey Douglas	Hein Law Firm
Bill Sneed	Midwest Title
Natalie Haag	Security Benefit
Mike Huttles	Huttles Government Relations
Jim McLean	KS Health Institute
Brad Smoot	BCBS
Chip Wheelen	Asn of Osteopathic Med
[illegible]	KID
Luke Thompson	DHPF
Bob Day	DHPF / KHPA
Andrew Couch	Federico Consulting
Alex Kotoyantz	P.I.A.
Doug Bowman	CCECDS
Ronnie Ann Lower	KAHP
Clancy Norris	OSBC
Kevin Glendenig	"
Adrian Serene	"
Ray Caf	SI. Rst
Sonya Allen	Office of State Bank Commissioner
[illegible] McElwee	OSBC
Doug Wareham	Kansas Bankers Association
Mike Hammond	Assoc. of CMHCs of KS

KANSAS

DIVISION OF HEALTH POLICY AND FINANCE

ROBERT M. DAY, DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

Testimony on:

Healthy Kansas First 5

presented to:

Senate Financial Institutions and Insurance Committee

by:

Robert Day, Ph.D.
Division of Health Policy and Finance

January 26, 2006

For additional information contact:

Luke Thompson
Division of Health Policy and Finance

Landon State Office Building
900 SW Jackson Street, Suite 900
Topeka, KS 66612

Phone: (785) 296-3981
Fax: (785) 296-4813

Senate F I & I Com
Attachment 1
January 26, 2006

Kansas Division of Health Policy and Finance

Robert M. Day, Director

Senate Financial Institutions and Insurance Committee
January 26, 2006

Healthy Kansas First 5

Madam Chair and members of the committee, I am Robert Day, Executive Director of the Division of Health Policy and Finance (DHPF) and Director of the Kansas Health Policy Authority (KHPA). I have been asked to describe the Governor's proposal to provide health coverage to all children through their fifth year.

We estimate that approximately 15,000 Kansas children five years old and younger are uninsured. Of these, 10,000 live in families with incomes under 200.0 percent of the federal poverty level (FPL) and would otherwise be eligible for HealthWave. The Governor has recommended two initiatives to help provide health insurance coverage for these children. She has added \$2.5 million, including \$1.0 million from the State General Fund, to implement a policy of presumptive eligibility for HealthWave eligible children. This program would allow hospital and clinic staff to perform an expedited review of family status and income and make a "presumptive" determination of a child's qualification for HealthWave. Based on that determination, state staff would activate the child's medical eligibility for 30 days while the family completes a full medical eligibility application and determination. This more rapidly connects children to programs they are already eligible for and guarantees a payment source for the provider.

The Governor also recommended \$3.5 million from the State General Fund to provide access to health insurance for all Kansas children from birth through age five. In order to leverage FFP we will use available federal funding to cover these children by increasing the Medicaid eligibility level for pregnant women and infants to 185.0 percent of FPL. Currently, pregnant women and infants are covered at 150.0 percent of FPL and children through their fifth year are covered at 133.0 percent of FPL. At the same time, the income eligibility levels for the State Children's Health Insurance Program (SCHIP) would be increased to 235.0 percent of FPL. This is a 35.0 percent increase in the current income eligibility levels. By federal regulation, the SCHIP income eligibility levels can not exceed 50.0 percent of the highest Medicaid income level. While making these changes will require federal approval and state eligibility system revisions, expanding the current Medicaid and SCHIP HealthWave program leverages existing managed care networks and enrollment processes in the HealthWave Clearinghouse. This approach also allows for federal matching dollars to finance 60.0 percent of the Medicaid expansion and 72.0 percent of the SCHIP expansion.

