

MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS COMMITTEE

The meeting was called to order by Chairman Anthony Brown at 3:30 p.m. on March 2, 2009, in Room 784 of the Docking State Office Building.

All members were present except:
Virgil Peck

Committee staff present:
Bruce Kinzie, Office of the Revisor of Statutes
Sean Ostrow, Office of the Revisor of Statutes
Melissa Calderwood, Kansas Legislative Research Department
Terri Weber, Kansas Legislative Research Department
Joyce Bishop, Committee Assistant

Conferees appearing before the committee:
Senator John Vratil
Doug Wareham, Senior Vice President, Kansas Banker's Association
Matt Goddard, Executive Vice President, Heartland Banker's Association
Scott Gates, Legal Counsel, Kansas State Treasurer's Office
Tom Krebs, Kansas Association of School Boards
Bob Vancrum, Government Affairs Specialist, Unified School District 229-Blue Valley
Haley Davee, Director, Legislative Affairs, Kansas Credit Union Association
Kathleen Olsen, Senior Vice President, Kansas Banker's Association

Others attending:
See attached list.

Chairperson Anthony Brown opened the hearing on **SB 39, An act concerning certain municipalities; relating to the investment of public moneys; amending K.S.A. 2008 Supp. 12-1677b and repealing the existing section.**

Senator John Vratil presented testimony in support of **SB 39, (Attachment 1).**

Kathleen Olsen, Senior Vice President, Kansas Banker's Association, presented testimony in support of **SB 39 (Attachment 2).**

Matt Goddard, Executive Vice President, Heartland Banker's Association, presented testimony in support of **SB 39 (Attachment 3).**

Scott Gates, Legal Counsel, Kansas State Treasurer's Office, presented testimony in support of **SB 39 (Attachment 4).**

Tom Krebs, Kansas Association of School Boards, presented testimony in support of **SB 39 (Attachment 5).**

Robert Vancrum, Government Affairs Specialist, Unified School District 229, Blue Valley, presented testimony in support of **SB 39 (Attachment 6).**

Chairperson Brown closed the hearing on **SB 39.**

Chairperson Brown opened the hearing on **SB 163, an act amending the consumer protection act; amending K.S.A. 50-624.**

Matt Goddard, Executive Vice President, Heartland Banker's Association, presented testimony in support of **SB 163 (Attachment 7).**

CONTINUATION SHEET

Minutes of the House Financial Institutions Committee at 3:30 p.m. on March 2, 2009, in Room 784 of the Docking State Office Building.

Haley Davee, Director, Legislative Affairs, Kansas Credit Union Association, presented testimony in support of **SB 163** (Attachment 8).

Kathleen Olsen, Senior Vice President, Kansas Banker's Association, presented written testimony in support of **SB 163**, (Attachment 9).

Chairperson Brown closed the hearing on **SB 163**.

The next meeting is scheduled for March 4, 2009.

The meeting was adjourned at 4:47pm.

State of Kansas

JOHN VRATIL
SENATOR, ELEVENTH DISTRICT
JOHNSON COUNTY
LEGISLATIVE HOTLINE
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Vice President Kansas Senate

COMMITTEE ASSIGNMENTS
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COMMISSION

Testimony Presented to
House Committee on Financial Institutions and Insurance
By Senator John Vratil
March 2, 2009
Concerning Senate Bill 39

Good afternoon! Thank you for the opportunity to appear before the House Committee on Financial Institutions and Insurance in support of Senate Bill (SB) 39. The language in SB 39 would enable Kansas school districts to invest idle funds in securities issued by federal agencies.

Currently, Kansas cities and counties are authorized to invest their idle funds in securities issued by approved federal agencies. Senate Bill 39 would add school districts to the list of entities so authorized and place the same constraints on school districts that exist for cities and counties. A school district would be able to invest idle funds in securities issued by federal agencies if and only if the school district has a written investment policy previously approved by the municipal pooled money investment board.

The language in SB 39 proposes to treat Kansas school districts in the same way that cities and counties are treated. If adopted, the language would enable school districts to maximize the investment potential of the districts' idle funds; therefore, reducing the burden placed on taxpayers to fund our schools.

I ask that you support SB 39 because it strengthens the ability of Kansas school districts to make the best use of the resources available to them.

A handwritten signature in blue ink that reads "John Vratil".

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HOUSE FINANCIAL INSTITUTIONS
DATE: 3-2-2009
ATTACHMENT: 1



March 2, 2009

To: House Committee on Financial Institutions

From: Kathleen Taylor Olsen, Kansas Bankers Association

Re: SB 39: Expanded Powers for Public Entities

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today in support of **SB 39 as amended**, which would amend K.S.A. 12-1677b. This statute provides for expanded investment powers for cities and counties that are approved for such powers by the Pooled Money Investment Board (PMIB). The bill would also allow school districts to apply for these expanded investment powers.

Important to the banking industry is that cities, counties and (under this bill) school districts must first offer their idle funds to local banks and savings and loan associations as provided in K.S.A. 12-1675, before the public unit can take advantage of the expanded investment authority granted by this statute.

The Kansas Bankers Association did not introduce the bill, but did request the amendments adopted by the Senate. The amendments would provide that as a part of the approval process for any public unit wishing to apply to the PMIB for these expanded powers, a public entity would have to include, in its application, procedures for complying with the requirement that funds are first offered for bid to local financial institutions, and a certification from the investment management staff that those procedures have been followed.

The bill as amended, would further provide that at the annual renewal of the expanded powers, the investment management staff would certify to the PMIB, that those procedures for bidding to local financial institutions had been followed and provide a list of the banks, savings and loan associations and savings banks from which the city, county or school district requested bids in the preceding year.

We requested the amendments when we learned that, while the PMIB has the responsibility under the statute for both approving each request for expanded powers and for approving each annual renewal of those powers – and has the authority to suspend the powers granted for two years, should the PMIB learn that the bidding procedures described in K.S.A. 12-1675 were not followed, they lacked the tools for making a determination about whether those procedures were, in fact, being followed. We believe that the amendments give the PMIB the appropriate tools for making that determination as they analyze each request for expanded investment powers.

House Financial Institutions Committee

SB 39

Page Two

The KBA has long been an advocate for keeping public funds invested locally – which give those dollars the opportunity to be re-invested in the community through loans made to individuals and businesses – who then spend those loan dollars in the community. We call this the “rollover effect” of local investment and believe that in the long term, it has significant value to all communities across Kansas.

