
SENATE COMMITTEE
ON
BUSINESS AND COMMERCE

TEXAS USURY LAWS
AND CREDIT COUNSELING SERVICES



INTERIM REPORT TO THE
79TH TEXAS LEGISLATURE



Senator Troy Fraser
Chairman
 Senator Kip Averitt
Vice Chairman
 Senator Ken Armbrister
 Senator Kim Brimer

Senator John Carona
 Senator Craig Estes
 Senator Mike Jackson
 Senator Eddie Lucio
 Senator Leticia Van de Putte

The Texas Senate
Business and Commerce Committee

December 1, 2004

The Honorable David Dewhurst
 Lieutenant Governor of Texas
 The Capitol, Second Floor East
 Austin, Texas


Dear Governor Dewhurst:

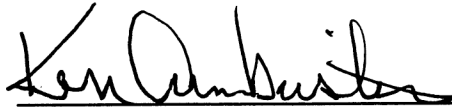
On behalf of the Senate Committee on Business and Commerce, I hereby submit the interim report on usury laws and consumer credit counseling services for consideration by the 79th Texas Legislature.

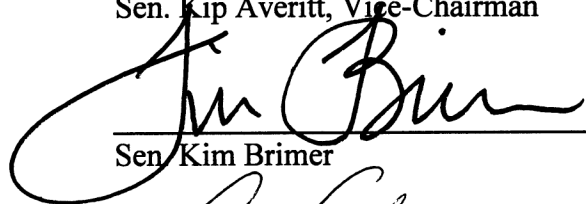
This report was prepared pursuant to interim committee charge number two to study the current structure of Texas' usury laws in order to determine how they are effected by federal law and how state law impacts new economic development and job production in the State. Pay particular attention to the relationship between the Constitutional limits on commercial and consumer lending and the location of new financial services companies within Texas. Make recommendations for improving the structure while increasing economic development and enhancing consumer protections. A thorough assessment of the credit counseling and debt management industry should accompany the Committee's examination of this subject, including recommendations for improving services.

Respectfully Submitted,



 Sen. Troy Fraser, Chairman



 Sen. Kip Averitt, Vice-Chairman

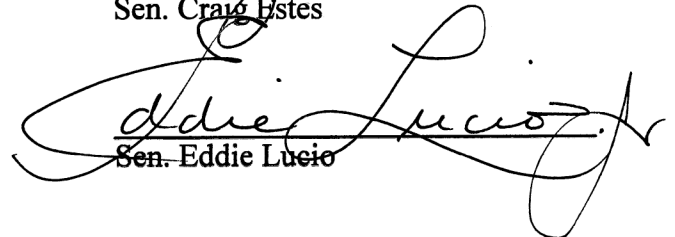

 Sen. Ken Armbrister


 Sen. Kim Brimer


 Sen. John Carona


 Sen. Craig Estes


 Sen. Mike Jackson


 Sen. Eddie Lucio


 Sen. Leticia Van de Putte

Interim Charge Number Two

During the interim of the 78th Legislature, the Lieutenant Governor issued the following charge to the Senate Business & Commerce Committee:

Study the current structure of Texas' usury laws in order to determine how they are affected by federal law and how state law impacts new economic development and job production in the State. Pay particular attention to the relationship between the Constitutional limits on commercial and consumer lending and the location of new financial services companies within Texas. Make recommendations for improving the structure while increasing economic development and enhancing consumer protections. A thorough assessment of the credit counseling and debt management industry should accompany the Committee's examination of this subject, including recommendations for improving services.

The Senate Business & Commerce Committee was requested to study usury laws in Texas and to assess the credit counseling and debt management industry. The following report is divided into two distinct sections due to the unique nature of each issue.

In order to explore the issues present in this interim charge, Senate Business & Commerce Committee staff sought the input of stakeholders as well as government agency personnel and policy makers. Additionally, the Senate Business & Commerce Committee held a hearing on May 3rd, 2004 to hear both invited and public testimony on usury laws and the credit counseling industry.

USURY

History and Concept Overview

Usury is generally defined as lending money at an exorbitant interest rate. Discussions concerning the ethics of usury have a long and interesting history. Several major world religions, including Christianity, Islam, and Judaism, scripturally and doctrinally forbid the practice of charging interest for the use of money. For example, there are at least fifteen biblical injunctions against usury.¹ It seems that for almost as long as people have charged interest for borrowing money, others have attempted to prohibit or to regulate it in some form.