For Kansas children over 235.0 percent of FPL, DHPF would create a mechanism for families to purchase HealthWave coverage for children five and younger. In the current program, families with incomes over 150.0 percent of FPL are charged a monthly family premium of \$20 or \$30 to participate in the cost of the benefit. In the Governor's proposal, families over 235.0 percent of FPL with children five or younger would be required to pay a monthly premium to access the HealthWave benefit package. DHPF would charge the premium for each enrolled child and would increase the amount as family income increases until the family pays the full actuarial cost of the HealthWave benefit. The final premium amounts have not been determined, but would likely range from $50 to $70 per child, per month for families under 300.0 percent of FPL. Federal funds are not available for these families, but this solution takes advantage of the existing infrastructure and name recognition of HealthWave to provide a comprehensive health insurance benefit. Also, to avoid potential crowd out of private insurance, families would have to provide evidence that the children do not have access to employer based health insurance and have been uninsured for at least six months prior to becoming eligible for the HealthWave buy in.

That concludes my testimony. I would be happy to stand for questions.

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

Senate Financial Institutions and Insurance Committee
Testimony of Security Finance
Regarding SB 376 Concerning Small Consumer Loans
Presented by Ron Gaches and Phillip Holt
Thursday, January 26, 2006

Thank you Senator Teichman for the opportunity to speak to your committee on behalf of Security Finance and describe our support for Senate Bill 376. The bill proposes to amend the Kansas Uniform Consumer Credit Code to authorize a new category of small consumer loans where the consumer pays a monthly "installment account handling charge" rather than a stated interest rate.

Consumer interest rates have been deregulated in Kansas since the Legislature passed a major reform of the UCCC in the late 1990's. Passage of SB 376 would allow Security Finance to charge consumers a monthly fee rather than an interest rate because it is more easily understood by the consumers who are the market for these small loans.

The small consumer loans authorized by the bill would be in an amount no larger than $1,000 and for a period no longer than 12 months. The bill authorizes the lender to charge (1) an "acquisition fee" in an amount not to exceed 10% of the amount financed, and (2) a monthly installment account handling charge in amounts established by the bill.

Loans of this nature compete in the sub-prime consumer loan market that is currently dominated by pay day loans, car title loans, and pawn shops. Banks and credit unions typically do not compete in the sub-prime, small consumer loan market. These clients are a significantly higher credit risk than banks and credit unions are normally comfortable serving. But they still have borrowing needs such as: car repairs, school clothes, health care emergencies and emergency travel.

The loans authorized by SB 376 have several advantages in the market place that might make them attractive to consumers.

First, the effective interest rate for our loans is significantly lower than the rates currently charged for payday loans, car title loans, bank overdraft charge, bounced check charges, late payment fees and the like.

Second, Security Finance reports the payment activity of its borrowers to the major credit reporting companies. Payday loan and car title loan companies do not. That means a consumer can improve their credit score by utilizing one of these loans which they can't do while using the alternatives.

Senate FI & I Com.
Attachment 2
January 26, 2006

Third, the consumer does not have to have a checking account, as is required for a payday loan.

Fourth, these are signature loans and do not require the borrower to have any capitol. The consumer does not pledge any asset as they do in a car title loan.

Fifth, because they are signature loans, Security Finance conducts a thorough evaluation of the consumer's ability to repay the loan before extending credit to the borrower.

Sixth, the consumer is protected from financially overextending themselves by the modest maximum size of the loan and the provision that prohibits the lender from issuing more than one loan to the borrower at a time.

The language of Senate Bill 376 reflects several changes that have been recommended or requested by Kevin Glendening of the Bank Commissioner's Office and House Financial Institutions Committee Chair Ray Cox. Following their input the length and size of the loans has been reduced, the number of loans that a borrower may have outstanding was reduced to one, the acquisition charge has been reduced, and provision has been added for refunding a portion of the installment account handling charge upon prepayment of the loan.

Security Finance is a family owned company specializing in small consumer loans of the type authorized by this bill. They operate in about 20 states including several of our surrounding states, Missouri, Oklahoma and Colorado. They have established a good track record with state regulators and are active members of the American Financial Services Association, the national trade group for consumer lending companies.

With me today to help answer questions are Phillip Holt, the vice president for government relations, and Tom Hudgins, vice president of operations.