In conclusion, we support **SB 39** as amended in the Senate as a way to ensure that those granted expanded investment authority under K.S.A. 12-1677b, continue to follow the long-standing policy of the State of Kansas which is to make an effort to keep Kansas dollars invested in Kansas.

Thank you and we respectfully request that if the Committee act favorably on **SB 39**, it keep the amendments adopted by the Senate in tact.

Kansas Legislature

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12-1675**Chapter 12.--CITIES AND MUNICIPALITIES
Article 16.--MISCELLANEOUS PROVISIONS**

12-1675. Investment of public moneys by governmental subdivisions, units and entities; conditions and limitations. (a) The governing body of any county, city, township, school district, area vocational-technical school, community college, firemen's relief association, community mental health center, community facility for the mentally retarded or any other governmental entity, unit or subdivision in the state of Kansas having authority to receive, hold and expend public moneys or funds may invest any moneys which are not immediately required for the purposes for which the moneys were collected or received, and the investment of which is not subject to or regulated by any other statute.

(b) Such moneys shall be invested only:

(1) In temporary notes or no-fund warrants issued by such investing governmental unit;

(2) in time deposit, open accounts, certificates of deposit or time certificates of deposit with maturities of not more than two years: (A) In banks, savings and loan associations and savings banks, which have main or branch offices located in such investing governmental unit; or (B) if no main or branch office of a bank, savings and loan association or savings bank is located in such investing governmental unit, then in banks, savings and loan associations and savings banks, which have main or branch offices in the county or counties in which all or part of such investing governmental unit is located;

(3) in repurchase agreements with: (A) Banks, savings and loan associations and savings banks, which have main or branch offices located in such investing governmental unit, for direct obligations of, or obligations that are insured as to principal and interest by, the United States government or any agency thereof; or (B)(i) if no main or branch office of a bank, savings and loan association or savings bank, is located in such investing governmental unit; or (ii) if no such bank, savings and loan association or savings bank having a main or branch office located in such investing governmental unit is willing to enter into such an agreement with the investing governmental unit at an interest rate equal to or greater than the investment rate, as defined in subsection (g) of K.S.A. 12-1675a, and amendments thereto, then such repurchase agreements may be entered into with banks, savings and loan associations or savings banks which have main or branch offices in the county or counties in which all or part of such investing governmental unit is located; or (C) if no bank, savings and loan association or savings bank, having a main or branch office in such county or counties is willing to enter into such an agreement with the investing governmental unit at an interest rate equal to or greater than the investment rate, as defined in subsection (g) of K.S.A. 12-1675a, and amendments thereto, then such repurchase agreements may be entered into with banks, savings and loan associations or savings banks located within this state;

(4) in United States treasury bills or notes with maturities as the governing body shall determine, but not exceeding two years. Such investment transactions shall only be conducted with banks, savings and loan associations and savings banks; the federal reserve bank of Kansas City, Missouri; or with primary government securities dealers which report to the market report division of the federal reserve bank of New York, or any broker-dealer engaged in the business of selling government securities which is registered in compliance with the requirements of section 15 or 15C of the securities exchange act of 1934 and registered pursuant to K.S.A. 17-12a401, and amendments thereto;

(5) in the municipal investment pool fund established in K.S.A. 12-1677a, and amendments thereto;

(6) in the investments authorized and in accordance with the conditions prescribed in K.S.A. 12-1677b, and amendments thereto; or

(7) in multiple municipal client investment pools managed by the trust departments of banks which have main or branch offices located in the county or counties where such investing governmental unit is located or with trust companies incorporated under the laws of this state which have contracted to provide trust services under the provisions of K.S.A. 9-2107, and amendments thereto, with banks which have main or branch offices located in the county or counties in which such investing governmental unit is located. Public moneys invested under this paragraph shall be secured in the same manner as provided for under K.S.A. 9-1402, and amendments thereto. Pooled investments of public moneys made by trust departments under this paragraph shall be subject to the same terms, conditions and limitations as are applicable to the municipal investment pool established by K.S.A. 12-1677a, and amendments thereto.

(c) The investments authorized in paragraphs (4), (5), (6) or (7) of subsection (b) shall be utilized only if the banks, savings and loan associations and savings banks eligible for

investments authorized in paragraph (2) of subsection (b), cannot or will not make the investments authorized in paragraph (2) of subsection (b) available to the investing governmental unit at interest rates equal to or greater than the investment rate, as defined in subsection (g) of K.S.A. 12-1675a, and amendments thereto.

(d) In selecting a depository pursuant to paragraph (2) of subsection (b), if a bank, savings and loan association or savings bank eligible for an investment deposit thereunder has an office located in the investing governmental unit and such financial institution will make such deposits available to the investing governmental unit at interest rates equal to or greater than the investment rate, as defined in subsection (g) of K.S.A. 12-1675a, and amendments thereto, and such financial institution otherwise qualifies for such deposit, the investing governmental unit shall select one or more of such eligible financial institutions for deposit of funds pursuant to this section. If no such financial institution qualifies for such deposits, the investing governmental unit shall select for such deposits one or more eligible banks, savings and loan associations or savings banks which have offices in the county or counties in which all or a part of such investing governmental unit is located which will make such deposits available to the investing governmental unit at interest rates equal to or greater than the investment rate, as defined in subsection (g) of K.S.A. 12-1675a, and amendments thereto, and which otherwise qualify for such deposits.

(e) (1) All security purchases and repurchase agreements shall occur on a delivery versus payment basis.

(2) All securities, including those acquired by repurchase agreements, shall be perfected in the name of the investing governmental unit and shall be delivered to the purchaser or a third-party custodian which may be the state treasurer.

History: L. 1968, ch. 217, § 1; L. 1969, ch. 80, § 1; L. 1973, ch. 63, § 6; L. 1975, ch. 68, § 1; L. 1976, ch. 79, § 2; L. 1977, ch. 55, § 1; L. 1982, ch. 52, § 6; L. 1983, ch. 47, § 7; L. 1986, ch. 76, § 7; L. 1989, ch. 48, § 66; L. 1992, ch. 146, § 3; L. 1993, ch. 207, § 2; L. 1994, ch. 104, § 2; L. 1997, ch. 180, § 14; L. 2004, ch. 154, § 53; L. 2006, ch. 57, § 3; July 1.



