

SESSION OF 2005

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2205

As Recommended by House Committee on
Financial Institutions

Brief*

HB 2205 enacts new law regarding the prohibition of the unauthorized use of a lender's name, trade name, or trademark. The bill provides that no person may include the following information in a solicitation for products or services unless the solicitation clearly states in bold faced type on the front page of correspondence that the person is not sponsored by or affiliated with a lender which shall be identified by name:

- the name, trade name, or trademark of a lender name or a name similar to that of a lender without consent of the lender;
- the loan number, loan amount, or other specific loan information that is:
 - not publicly available in a solicitation for the purchase of products and services;
 - is publicly available in a solicitation, if such information is prohibited by KSA 45-230; and
 - publicly available and allowed in KSA 45-230.

The statement must also include the name, address, and telephone number of the person making the solicitation and that any loan information referenced was not provided by the lender.

The bill further provides that without consent from the lender, the correspondence cannot make reference to an existing lender or a loan number, amount, or other specific loan information on the outside of an

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

envelope, visible through the envelope window, or on a postcard in connection with any written communication that includes or contains a solicitation for products or services offered by the other lender.

The bill also provides a remedy for solicitations that do not have consent of the existing lender:

- lender or owner of the name, trade name, or trademark may seek an injunction against a person who violates this act;
- the person seeking the damages does not have to prove actual damages and may seek actual damages and any profits the defendant has accrued as a result of the violation;
- irreparable harm and interim harm to the lender or owner shall be presumed; and
- the prevailing party in any action brought pursuant to this section is entitled to recover costs associated with the action and reasonable attorney fees for the other party.

The act exempts communications by a lender or affiliates with a current customer or with a person who was a customer during the preceding 18 months and any advertisement or solicitation for products or services that compares products or services offered by the other lender, provided the person making the comparison is clearly and conspicuously identified. A lender is defined by the act as a bank, savings and loan association, savings bank, credit union, finance company, mortgage bank, mortgage broker, and any affiliate.

Background

The bill was requested by the Heartland Community Bankers Association whose representative explained that HB 2205 would address concerns about misleading, and possibly deceptive, use of certain information in solicitations for mortgage loans and related insurance products. The solicitations, the Association's representative noted, often use words such as "authorized" and "endorsed" to promote products and services and may include the recipient's loan amount and loan number.

The bill is also supported by the Kansas Bankers Association.

The fiscal note prepared by the Division of the Budget indicates that passage of the bill would have no fiscal effect.