AFSA
American Financial Services Association

THE INSTALLMENT LOAN INDUSTRY AT A GLANCE: AFFORDABILITY, TRANSPARENCY AND CONSUMER FINANCIAL IMPROVEMENT

- We Test a Consumer's Ability to Repay. Installment Loan companies work out a monthly net income/expense budget based on information provided by prospective borrowers, thereby making sure proposed monthly loan payments are affordable.

- Monthly Installments Are Better for Consumers. A monthly installment payment allows borrowers to pay their interest and reduce their principal each month and gives them a manageable way to pay off their loan.

- Consumers Pay Less. Installment loans have lower rates, and are cheaper for the consumer, than single pay loans.

- No Pre-Payment Penalties. The installment loan industry does not impose pre-payment penalties on loans.

- The Installment Loan Industry is Committed to Financial Literacy. The American Financial Services Association and many of its individual member companies, have made a huge investment in financial literacy programs, including the MoneySKILL interactive program for schools and Jump$tart, the nation's leading initiative promoting personal financial literacy.

- We Address the Cycle of Debt Problem. Installment Loan Companies provide a monthly payment that will fit into a consumer's cash flow budget thereby allowing for affordable monthly debt reduction without the constant renewals of single pay loans.

- We Utilize the Credit Reporting System. Installment Loan companies report good as well as bad credit to the credit bureaus. This improves the quality of consumer credit data overall and helps individual borrowers establish a foundation from which to improve their financial position and access to better financial products.

American Financial Services Association

Member Company Fact Sheet

The American Financial Services Association (AFSA) is the national trade association for finance companies and other consumer and commercial lenders that raise funds in the capital markets. These market funded lenders then "recycle" these funds by providing financial services at the community level to individuals and small businesses.

Founded in 1916, AFSA has a broad membership, ranging from large national financial services firms to single office, independently owned consumer finance companies. Although it is diverse, AFSA's membership is united by its main goal of serving the credit needs of consumers and businesses.

AFSA MEMBERS – PRODUCTS AND SERVICES

Current membership is nearly 400 active (consumer finance), associate (industry suppliers), affiliate (state associations) and commercial finance and foreign member companies with over 10,000 offices. Members include:

- **Diversified Financial Services Companies** – Companies that offer a broad range of financial products and services to middle-income consumers through offices nationwide. Credit products include: personal loans, first and second mortgages, home equity line of credit, credit cards and private label cards, sales financing and credit insurance. Many also offer consumer deposit products through banks or savings and loans owned or affiliated with them. Some AFSA members that are diversified financial services companies include: American General Finance, Inc.; The CIT Group, Inc., GE Consumer Finance – U.S. & Canada, Wells Fargo Financial, Inc. and Household Finance Corporation.

- **Automotive Finance Companies** – In addition to the captive companies, these companies operate on a regional and national basis providing indirect financing to automotive dealers of new and pre-owned vehicle customers. Companies include: AmeriCredit Financial Services, Ameristar Financial Company, Reliable Credit Association, Inc., Mission Financial Services, TICO Credit Company and Wells Fargo Financial Acceptance Corporation, among others.

- **Captive Finance Companies** – These companies, often owned by a manufacturer of hard durable goods, provide financing for customers who purchase their products. In addition to offering financing and leasing options on products manufactured by the parent, the companies or their parents have formed or acquired other financial entities that include: credit card affiliates, mortgage companies, savings and loans, and consumer finance affiliates. Finance subsidiaries of manufacturers include: DaimlerChrysler, GMAC Financial Services, Ford Motor Credit Company, Harley-Davidson Financial Services, Inc., Hyundai Motor Acceptance Corporation, Nissan Motor Acceptance Corporation, Saab Financial Services Corp. and Toyota Motor Credit Corporation.

● **Consumer Finance Companies** – Consumer loan companies' core business includes: unsecured personal loans, home equity loans and sales financing (providing credit for retailers' customers.) This group includes multi-billion dollar companies with nationwide offices, regional companies, and independently owned firms that have one branch office or branches in several states. Consumer finance companies include: American General Finance Corporation, CitiFinancial, Washington Mutual Finance, Wells Fargo Financial, Inc. and independently owned firms such as 1st Franklin Corporation, First Tower Corp, Heights Finance Corporation, Pioneer Credit Company, Reliable Credit Association, Security Finance Corporation of Spartanburg, United Finance Co. and World Acceptance Corporation.