Matthew S. Goddard, Vice President

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To: House Financial Institutions Committee

From: Matthew Goddard
Heartland Community Bankers Association

Date: March 2, 2009

Re: Senate Bill 39

The Heartland Community Bankers Association appreciates the opportunity to appear before the House Financial Institutions Committee to express our support for Senate Bill 39.

Under current law, cities and counties – but not school districts - may make direct investments in United States government and agency securities, interest-bearing time deposits and repurchase agreements with maximum maturities of four years if the unit of government has a written investment policy which is approved annually by the Pooled Money Investment Board. HCBA has long understood K.S.A. 12-1675 to require that cities and counties must still offer deposits to eligible public funds depositories such as banks and savings and loans and can only exercise their expanded investment authority if the local depositories fail to at least match the PMIB-published investment rate.

Senate Bill 39 gives the same expanded investment powers available to cities and counties to school districts with the same PMIB approvals also required. However, it has recently come to the attention of the various banking trade associations that there may be some misunderstandings surrounding K.S.A. 12-1675 and so the Senate amended SB 39 to provide clarification.

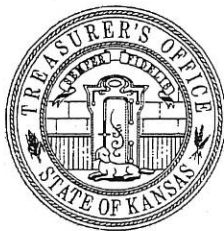
As amended, the bill now requires that the written investment policy that must be approved by the PMIB each year must now include procedures for compliance with K.S.A. 12-1675 and the investment staff of the governmental unit must certify that those procedures were followed. In addition, as a part of the annual approval process of the written investment policy, the investment management staff of local governments must submit a list of the banks and thrifts from which the city, county or school district requested bids the previous year.

Senate Bill 39 provides school districts with expanded investment powers and at the same time removes any ambiguity that might surround the exercise of those powers. HCBA has long supported a balance between the pursuit of greater returns on the investments of local governments and the need to reinvest in our communities and support Kansas financial institutions. Senate Bill 39 helps protect that balancing act.

The Heartland Community Bankers Association respectfully requests the House Financial Institutions Committee recommend Senate Bill 39 favorable for passage

HOUSE FINANCIAL INSTITUTIONS
DATE: 3-2-2009
ATTACHMENT:

3



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STATE OF KANSAS
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TREASURER

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House Committee on Financial Institutions
Senate Bill 39
March 2, 2009

Chairman Brown and members of the committee:

Thank you for this opportunity to share my views on Senate Bill 39. I support S.B. 39, as amended in the Senate Financial Institutions & Insurance Committee.

We should have three objectives when it comes to investing public funds:

1. Protect the safety of the public funds, especially idle funds. A large part of idle funds are not open to long term investment as they will be needed for expenditure within 30 days and even more within 90 days. Therefore, it is imperative that the monies be safe and available when needed.
2. Utilize a system that engages competition for idle monies to secure the best possible interest earnings for the benefit of taxpayer.
3. In a manner consistent with goals one and two, invest idle funds in a way that allows the funds to remain within the Kansas economy, preferably in ways that allow the funds to provide liquidity for loans within the Kansas economy.

My concern is growing that more and more public funds in Kansas are moving into non-bank investments such as federal agency securities which in some cases may have more risk than a bank deposit and a slightly higher return on the investment, but they take the public funds completely out of the Kansas economy. In his January 2006 study, John D. Wong, Ph. D. with Wichita State University cautioned that the increased return that may be received from investing funds out of state must be balanced against the benefit to the Kansas economy, and ultimately the state's tax revenue, when Kansas banks use the capitol provided by deposits of public funds to make loans to Kansas businesses.

While I am not opposed to giving school districts expanded investment powers, the additional options provided by expanded powers must be part of a diversified portfolio that maximizes returns while also minimizing risk and complying with current statutes requiring municipalities to first offer their idle funds to local banks.

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I believe that the amendments added by the Senate Committee, as supported by the Kansas Bankers Association, will help to ensure that we maintain compliance with current laws requiring the investment of idle funds in the Kansas economy as investment powers are expanded.

KANSAS
ASSOCIATION



OF
SCHOOL
BOARDS

1420 SW Arrowhead Road • Topeka, Kansas 66604-4024
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Testimony before the
House Financial Institutions Committee
on
SB 39

by

Tom Krebs, Governmental Relations Specialist
Kansas Association of School Boards

March 2, 2009

Mr. Chair and Members of the Committee;

Currently, K.S.A. 12-1677b does not include school districts when describing opportunities for governmental entities to invest idle funds. **SB 39** amends the statute to give school districts the same latitude. Even with the new language added in the Senate, KASB is supportive of the bill. There are certainly more constraints with the new language that could minimize the number of districts that might choose to use the new options, but nonetheless, it does create more investment opportunities.

Our members have adopted, as part of our local school finance policies, the stance that local boards be allowed to be the best stewards of the public's money by investing it in ways that maximize return yet always be secured and never invested in a speculative fashion. Amending K.S.A. 12-1677b allows school districts to better invest their idle funds as it gives them a wider array of possibilities from which to choose, including direct obligations of the federal government.

Thank you for your consideration.

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DATE: 3-2-2009
ATTACHMENT: 5

TESTIMONY TO HOUSE FINANCIAL INSTITUTIONS COMMITTEE

ON SB 39

Robert Vancrum, BlueValley USD229

Government Affairs Specialist

MARCH 2, 2009

Chairman Brown and Honorable Members of the Committee:

SB 39 was a bill requested by the Blue Valley school district to allow school districts to have the same access to put 90-180 day funds in the same type of investments as is currently granted to cities and counties. Furthermore we had wished to make it clear that we could go directly to investment in US Government and Agency Securities or other investments permitted by the provisions of KSA 12-1675 (b)(4), (5), (6) and (7) without having the delay and expense of first putting such funds out for bid by commercial banks.

School districts since 1992 receive from the state or from local property sources only what the state allows. Nevertheless, the property portion of our receipts is received twice a year and there are times when the district is holding funds that it will need to pay expenses within less than 180 days but don't need now. As you know there has been a general contraction of all financial institutions and earnings rates have hit all time lows. We believe our stewardship of public funds requires us to be able to invest funds as rapidly as we can in safe investments that yield the highest rates – this is good money management and good government.