The term usury may also refer to charging interest in excess of the legal rate of interest. State usury laws specify maximum legal interest rates at which loans can be made. The Texas Constitution of 1869 repealed then-existing state usury laws and prohibited the Legislature from limiting the amount of interest collected as payment for the use of money. However, interest rate abuses prompted a constitutional amendment reintroducing interest rate caps in 1876, which were again modified in 1891.²

In 1891, the Texas Legislature established a legal rate of interest of six percent per year, but the law permitted interest of up to ten percent per year if the parties agreed in contract. It was not until the Constitution was again amended in 1960 that the Legislature was delegated authority to set maximum rates of interest greater than ten percent per year. The 1960 constitutional amendment gave the Legislature authority to classify loans and lenders, license and regulate lenders, define interest, and fix maximum rates of interest. A 2001 non-substantive statutory revision resulted in the current constitutional language, but did not alter the effect of the 1960 constitutional amendment.

Policy is an important consideration of usury laws. Vernon's Texas Constitution Annotated provides the following policy observation: "The ethical nature of the concept of usury renders it impossible to formulate permanent and definite criteria of what constitutes a usurious transaction. As long as freedom of contract remains the cornerstone of economic organization it is up to the legislature to decide at what point a voluntary economic transaction constitutes an abuse of economic freedom and thus an act of usury."³

The necessary balance between allowing economic transactions to proceed unfettered by government interference and protecting individual borrowers makes it challenging to define absolute criteria which constitute usury. Usury laws are intended to be a protective measure to ensure that borrowers are not

¹ Exodus 22:25, Leviticus 25:36 and 25:37, Deuteronomy 23:19 and 23:20, Nehemiah 5:7 and 5:10, Psalm 15:5, Proverbs 28:8, Isaiah 24:2, Jeremiah 15:10, Ezekiel 18:8, 18:13, 18:17, and 22:12.

² Vernon's Texas Constitution Annotated, Volume 3, Interpretive Commentary.

³ Ibid.

subject to unjust terms of credit because of unequal bargaining power. In attempting to protect borrowers through interest rate restrictions, strict usury laws could have the unintended consequence of restricting access to capital for commercial and consumer purposes, reducing the supply of capital, and increasing the cost of credit. Economic development and job retention and production are also tied to these issues.

Usury in Texas

The Texas Constitution addresses the issue of usury:⁴

The Legislature shall have authority to define interest and fix maximum rates of interest; provided, however, in the absence of legislation fixing maximum rates of interest all contracts for a greater rate of interest than ten per centum (10%) per annum shall be deemed usurious; provided, further, that in contracts where no rate of interest is agreed upon, the rate shall not exceed six per centum (6%) per annum.

In reality, very few credit transactions are actively constrained by the constitutional interest rate limits of ten percent and six percent because state statute provides higher interest limits for most lenders and loans.

Most usury laws are codified in Title Four of the Texas Finance Code, also called the Texas Credit Title. Consumer and commercial loan transactions are governed by separate credit law provisions in the Credit Title. Subtitle A typically applies to commercial loans, as well as consumer loans with interest not exceeding ten percent annually. In general, Subtitle B regulates consumer loans with interest in excess of ten percent annually. When conceptualizing Texas credit laws, it is important to differentiate between these two types of loans.

Commercial Loans

A commercial loan is defined as a loan made primarily for business, commercial, investment, agricultural, or similar purposes.⁵ Commercial loans are authorized by Chapter 306 of the Texas Finance Code. They are subject to a commercial usury ceiling of 18 percent annual interest, which may float with inflation to 24 percent (or 28 percent for loans exceeding \$250,000).⁶

For specific types of large commercial loans, called qualified commercial loans, Texas statute allows for equity participation in addition to the allowable interest rate. Equity participation agreements occur typically with small business loans and allow an interest rate under the legal limit plus a specified percentage

⁴ Texas Constitution, Art. 16 § 11.

⁵ Texas Finance Code § 306.001(5).

⁶ Texas Finance Code § 303.009.

of profits from the transaction the loan finances. In these agreements, the lender subjects part of his return to the future profits of the venture. Equity participation agreements are seen as a viable way to encourage business investment and strengthen the economy especially during times of inflation.⁷

Texas statute defines qualified commercial loans as loan transactions valued at or exceeding \$250,000 if non-real estate secured or three million dollars if secured by real estate.⁸ The statute was written in 1997 in response to an ambiguity in law as to whether equity participation was considered interest and thus subject to usury determinations. Equity participation contracts were being successfully employed to procure a return greater than otherwise allowed by law prior to 1997; however, the agreements had to be carefully constructed in such a way to avoid usury taint, and even then still contained a small element of risk.⁹