Many independently owned companies specialize in one type of lending, for example such as specialty auto financing.

● **Mortgage Lenders** – Companies that provide home equity loans/second mortgages, manufactured housing loans an other loans secured by a borrower's residence. Companies in this category include Ameriquest Mortgage Company; Conseco Finance Corp., Countrywide Home Loans, Equity One; CitiFinancial, Household Finance Corp; Key Consumer Real Estate; Washington Mutual Finance and Wells Fargo Financial, Inc.

● **Commercial Finance Companies** – Companies that offer commercial finance and leasing services include: Boeing Capital Corporation, Financial Federal Credit, Inc., GATX Capital Corporation, International Lease Finance Corporation, John Deere Credit Corporation, and Textron Financial Corporation.

● **Credit Card Issuers** – Companies that offer bank cards, charge cards, credit cards, or private label cards. Several AFSA member companies are among the largest credit card issuers in the United States including: Capital One, GE Consumer Finance – U.S. & Canada; GMAC Financial Services, Household International, MBNA, Metris Companies Inc., Morgan Stanley (Discover).

● **Financial Services, Retail Trade** – Companies that are general merchandise or department store retailers, but have substantial volumes of captive financing business plus other financial services such as securitization, third-party servicing, etc. AFSA member includes: Sears Roebuck & Co.

For more information about AFSA, please visit its Website at www.afsaonline.org

Updated November 13, 2002

2-6

SECURITY FINANCE CORPORATION
REGULATORY CONTACTS

STATE	*AGENCY*	*CONTACT*	*PHONE*
Alabama	State Banking Department	Scott Corscadden	334-242-3452
Colorado	Office of the Attorney General	Laura Udis	303-866-4494
Florida	Office of Financial Regulations	Don Saxon	850-410-9256
Georgia	Industrial Loan Division	John Oxendine	404-656-2078
Idaho	Department of Finance	Gavin Gee / Michael Larsen	208-332-8060
Illinois	Division of Financial Institutions	Michelle Latz	312-814-5145
Louisiana	Dept. of Financial Institutions	John Braud	225-925-7762
Missouri	Division of Finance	Joe Crider	573-751-3242
New Mexico	Financial Institutions Division	Bill Verant	505-476-4885
Nevada	Nevada Financial Institutions	Carol Tidd	702-486-4120
North Carolina	Commission of Banks	Joseph Smith	919-733-3016

2-6

STATE	AGENCY	CONTACT	PHONE
Oklahoma	Department of Consumer Credit	Don Hardin	405-521-3653
Oregon	Dept. of Consumer & Business Srvs.	Charles Donald	503-947-7844
South Carolina	Board of Financial Institutions	Dean Bratton	803-734-2020
Tennessee	Dept. of Financial Institutions	Kevin Lavender	615-741-2883
Texas	Office of Consumer Credit Commission	Leslie Pettijohn	800-538-1579
Utah	Dept. of Financial Institutions	David Barker	801-538-8830
Wisconsin	Dept. of Financial Institutions	Jean Plale	608-261-7578

Matt Blunt, Governor
State of Missouri

Gregory A. Steinhoff, Director
Department of Economic Development

301 West High Street, Room 630
Post Office Box 716
Jefferson City, Missouri 65102-0716
573-751-3242
573-751-9192 FAX
www.missouri-finance.org

DIVISION OF FINANCE

D. Eric McClure
Commissioner of Finance

May 3, 2005

Mr. Tom Hudgins
Vice President
Security Finance Corporation
3578 Westport Drive
St. Charles, Missouri 63303

Dear Mr. Hudgins:

This will confirm our conversation of May 2, 2005 during which we discussed the activities of your company in the State of Missouri. As you know, Security Finance has licensed multiple offices in Missouri since 1996, presently holding a total of 94 licenses at 47 licenses. During that time, the Division of Finance has conducted a compliance examination of each location every year and Security Finance has been rated very high on compliance. Further, what few citizen complaints we have received have been addressed by your company in a very professional manner. Having inspected many of these offices personally, it is the opinion of the undersigned that Security Finance has at all times operated fairly, efficiently and very professionally with regards to both the letter and the spirit of Missouri law.