We understood that KSA 12-1677 required us to get the district's written investment policy approved by the PMIB board, but certainly had not understood that we would still have to have the delay and expense putting such funds out to bid, which really defeats the purpose of the bill. Unfortunately, KSA 12-1675 (c), which was not in the original bill, would still provide that we have to see if there is any bank that would pay the "average effective federal funds rate" on such funds. This is found in the last sentence of KSA 1275a. Since the banks have to post as security the very types of security we want to invest in directly, THE BANKS rather than the SCHOOL DISTRICT get the benefit of any increased earnings. I have attached a copy of both KSA 12-1675 and KSA 12-1675a to my testimony.

In this time of severe budget crunch at all levels, I would hope you would see this as an outdated and unfair requirement. I had hoped to have a balloon amendment adding the change requested to KSA 12-1675 (c) ready before the hearing was set on this bill, but I'm sure I can get it to the chair in few days.

Thank you for your attention and I'll be happy to answer your questions

HOUSE FINANCIAL INSTITUTIONS
DATE: 3-2-2009
ATTACHMENT: 6-1

KSA 12-1675

Chapter 12 — Cities and Municipalities

Article 16 — Miscellaneous Provisions

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12-1675. Investment of public moneys by governmental subdivisions, units and entities; conditions and limitations. (a) The governing body of any county, city, township, school district, area vocational-technical school, community college, firemen's relief association, community mental health center, community facility for the mentally retarded or any other governmental entity, unit or subdivision in the state of Kansas having authority to receive, hold and expend public moneys or funds may invest any moneys which are not immediately required for the purposes for which the moneys were collected or received, and the investment of which is not subject to or regulated by any other statute.

(b) Such moneys shall be invested only:

(1) In temporary notes or no-fund warrants issued by such investing governmental unit;

(2) in time deposit, open accounts, certificates of deposit or time certificates of deposit with maturities of not more than two years: (A) In banks, savings and loan associations and savings banks, which have main or branch offices located in such investing governmental unit; or (B) if no main or branch office of a bank, savings and loan association or savings bank is located in such investing governmental unit, then in banks, savings and loan associations and savings banks, which have main or branch offices in the county or counties in which all or part of such investing governmental unit is located;

(3) in repurchase agreements with: (A) Banks, savings and loan associations and savings banks, which have main or branch offices located in such investing governmental unit, for direct obligations of, or obligations that are insured as to principal and interest by, the United States government or any agency thereof; or (B)(i) if no main or branch office of a bank, savings and loan association or savings bank, is located in such investing governmental unit; or (ii) if no such bank, savings and loan association or savings bank having a main or branch office located in such investing governmental unit is willing to enter into such an agreement with the investing governmental unit at an interest rate equal to or greater than the investment rate, as defined in subsection (g) of K.S.A. 12-1675a, and amendments thereto, then such repurchase agreements may be entered into with banks, savings and loan associations or savings banks which have main or branch offices in the county or counties in which all or part of such investing governmental unit is located; or (C) if no bank, savings and loan association or savings bank, having a main or branch office in such county or counties is willing to enter into such an agreement with the investing governmental unit at an interest rate equal to or greater than the investment rate, as defined in subsection (g) of K.S.A. 12-1675a, and amendments thereto, then such repurchase agreements may be entered into with banks, savings and loan associations or savings banks located within this state;

(4) in United States treasury bills or notes with maturities as the governing body shall

determine, but not exceeding two years. Such investment transactions shall only be conducted with banks, savings and loan associations and savings banks; the federal reserve bank of Kansas City, Missouri; or with primary government securities dealers which report to the market report division of the federal reserve bank of New York, or any broker-dealer engaged in the business of selling government securities which is registered in compliance with the requirements of section 15 or 15C of the securities exchange act of 1934 and registered pursuant to K.S.A. 2006 Supp. 17-12a401, and amendments thereto;

(5) in the municipal investment pool fund established in K.S.A. 12-1677a, and amendments thereto;

(6) in the investments authorized and in accordance with the conditions prescribed in K.S.A. 12-1677b, and amendments thereto; or

(7) in multiple municipal client investment pools managed by the trust departments of banks which have main or branch offices located in the county or counties where such investing governmental unit is located or with trust companies incorporated under the laws of this state which have contracted to provide trust services under the provisions of K.S.A. 9-2107, and amendments thereto, with banks which have main or branch offices located in the county or counties in which such investing governmental unit is located. Public moneys invested under this paragraph shall be secured in the same manner as provided for under K.S.A. 9-1402, and amendments thereto. Pooled investments of public moneys made by trust departments under this paragraph shall be subject to the same terms, conditions and limitations as are applicable to the municipal investment pool established by ~~K.S.A. 12-1677a, and amendments thereto.~~

(c) The investments authorized in paragraphs (4), (5), (6) or (7) of subsection (b) shall be utilized only if the banks, savings and loan associations and savings banks eligible for investments authorized in paragraph (2) of subsection (b), cannot or will not make the investments authorized in paragraph (2) of subsection (b) available to the investing governmental unit at interest rates equal to or greater than the investment rate, as defined in subsection (g) of K.S.A. 12-1675a, and amendments thereto.

(d) In selecting a depository pursuant to paragraph (2) of subsection (b), if a bank, savings and loan association or savings bank eligible for an investment deposit thereunder has an office located in the investing governmental unit and such financial institution will make such deposits available to the investing governmental unit at interest rates equal to or greater than the investment rate, as defined in subsection (g) of K.S.A. 12-1675a, and amendments thereto, and such financial institution otherwise qualifies for such deposit, the investing governmental unit shall select one or more of such eligible financial institutions for deposit of funds pursuant to this section. If no such financial institution qualifies for such deposits, the investing governmental unit shall select for such deposits one or more eligible banks, savings and loan associations or savings banks which have offices in the county or counties in which all or a part of such investing governmental unit is located which will make such deposits available to the investing governmental unit at interest rates equal to or greater than the investment rate, as defined in subsection (g) of K.S.A. 12-1675a, and amendments thereto, and which otherwise qualify for such deposits.

(e) (1) All security purchases and repurchase agreements shall occur on a delivery versus payment basis.

(2) All securities, including those acquired by repurchase agreements, shall be perfected in the name of the investing governmental unit and shall be delivered to the purchaser or a third-party custodian which may be the state treasurer.