The statutory definition of interest in Texas is broad, covering all compensation for the use, forbearance, or detention of money.¹⁰ This is true both for commercial and consumer loans. Penalties for Subtitle A violations apply to a contract for, charge, or receipt of usurious interest. The basic penalty formula is the greater of (a) three times the amount computed by subtracting the amount of allowable interest from the total amount of interest, or (b) the lesser of two thousand dollars or 20 percent of the principal.¹¹ If the interest on a Subtitle A loan is charged and received in excess of twice the allowable amount, additional liability is assessed. This additional amount is forfeiture of principal along with all interest and other amounts charged and received.¹² Subtitle A penalties for commercial loan violations are civil penalties. Creditors subject to Subtitle A have the opportunity to correct or cure violations under certain circumstances.¹³

Note that Texas is one of very few states that regulates interest rates for commercial loans among sophisticated parties. Most states have no effective commercial usury laws for large commercial loans (see Appendix A). Only five other states cap interest rates for these loans. Of those states that do cap large commercial transaction interest rates, Florida and Colorado have a cap of 45 percent; Arkansas

⁷ Stephen Hackerman, "The Application of Texas Usury Laws to Equity Participation Agreements," *Texas Law Review* (1970).

⁸ Texas Finance Code § 306.101.

⁹ Stephen Hackerman, "The Application of Texas Usury Laws to Equity Participation Agreements," *Texas Law Review* (1970).

¹⁰ Texas Finance Code § 301.002(a)(4).

¹¹ Texas Finance Code § 305.001 and § 305.003.

¹² Texas Finance Code § 301.002.

¹³ Texas Finance Code § 305.103.

commercial usury laws are similar to those in Texas, however Arkansas commercial usury laws have been effectively federally preempted through provisions of the Gramm-Leach-Bliley Act, also known as the Financial Service Modernization Act, enacted in November 1999.¹⁴

Consumer Loans

The Texas Finance Code has a relatively complicated system of determining maximum allowable interest rates for various consumer loan products in Subtitle B. For consumer loans to exceed the constitutional interest ceiling of ten percent, they must comply with licensing or registration requirements. Lenders must follow regulations for permissible interest rates, specific fees and charges that may be assessed, insurance rules, consumer protection practices and disclosures, and late charge requirements.

Civil penalties for violating consumer loan provisions of Subtitle B are prescribed in Chapter 349 of the Finance Code, along with criminal misdemeanor penalties for certain violations. Contract for, charge, or receipt of interest in violation of Subtitle B results in a basic penalty of twice the amount of interest and attorney's fees. Additional penalties exist for excessive charges other than interest or time price differentials, for charging twice the allowable interest rate, and for certain non-interest related violations. Subtitle B violations can be corrected by creditors under limited circumstances.

As an illustration of Texas consumer loan regulations, the following is a list of major categories of Subtitle B consumer loans in the Finance Code and their respective interest rate ceilings:

- Chapter 342, Subchapter F authorizes Signature Loans up to \$520 with effective interest to 240 percent
- Chapter 342, Subchapter E authorizes Personal Loans with effective interest to 32 percent for loans up to \$1,560; for loans up to \$13,000 the maximum rate is a blended rate of 30 percent, 24 percent, and 18 percent
- Chapter 342 authorizes Deferred Presentment (commonly called Payday Loans) which are microloans to \$520 secured by check, with typical rates ranging from 152 percent to 309 percent
- Chapter 345 authorizes Retail Installment Contracts with effective interest to 22 percent
- Chapter 345 authorizes Retail Charge Agreements that charge the market competitive rate as computed by the Office of Consumer Credit Commissioner, currently 21 percent
- Chapter 346 allows for Revolving Credit Accounts (credit cards) with effective interest to 18 percent
- Chapter 348 dictates terms for Motor Vehicle Sales Finance and allows effective interest to 27 percent
- Chapter 371 authorizes Pawn Loans with a maximum interest rate of 240 percent
- Interest rate ceilings pertaining to Second Lien Home Mortgages are also included in the Texas Finance Code.

