

## MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS COMMITTEE

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

All members were present except:

Anthony Brown- excused

Pat George- excused

Committee staff present:

Melissa Calderwood, Kansas Legislative Research Department

Michele Alishahi, Kansas Legislative Research Department

Bruce Kinzie, Revisor of Statutes Office

Patti Magathan, Committee Secretary

Conferees appearing before the committee:

Matt Goddard, Heartland Community Banking Association

Kathy Olsen, Kansas Banking Association

Kevin Glendening, Office State Banking Commission

Ron Gaches, Gaches, Braden, Barbee & Associates

Patrick DeLapp, Public

Others attending:

See attached list.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Meeting was adjourned at 5:15 P.M.