History:

L. 1968, ch. 217, § 1; L. 1969, ch. 80, § 1; L. 1973, ch. 63, § 6; L. 1975, ch. 68, § 1; L. 1976, ch. 79, § 2; L. 1977, ch. 55, § 1; L. 1982, ch. 52, § 6; L. 1983, ch. 47, § 7; L. 1986, ch. 76, § 7; L. 1989, ch. 48, § 66; L. 1992, ch. 146, § 3; L. 1993, ch. 207, § 2; L. 1994, ch. 104, § 2; L. 1997, ch. 180, § 14; L. 2004, ch. 154, § 53; L. 2006, ch. 57, § 3; July 1

KSA 12-1675a

Chapter 12 — Cities and Municipalities

Article 16 — Miscellaneous Provisions

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12-1675a. Definitions. As used in K.S.A. 12-1675, 12-1676, 12-1677, 12-1677a and 12-1677b, and amendments thereto:

- (a) “Bank” means any bank incorporated under the laws of this state or any other state, or organized under the laws of the United States which has a main or branch office in this state;
- (b) “savings and loan association” means any savings and loan association incorporated under the laws of this state or any other state, or organized under the laws of the United States and which has a main or branch office in this state;
- (c) “savings bank” means any savings bank organized under the laws of the United States and which has a main or branch office in this state;
- (d) “municipality” includes each investing governmental unit under K.S.A. 12-1675, and amendments thereto;
- (e) “main office” means the place of business specified in the articles of association, certificate of authority or similar document, where the business of the institution is carried on and which is not a branch;
- (f) “branch” means any office within this state, other than the main office, that is approved by a federal or state supervisory agency at which deposits are received, checks paid or money lent. Branch does not include an automated teller machine, remote service unit or similar device or a loan production office; and
- (g) “investment rate” means a rate which is the equivalent yield for United States government securities having a maturity date as published in the Wall Street Journal, nearest the maturity date for equivalent maturities. The 0-90 day rate shall be computed on the average effective federal funds rate as published by the federal reserve system for the previous week.

History:

L. 1997, ch. 180, § 13; L. 2006, ch. 57, § 4; July 1



Matthew S. Goddard, Vice President

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To: House Financial Institutions Committee
From: Matthew Goddard
Heartland Community Bankers Association
Date: March 2, 2009
Re: Senate Bill 163

The Heartland Community Bankers Association appreciates the opportunity to appear before the House Financial Institutions Committee to express our support for Senate Bill 163.

Senate Bill 163 requires greater disclosure to consumers by users of mortgage trigger leads. The bill does not prohibit anything, but rather attempts to ensure that consumers are educated about who is making an unsolicited offer of mortgage credit.

A mortgage trigger lead is defined in SB 163 as a credit report obtained under the prescreened offer of credit provisions of the federal Fair Credit Reporting Act where the issuance of the report is "triggered" by an inquiry in response to an application for credit. Procedurally, a mortgage trigger lead operates like this: John Doe applies for a loan with ABC Savings Bank which then runs a credit report on John Doe. The credit reporting agency provides the credit report to ABC Savings Bank. However, provided the applicant meets predetermined credit criteria established by the purchaser of the lead, the credit reporting agency also notifies lenders who have chosen to purchase mortgage trigger leads that John Doe has applied for a mortgage loan. John Doe then gets an unsolicited phone call the next day with a loan offer from XYZ Mortgage.

The anecdotal evidence we have seen is that the representative from XYZ Mortgage does not always explain who they are with or how they obtained the consumer's information. This leads the loan applicant to believe ABC Savings Bank sold their loan application information to someone else. This undermines consumer confidence in our banking system and its protection of private information.

Federal law preempts state law when it comes to a prescreened offer of credit and therefore, under the Fair Credit Reporting Act, individual states cannot prohibit the sale of mortgage trigger leads. The State of Minnesota passed legislation banning the sale of mortgage trigger leads and a District Court quickly struck down the law. However, the approach taken in SB 163 focuses on disclosure. This was done in Connecticut, Maine and Wisconsin, none of which have seen a court challenge.

Senate Bill 163 amends the Unfair Trade and Consumer Protection Act, K.S.A. 50-626, to make it a violation of the Act if the initial phase of an oral loan solicitation based on a mortgage trigger lead

does not clearly and conspicuously state that the solicitor is not affiliated with the lender with whom the consumer applied for credit and that the solicitation is based on personal information that was purchased from a consumer reporting agency without the knowledge or permission of the lender with whom the consumer initially applied. It also makes it a violation of the Act if a written solicitation based on a mortgage trigger lead fails to make similar statements on the first page of said solicitation. The Unfair Trade and Consumer Protection Act is enforced by the Kansas Attorney General.

To avoid any possible inconveniences to the customer and their business relationships, Senate Bill 163 exempts from its provisions a credit report obtained by a lender the consumer applied for credit with as well as a lender that has an outstanding extension of credit to the consumer.

There was a concern in the Senate Financial Institutions and Insurance Committee that some solicitors using mortgage trigger leads might not adhere to the Kansas Mortgage Business Act and certain federal regulations. As a result, the Committee added the requirement in Clause (C) that, if applicable, any solicitor using a mortgage trigger lead must be in compliance with the Kansas Mortgage Business Act and any other law or regulation. It has since been suggested that other language may be more clear and, accordingly, a balloon amendment has been attached for your consideration.

Again, the Senate Bill 163 does not prohibit the sale or use of mortgage trigger leads. If a consumer would benefit from an unsolicited offer of mortgage credit, the bill does nothing to stop that from happening. What the bill does do, however, is safeguard the interests of Kansas consumers by making sure that whoever makes that unsolicited offer of credit discloses to the consumer that they are not affiliated with the consumer's mortgage lender and that they explain how they obtained the consumer's information.

The Heartland Community Bankers Association respectfully requests the House Financial Institutions Committee recommend Senate Bill 163 favorable for passage.



February 21, 2006

~~XXXXXXXXXX~~
~~XXXXXXXXXX~~
~~XXXXXXXXXX~~
~~XXXXXXXXXX~~

Dear ~~XXXXXXXXXX~~

As the Mortgage industry becomes more competitive, getting new business in the door is a critical component for your success. Lists and standard pre-approval programs are no longer bringing in the prospects they once did. Response rates from Radio and TV advertising are likely slipping.

Being aggressive and having a great offer are important, but more important than ever is timing. How will you know when a consumer is ready for a mortgage loan? Will you know before your competitors do?