¹⁴ Commercial Usury Comparison Chart prepared by Dan Nicewander (see Appendix A)

Industry and Regulatory Concerns

Discourages Headquarters and Economic Development - Relatively few large banks and other financial institutions headquarter in Texas. For example, the largest bank headquartered in Texas is Frost Bank in San Antonio. Frost bank has consolidated assets of \$10,045 million and is the 78th largest commercial bank in the U.S. Southwest Bank of Texas in Houston is the second largest bank in Texas, ranking at 103, and Texas State Bank in McAllen ranks third at 115 (see Appendix B).¹⁵

Texas is a host state for many large financial institutions. These institutions headquarter in other states and operate branch locations in Texas. According to FDIC data for commercial banks and savings institutions, all but 34 of the state's 741 total institutions are headquartered in Texas. However, when looking at total deposits in Texas, 45 percent of bank and thrift deposits are with institutions headquartered in other states (see Appendix B).¹⁶

Restrictive usury laws perhaps contributed to the dearth of major financial institutions headquartered in Texas. Because lenders can only export rate ceilings from the headquarter jurisdiction, Texas is not a practical location for major financial institutions to headquarter. Other factors, such as additional costs to comply with usury statutes and harsh penalties for noncompliance, may also contribute to a reluctance to locate headquarters in Texas. The disinclination of major financial institutions to headquarter in Texas affects the number and quality of jobs in the finance industry.

Out of Step with Modern Banking - Texas is out of step with the national lending environment in terms of commercial lending. As aforementioned, Texas is one of only a few states that regulates interest rates for large commercial loans. Most states allow competition and the marketplace to dictate interest rates. An example of how Texas fails to keep up with the modern lending environment can be found in start-up ventures and short term commercial bridge loans. The nature of start-up ventures and short term commercial bridge loans generally require that higher interest rates be charged. Because of inflexible usury laws, costs associated with making the loan cannot be adequately recouped, and these types of loans cannot realistically be made in Texas.

Texas Banks at Competitive Disadvantage - The lending community believes that Texas usury laws, especially commercial usury laws, unfairly penalize banks headquartered in Texas. Commercial usury laws apply only to Texas banks and other locally based lenders, while out of state lenders are not required to abide by Texas usury laws. Federal law allows a bank to branch into a different state and export the maximum rates of interest from the home state. Since commercial usury rates only apply to local lenders, Texas banks are at a competitive disadvantage in making commercial loans in a national marketplace.

¹⁵Federal Reserve Board: Insured U.S.-Chartered Commercial Banks That Have Consolidated Assets of \$300 Million or More, Ranked by Consolidated Assets as March 31, 2004. Available <http://www.federalreserve.gov/releases/lbr/> (See appendix B).

¹⁶ Ibid.

Ineffective Laws - Loans may exceed the usury limit that Texas attempts to impose if the loan is executed by a bank headquartered in another state that exports its rates through branch locations. Since federal law provides that certain banks are not required to comply with Texas usury laws, the desire to limit the interest rate that a lender can charge is easily circumvented.

Possible Ambiguity in the Qualified Commercial Loan Statute - Some in the lending community feel that language allowing equity participation in large commercial loans is not sufficiently clear. Texas lenders cannot be absolutely certain about constitutional usury issues until the Texas Supreme Court addresses the issue. As such, some lenders are hesitant to include equity participation for fear of usury violations which may result in forfeiture of principal and interest. Some lenders believe that an equity component that performed well may render the transaction usurious, and therefore choose not to make commercial loans with equity components under Texas law. Alternatively, lenders need to procure expensive legal opinions to accompany equity participation agreements. Senate Joint Resolution 22 and Senate Bill 417, 78th Texas Regular Legislative Session, would have addressed perceived ambiguities by completely removing large commercial loans from usury regulation. This bill passed through the Senate but failed to move out of the Financial Institutions Committee in the House of Representatives.

Committee Hearing Summary

The Senate Business & Commerce Committee held a public hearing at the Texas State Capitol on May 3, 2004 to hear testimony on Interim Charge Two. Commissioner Leslie Pettijohn, Office of Consumer Credit Commissioner, and Everette Jobe, General Counsel for the Department of Banking, provided invited testimony. Individuals testifying in public testimony on the topic of usury included Val Perkins, representing the Texas Business Law Foundation; Karen Neeley, representing the Independent Bankers Association of Texas; John Heasley, representing the Texas Bankers Association; and Bill Stinson, representing the Texas Association of Realtors.

Leslie Pettijohn, Consumer Credit Commissioner, was the first witness called to address usury laws in Texas. Pettijohn began her testimony with a discussion of the constitutional interest rate provisions and their history. She stated that in the 1800s and early 1900s the usury ceiling of ten percent was appropriate because of the relatively primitive agricultural economy in Texas. As consumer lending become more common and Texas become less agriculturally based, it became necessary to allow loans with greater than a ten percent annual interest rate. This was the impetus for the creation of the credit statutes in the 1960s, which allowed the Legislature to classify lenders and to set interest rates in excess of the constitutional interest rate cap.