Very truly yours,

Joe Crider

Joe Crider
Supervisor of
Consumer Credit

JC:cs

AD ASTRA PER ASPERA
KANSAS

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

KATHLEEN SEBELIUS, GOVERNOR

Senate Financial Institutions and Insurance Committee

January 26, 2006

RE: Testimony on SB 376

Madam Chairman and Members of the Committee:

The Office of the State Bank Commissioner (OSBC) opposes Senate Bill 376 as written. This bill attempts to create an exception to a very important safeguard which currently exists in the law for every other type of consumer loan in Kansas. That safeguard is a prohibition against a predatory lending practice commonly referred to as "loan flipping". Loan flipping is a practice where a borrower's loan is repeatedly renewed by a lender for the primary purpose of generating additional fees. The language of this bill would create a strong incentive for a lender to repeatedly renew these loans. The bill would allow a new "acquisition charge" fee to be assessed with each renewal, in effect, causing the borrower to pay fees over and over for the same loan funds, in turn, inflating the actual cost to the borrower. The result would be that borrowers will incur costs far in excess of those indicated by proponents of the bill.

The OSBC believes it is extremely important to lessen the incentive for lenders to engage in loan flipping, in order to avoid the damaging effects this practice would have on Kansas borrowers. Of particular concern to our office, is the fact that the company seeking this legislation, Security Finance, has been found guilty of fraud in connection with loan flipping activities in a civil suit involving a mentally disabled man in Oklahoma. In that case, a man with an IQ of 59 had his initial $400 loan flipped 37 times. Court documents in that case also reference other borrowers whose loans were flipped as much as 125 times. The company's own internal documents, which were cited in this case, also appear to show a desire to encourage loan flipping. The OSBC believes these facts should further raise concerns among the committee as to the appropriateness of such an exception as suggested by this bill.

Other concerns of our agency include the absence of language clarifying the loan product contemplated by the bill would be unsecured and have a minimum term. We believe these are important features that should be specified in the bill and would be consistent with other small loan/high rate products. In summary, the OSBC urges the

Senate FI & I Com
Attachment 3
January 26, 2006

committee to reject this flawed bill in favor of maintaining existing important protections in the law which serves both consumers and lenders. Thank you.

Respectfully,

Kevin Glendening
Administrator UCCC
Deputy Commissioner
Kansas Office of the State Bank Commissioner

The following facts are taken from <u>Gilbert v. Security Finance Corp. of Oklahoma, Inc.</u> (2005). Original case was filed in December 2002, and trial verdict was in December 2004. An Oklahoma jury found Security Finance and Maverick Acquisition Corp. guilty of fraud, breach of an implied covenant of good faith and fair dealing, and breach of fiduciary duty. The same jury awarded Mr. Gilbert $1.765 million in punitive damages because of Security Finance and Maverick Acquisition's conduct.

- John Gilbert (plaintiff in the above case) is a mentally disabled man with an IQ of 59. When Security Finance made their initial loan to Mr. Gilbert, his total monthly income was $533.00. The sole source of this income was Mr. Gilbert's SSI disability. - trial transcript (II, p. 425)

- Assistant Manager Ted Henshaw took Gilbert's initial credit application. Gilbert told Security Finance employees that he could not read, write, or understand the contract. Instead of explaining the contract, Henshaw simply showed Gilbert where to sign his name; **"My job is to ask the question and write down the answer...I don't have to know whether he is confused or even gets it."**
  -Security Finance Asst. Mngr. Ted Henshaw, trial transcript (II, p. 450)

- The only explanation Gilbert received regarding his loan was that he was to pay them once a month. **Referring to the sign up process, Gilbert said, "I can't read or write, they just showed me where to sign."**
  -John Gilbert, *Unlikely loan recipient socked*, Tulsa World, 2/17/02