We have developed a tool to provide you an unprecedented level of insight into a consumer's mortgage purchase behavior. Experian *Prospect Triggers* gives you a level of visibility that is unique in the marketing world. Within 24 hours of a consumer applying for a mortgage loan with another company, you will know. How powerful would that be for your organization?

With *Prospect Triggers* from Experian you can :

- Receive a daily list of consumers who have actively applied for a mortgage loan within the past 24 hours and who meet your pre-approval criteria!
- Set credit score limitations as well as credit attributes. For example, you may only want to deal with consumers in a certain FICO score range, or consumers with a certain amount of revolving debt and no prior mortgage. It is entirely up to you!
- Feel confident knowing that you have a steady flow of pre-approved credit active consumers that need your product.

I ask for the opportunity to talk to you further about this exciting new tool. This is a solution that can positively impact ~~XXXXXXXXXX~~ bottom line. *Prospect Triggers* brings an unprecedented new level of precision to your marketing programs.

If you would like to contact me, please call 913 345 8395 or e-mail me at david.vaninwegen@experian.com. Otherwise, I will call you the week of February 27th to follow up and answer any questions you might have regarding this innovative solution.

Sincerely,

David Van Inwegen
Account Executive
Experian

Prospect TriggersSM

Make a firm offer of credit to consumers who initiated credit activity just 24 hours earlier

Now you can dramatically increase the response rate to your preapproved credit offers by reaching consumers at the precise time they actively are shopping for credit. With Experian's Prospect TriggersSM you can identify opportunities as they occur and make firm credit offers, as often as daily, to consumers who meet your credit criteria.

Superior data freshness and timely delivery

Experian[®], the industry leader in event-based triggering solutions, brings a new level of timeliness and precision to the prescreen process. Historically, prescreen relied on dated information to identify consumers who might be looking for credit. Prospect Triggers is the first preapproved marketing solution to target consumers based on their actual credit behavior within the past 24 hours — nationwide — and to deliver that data to you daily.

You can make timely credit offers by mail, phone or e-mail to increase response rates, reduce overall acquisition costs and boost profitability, reaching credit-active consumers before your competitors do.

Prospect Triggers is ideal for:

- Mortgage and home-equity lenders
- Credit card issuers
- Banks
- Retailers
- Automotive lenders

Incorporates your credit criteria

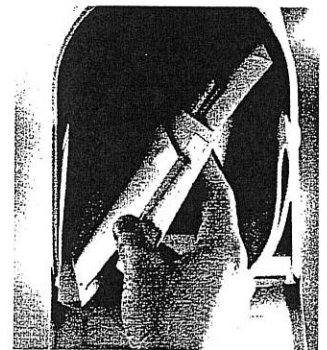
Experian will monitor a prospect list that incorporates your credit criteria. We can generate a prospect list for monitoring using one of the following three items:

- Experian's ExtractPlusSM a comprehensive nationwide database of credit-active consumers
- Your current prescreen list
- A prospect list from an outside source

Uses new trade and inquiry triggers — Experian identifies highly responsive, credit-active consumers who are prime candidates for your preapproved offers and notifies you within 24 hours when those consumers actively are seeking credit.

Segments and suppresses less-creditworthy consumers — You can use scores and attributes to segment your criteria. Back-end screening helps to eliminate consumers with recent derogatory activity.

A fully compliant process — All triggered consumer names are run through Experian's pander/opt-out file, and the process fully complies with all Fair Credit Reporting Act and FACT Act requirements.



Make the most of a time-sensitive opportunity

When a qualified consumer is actively seeking credit, you need to be there with your marketing message. With Experian's Prospect Triggers, you can reach the right people at the right time, bringing a new level of precision and profitability to your credit marketing programs.

To find out more about Prospect Triggers, contact your local Experian sales representative or call 800 333 4930.

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FTC Consumer Alert

Federal Trade Commission ■ Bureau of Consumer Protection ■ Division of Consumer & Business Education

Shopping For a Mortgage? Your Application May Trigger Competing Offers

If you apply for a mortgage, your inbox, answering machine, and mailbox may fill up quickly with competing offers from other mortgage companies. It's not that the company you applied to is selling or sharing your information. Rather, it's that creditors – including mortgage companies – are taking advantage of a federal law that allows them to identify potential customers for the products they offer, and then market to them. The Federal Trade Commission, the nation's consumer protection agency, wants you to know why your application for a mortgage may trigger competing offers, how you can use them to your benefit, and how to stop getting them if that's your choice.

The unsolicited calls, emails, and letters about competing offers often are called “prescreened” or “pre-approved” offers of credit. They are based on information in your credit report that suggests you meet criteria set by the creditor making the offer – for example, you live in a certain zip code, you have a certain number of credit cards, or you have a certain credit score. Credit bureaus and other consumer reporting companies sell lists of consumers who meet the criteria to insurance companies, lenders, and other creditors.

When you apply for a mortgage, the lender usually gets a copy of your credit report. At that point, an “inquiry” appears on your report showing that the lender has looked at it. The inquiry indicates you're in the market for a loan. That's why mortgage companies buy lists of consumers who have a recent inquiry from a mortgage company on their credit report. Federal law allows this practice if the offer of credit meets certain legal requirements.

Clearly, some mortgage companies benefit from the practice. But the FTC says consumers can benefit, too: prescreened offers can highlight other available products and make it easier to compare costs while you carefully check out the terms and conditions of any offers you might consider.

Still, some people may prefer not to receive prescreened offers of credit and insurance at all. Here's how to stop them:

- 1. Call 1-888-5-OPTOUT (1-888-567-8688) or visit www.optoutprescreen.com.** When you call this toll-free number or visit the website, you will be asked to provide certain personal information, including your home telephone number, name, Social Security number, and date of birth. The information you provide is confidential, and will be used only to process your request to opt out. Don't enter any personal information until you have checked for indicators that the site is secure – a lock icon on your browser or a web address that begins *https*.

Opting out of prescreened offers does not affect your ability to apply for credit or to get it. Your opt out request will be processed within five days, but it may take up to 60 days before the prescreened offers stop coming. If you have a joint mortgage, both parties need to opt out

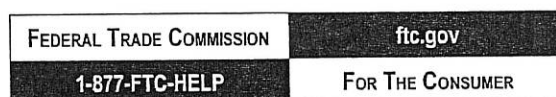
to stop the prescreened offers. If or when you want to opt back in, use the same telephone number or website.

2. Put your phone number on the federal government's National Do Not Call Registry to reduce the telemarketing calls you get at home. To register your phone number or to get information about the registry, visit www.donotcall.gov, or call **1-888-382-1222** from the phone number you want to register. You will get fewer telemarketing calls within 31 days of registering your number. Your number stays on the registry for five years, until it is disconnected, or until you take it off the registry.

That said, the FTC wants you to know that many companies use other tools to identify marketing prospects, and that the Do Not Call Registry won't shield you from all telemarketers – for example, those with which you have a business relationship. Even if you opt out of prescreened offers and put your number on the National Do Not Call Registry, you can expect some unsolicited offers.

For more information about the Fair Credit Reporting Act, the law that spells out the terms under which companies can check credit reports, visit www.ftc.gov/credit.

The FTC works for the consumer to prevent fraudulent, deceptive and unfair business practices in the marketplace and to provide information to help consumers spot, stop, and avoid them. To file a complaint or to get free information on consumer issues, visit www.ftc.gov or call toll-free, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261. The FTC enters Internet, telemarketing, identity theft, and other fraud-related complaints into Consumer Sentinel, a secure online database available to hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.



February 2007



Mortgage triggers' prompt complaints

Brian Bergstein, Associated Press
Saturday, June 2, 2007

BOSTON -- As a former mortgage broker, Adryenn Ashley thought she knew what to expect when she refinanced her house in March. Yet Ashley was unprepared for one twist she encountered: a barrage of phone calls and e-mails from rival lenders vying to sell her a better mortgage.

Some of the callers apparently knew just how much money she was borrowing. Others made such misleading come-ons such as "We need to update your information" or "We need to complete your application," Ashley recalls.

"I have privacy concerns over that," she said from her home in Petaluma. "My information should be confidential."

These days, mortgage shoppers like Ashley are supreme telemarketing targets, thanks to "trigger leads" that the credit reporting bureaus sell to lenders the instant a consumer's credit file is pulled by a loan officer. So when Ashley's lender checked her credit to prepare her loan, dozens of other mortgage companies were tipped off. These alerts can be had for a few bucks per name if bought in bulk.

This is legal -- though not necessarily for much longer. A few states have been exploring restrictions on the practice, and last week, Minnesota's governor approved a block on most trigger leads. A ban is pending in Massachusetts.

Potential Congressional action is brewing as well. The House Financial Services Committee, chaired by Rep. Barney Frank, D-Mass., is investigating the issue in advance of hearings it expects to hold on a broad review of the credit-reporting agencies, according to committee spokesman Steven Adamske.

Such hearings could find that trigger leads have drawn some powerful enemies.

The proposed ban in Massachusetts, for example, was floated by the state bankers' association. Its chief operating officer, Kevin Kiley, fears that "the trust that has been established between the bank and the consumer has been essentially undercut" because of trigger leads.

"Why should a bank be in a situation where it invests millions of dollars in a branch network and advertising, if I can go out and just buy leads?" Kiley said. (On Web message boards frequented by mortgage brokers, the act has a more colorful name: It's called "snaking a deal.")

The National Association of Mortgage Brokers, whose membership includes many customers of trigger leads, officially isn't a fan of them. Its president, Harry Dinham, laments that many buyers of the alerts aren't really in a position to make a firm offer of credit, as required by the Fair Credit Reporting Act.

Even so, Dinham says a ban would be overkill. He'd prefer to see the leads sold only on consumers who elect to put their names on the trigger lists. As it stands now, leads about your interest in a mortgage can be sold unless you bother to opt out from all prescreened credit solicitations. That requires calling 1-888-567-8688 or going to www.optoutprescreen.com.

Mortgage triggers' prompt complaints

The credit agencies defend their sale of trigger leads by arguing that it promotes competition, which keeps rates down. That stance has support at the Federal Trade Commission, which says consumers can benefit from the practice.

"It is absolutely false to say the first lender or broker that a consumer goes to is definitely going to have the best offer," said Stuart Pratt, director of the Consumer Data Industry Association, the credit reporting agencies' trade group.

Pratt insists that the credit agencies, led by the three largest -- Experian, TransUnion and Equifax -- check their trigger leads against anti-telemarketing Do Not Call lists.

However, it's unclear how well that step works or is being followed. Ashley, for example, believes she was already on the Do Not Call list. Same with Matthew Tuttle, who runs a wealth-management firm in Stamford, Conn.

"I'm getting these calls five months after I refinanced," Tuttle said. "Refinancing is a pain enough -- I'm not doing it again, especially not for a recording," he said.

The length of Tuttle's onslaught might not be unusual. Pace University publicist Cara Halstead Cea said she and her husband have averaged at least a call a day for 14 months now. "We understand you are looking to refinance," the callers still intone. The frenzy prompted the couple to get caller ID so they can answer the phone with their own script: "If this is about refinancing, we're all set. Please take us off your list."

Mortgage triggers have been sold for at least a few years, but they have become more of an issue recently. Kiley at the Massachusetts Bankers Association believes this is because the home-buying binge early in the decade caused an explosive growth of mortgage brokers and mortgage companies that now, in a cooling market, are redoubling efforts to win business.

Trigger leads also have cascaded because of a vast data-collecting infrastructure created by the credit bureaus and amplified by innumerable information brokers who serve as resellers. "Borrowers Trigger'd Yesterday Delivered via email to you Today," reads an ad on Google for one broker's site, MortgageTriggers.com.

Such resellers offer to filter trigger alerts for mortgage lenders by dozens of criteria, including consumers' location, credit scores and home value. DailyTriggerLeads.com says buyers of its alerts can "eliminate Hispanics or select them."

The owner of one marketing service -- who refused to be identified by name, fearing negative repercussions for his company -- said he has been selling mortgage triggers for almost two years, accounting for about 20 percent of his revenue. He said he presumes his product increases the chance a consumer will get a mortgage offer that keeps the mortgage banker honest and the playing field fair.

That's how he can sleep at night, he said.



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Opt Out of Uninvited Mortgage Offers

By Kenneth R. Harney
Saturday, September 9, 2006; F01

Picture this: You apply for a loan from a local mortgage company on a Monday afternoon. By Tuesday morning, you're getting unsolicited phone pitches from out-of-state lenders who seem to know a lot about your personal finances:

- Your credit scores.
- Your outstanding credit card balances and other revolving credit accounts.
- The approximate market value of your home and how much you owe on it.
- Your home address and obviously, your phone number.