- Mr. Gilbert acquired a loan from Security Finance and Maverick Acquisition (sister corporations) that was flipped (renewed) by the two companies 37 times. Due to Mr. Gilbert's illiteracy, he was unable to read or understand the contract for the loans/renewals. He was also unable to calculate the financial consequences of flipping his loans.
  -Trial transcript (IV, p. 821)

- Every time Security Finance flipped Mr. Gilbert's loan, Security Finance added "acquisition" and "installment account handling" charges. - trial transcript IV, p. 780-82)

- Security Finance employees did not explain the renewal process to Gilbert either. **As a result, Gilbert had no idea how much he was borrowing; "Oh, I never borrowed over—I borrowed—the most I borrowed was 90, 50. I wouldn't borrow over 100 [...] because I didn't need it."**
  -John Gilbert, trial testimony (VII, p 1457)

- Actually, Security Finance's initial loan to Gilbert was for $400. **By flipping Gilbert's loan 37 times, Security Finance was able to assess more than $4,300 in finance charges alone.**
  - *Unlikely loan recipient socked*, Tulsa World, 2/17/02

- The increased monthly payments inflated Security Finance profits, but forced Mr. Gilbert to become homeless. Realizing that Mr. Gilbert's situation was worsening, Security Finance modified their original budget for Mr. Gilbert to decrease his monthly food budget to just $20.00 (67¢ /day), and included no money whatsoever for transportation. - trial transcript (T.II, p. 489-491; T.V 1005; PX110; SST 102)

- "With two loans of the same amount outstanding, Gilbert was paying more than 40 percent of his monthly income [SSI Disability] to small loan companies. He skipped paying his rent and got evicted, but he never slowed his loan payments, [Gilbert's attorney] Adelson said. During the four months he was homeless, he kept paying on time."
  -*Unlikely loan recipient socked*, Tulsa World, 2/17/02

- On at least one occasion, an employee of Security Finance and Maverick drove to the homeless shelter to pick up Mr. Gilbert. Then the employee took Mr. Gilbert back to the loan office so that Security Finance could collect their monthly payment. While they had him in the office, they convinced him to flip his loan again. - trial transcript (VII, p. 1675-76)

- Under oath, Assistant Manager Audrey Worley admitted that Mr. Gilbert was not the only disabled person Security Finance signed up for loans; "Well I guess you would say he was probably like your average customer in the Tulsa area."

-Security Finance Asst. Manager. Audrey Worley, trial transcript (V, p. 1276, 1277)

- Security Finance's business model depends on flipping loans. Financial statements reveal an annual loan volume of $7.9 million for new customers versus $85.7 million in borrower renewal loans.
  - Security Finance Corp. of Oklahoma Consolidated Balance Sheet, 12/31/2001

The following quotes show an apparent desire by Security Finance to encourage loan flipping. These quotes were used in the <u>Gilbert</u> case, and they were taken from Security Finance's internal memos:

- "We are telling customers they can renew when two payments have been made and they are in the office, but we are taking 'no' for an answer on the first attempt every time. Must SELL Renewals, not just Tell. If you get a 'no' try another approach. Sell as a TEAM. We must start selling RENEWALS on EVERY CONTRACT, EVERY TIME…We must train our customers to renew every two months. In order to train, we must sell them over and over.

  -Supervisor's follow-up visit, 3/22/99

- "…[O]ffer them some ideas to try and prevent payoffs, such as 'pay 3,4,or 5 payments but keep account open so when you need money, there will be less red tape' etc. You get the idea! Also make sure we are doing our best at selling renewals, the higher the balance stays, the less payoffs you will have." -Official Visit 10/10/2000

- Senior Vice President Lisa Burroughs approved a supervisor's comments that "We must train our customers to renew every two months" - trial transcript (VII, p. 1650-51, SM 3220)

- Senior Vice President Lisa Burroughs told employees to prevent loan pay off "and make sure we are doing our best at selling renewals. The higher the balance stays, the less pay offs you will have" –trial transcript (IV, p. 745-47, PX 146, SM 12003)

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 Country 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.

Back to search results

3-5

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."