Thousands of loan applicants around the country are receiving uninvited pitches such as these, sometimes just 12 hours after getting a mortgage quote. But now a major mortgage industry group is planning a campaign to put a damper on the practice.

"There are very serious privacy, identity-theft and bait-and-switch issues involved here," said Roy DeLoach, executive vice president of the 27,000-member National Association of Mortgage Brokers. "It's outrageous that simply applying for a home loan should open up a person's sensitive personal information."

The practice targeted by the mortgage brokers is known in the industry as "trigger list" marketing -- a warp-speed version of the "pre-screened" credit card offers you get routinely. It works this way: When your local mortgage company checks your credit to provide you a rate quote, one or more of the national credit bureaus take that inquiry and essentially turn it into a marketing product.

So-called "lead generator" companies and some lenders themselves are eager to know the identities of people who are in the process of shopping for a mortgage -- and they pay the credit bureaus for those hot prospects.

Generally the prospects have to fit credit and geographic profiles that the lenders have set in advance. For example, one customer might want only the identities and contact information of people in the Los Angeles area with FICO credit scores above 700 who have applied or inquired about a jumbo home mortgage within the past 24 hours.

Another might want only the credit and contact information of Washington or Chicago residents who applied for a zero-down-payment loan no more than 12 hours ago. The fresher the information, the better, marketers say.

The credit bureaus defend their right to sell applicants' personal financial information, arguing that it is simply a zippier form of marketing pre-screened target prospect lists for credit offers -- something they have been doing for years.

Tim Summers, a vice president at Experian, one of the three dominant national credit bureaus, wrote in an e-mail that his company's "Prospect Triggers" program "provides consumers with choice and potentially

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significant cost savings by delivering relevant information at the decision-making point instead of weeks after a mortgage lending choice has been made."

Summers said the program meets "all requirements" under federal credit and privacy statutes.

The National Association of Mortgage Brokers disagrees. When credit bureaus sell overnight trigger lists to third-party lead generators, the brokers argue, they fail to comply with a key provision of the Fair Credit Reporting Act: that anyone receiving consumers' personal information must be in the position to make a "firm offer of credit" or have previously received permission from the consumer to obtain credit file data. Third-party lead generators obtain no permission and are in no position to make credit offers, firm or otherwise.

The brokers also contend that even lenders who obtain trigger lists may not be in the position to make the firm offers that the law requires. A firm offer for a mortgage is vastly different from a firm offer for, say, a credit card. The mortgage process is more complex, and rates and fees are more difficult to quote on the basis of a credit score alone.

To make a firm loan quote, DeLoach said, "you need to know a consumer's income, you need to have an appraisal" -- you need to know a lot more than telephone marketers have in hand.

The biggest problem, however, may be the confusion that overnight trigger marketing brings to the mortgage business. Your local lender or broker quotes you one rate and estimated fees. But now one or more outside lenders -- whose reputation for honesty or service you know nothing about, and who are in possession of your personal financial data without your permission -- intervene and offer a lower rate.

Are the rate quotes for real? Or will they morph into costly bait-and-switch deals weeks or months from now?

You really can't know. But what you can do is remove yourself from all potential trigger list come-ons by opting out. Much as with the federal Do Not Call program, you can opt out of pre-screened offers by going to <http://www.optoutprescreen.com/> or by calling this toll-free number: 888-567-8688.

Kenneth R. Harney's e-mail address is KenHarney@earthlink.net.

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- Centex Homes - Over 50 years of better built & better value - Enjoy Life!

7-12

1 *sumer initially applied and that the solicitation is based on personal*
 2 *information about the consumer that was purchased, directly or*
 3 *indirectly, from a consumer reporting agency without the knowl-*
 4 *edge or permission of the lender or broker with which the consumer*
 5 *initially applied. Clear and conspicuous shall include legible type*
 6 *in contrast by typography, layout or color with other printing on*
 7 *the first page of the correspondence; and*

8 ~~(C) if applicable, any solicitor under clause (A) or (B) shall be~~ Any
 9 ~~in compliance with the provisions of the Kansas mortgage business~~
 10 ~~act and any other law or regulation.~~ , unless otherwise exempt,

11 Sec. 3. K.S.A. 50-624 and 50-626 are hereby repealed.

12 Sec. 4. This act shall take effect and be in force from and after its
 13 publication in the statute book.

7-12



KANSAS CREDIT UNION ASSOCIATION

To: House Financial Institutions Committee

**From: Haley DaVee, Director of State Legislative & Public Affairs
Kansas Credit Union Association**

Date: Monday, March 2, 2009

Re: Written Support of Senate Bill 163

The Kansas Credit Union Association, on behalf of the 86 state-chartered and 23 federally-chartered Kansas credit unions, appreciates this opportunity to provide written comment in support of SB 163.

SB 163 would require greater disclosure to consumers by lenders utilizing mortgage trigger leads. Other states have taken steps to require full disclosure of unsolicited offers of mortgage credit and KCUA supports the passage of this legislation in Kansas.

Requiring full disclosure from users of mortgage trigger leads is ultimately a consumer protection measure. Kansas credit unions recognize the consumer's interest in preserving the privacy of their personal information. When consumers receive unsolicited offers of mortgage credit from lenders who utilize mortgage trigger leads and these solicitations do not disclose the source of their lead, it can cause the consumer to question the security of their information at Kansas credit unions.

The Kansas Credit Union Association respectfully requests that the House Financial Institutions Committee recommend SB 163 as favorable for passage.



March 2, 2009

To: House Financial Institutions Committee

From: Kathleen Taylor Olsen
Kansas Bankers Association

Re: SB 163: Mortgage Trigger Leads

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to present to the Committee written testimony in support of **SB 163** which amends the Kansas Unfair Trade and Consumer Protection Act. The bill would add a new section to K.S.A. 50-626 which lists practices that are considered to be deceptive.

We have received calls from our member banks, frustrated by the fact that a customer has been contacted by another lender shortly after applying for a loan with the bank. The customer usually assumes that the bank has sold its loan application information to these other lenders and is typically angry. In the time that it takes the bank to assure the customer that it was a third party who sold this information, the customer is completely confused and still is angry.

While SB 163 does not prohibit the practice of selling mortgage trigger leads, it does provide some safeguards against this confusion by the customer and will greatly improve the loan application process.

Thank you and we respectfully request that the Committee act favorably on **SB 163**.