Recent changes in state policy have occurred to ease the restrictions on sophisticated commercial transactions. Commissioner Pettijohn was involved in the formulation of legislation to ease restrictions on commercial loans, and specifically to clarify the allowance of creative loan transactions with speculative equity loan components. In 1997, legislation created a particular category of commercial loan called a qualified commercial loan. The qualified commercial loan statute clarified that certain types of income from

equity participation agreements are not considered interest nor subject to usury laws.

Some parties, however, continue to seek additional flexibility in commercial lending. To avoid the existing restrictions on commercial lending, some borrowers turn to out of state banks that are subject to the laws of the state in which the bank is headquartered. This places state banks at a competitive disadvantage. Furthermore, this is the situation that Senate Joint Resolution 22 and Senate Bill 417 sought to fix through deregulating usury provisions for qualified commercial loans.

Pettijohn stated that for consumer loans, the consistency of the statute governing these loans has eroded since the statute was created in 1967 as amendments have been made to accommodate various parties. Additionally, Pettijohn said that most consumers using credit cards do not receive transactions under the interest rate structure that Texas statutes permit. For example, the OCCC calculates and prescribes maximum interest rates that revolving credit accounts may charge. Yet almost all credit card companies are located out of state; they charge the rates that their headquarter state allows, all higher than Texas rates. Furthermore, when it comes to ensuring that credit card companies do not abuse Texas consumers, Texas can do very little to protect its citizens. In 1997, a major Finance Code statutory revision took place. However another modernization may be needed to return flexibility and consistency, and to better conform to the modern lending environment.

Everett Jobe, General Counsel for the Department of Banking, provided testimony on behalf of Commissioner Randall James, Banking Commissioner and Executive Director of the Finance Commission. He explained that the constitutional provisions on usury allow the Legislature to define interest rate limits but do not provide the option of exempting usury for particular transactions or classifications of borrowers. The Legislature cannot decide, for example, to set the interest rate limits for commercial transactions at the rate of infinity; they could, however, choose to set the ceiling at 100 percent. Jobe argued that a constitutional amendment would be required to empower the Legislature to make exceptions to the constitutional usury language or to otherwise achieve the goal of fully deregulating commercial interest rates. Currently interest rates are low; however, when interest rates rise with inflation, our usury laws will hinder Texas' competition in the national commercial lending market.

Texas is a major economic market but is dominated by out of state banks with branch locations. Written testimony submitted to the Committee lays out five primary usury issues for commercial lenders: interest rate; penalties; complexity; fees; and effectiveness. Maximum interest rates set too low have the effect of limiting the availability of funds. Harsh penalties for noncompliance discourages lenders from headquartering in Texas and result in Texas lenders paying higher legal costs to comply with usury laws. Overly complex usury laws result in higher costs for training and compliance, and encourage lenders to contract under other states' laws. The statute prohibiting fees unless specifically authorized occasionally results in usury law violations when disallowed fees are determined to be interest in court. Also, since out of state lenders are not required to comply with Texas usury laws, they import the usury rate of their home state. This situation calls into question the effectiveness of our commercial usury laws. Most other states have no effective commercial usury limits, and avoid the aforementioned issues related to commercial usury.

Finally, Jobe discussed how state law interacts and interrelates with federal law, especially in light of the federal Office of the Comptroller of the Currency preemption of state laws. Federal regulators consistently assert that state law restrictions on the lending activities of federally chartered institutions are subject to preemption (this is also applicable to out of state state-chartered institutions).

Val Perkins testified on behalf of the Business Law Foundation regarding the benefits of easing usury restrictions for commercial transactions. He advised that the 1997 qualified commercial loan statute helped clarify and modernize commercial lending, but Texas is still lagging behind other states. Common transactions in other states are not clear or not lawful in Texas. He pointed to case law that states if a lender requires a debtor to guarantee another's obligation as part of a loan, then the other obligation is considered and classified as interest in determining usury.¹⁷ Perkins stated that this precedent is not sensible for complex commercial loan transactions. Affiliated companies may guarantee each others loans in other states, but not Texas. This issue, Perkins believes, could be addressed through legislation deregulating commercial usury or via broad based exemptions.

Bill Stinson with the Texas Association of Realtors testified against loosening restrictions on commercial lending. He stated the Texas Association of Realtors interest in this interim charge is not about interest rates; rather, it stems from a fear that deregulating commercial lending would allow lenders to require equity components as conditions of making loans. He expressed strong reservations about further loosening commercial lending restrictions or encouraging lenders to seek percentage ownership in real estate secured transactions.

Karen Neeley with Independent Bankers Association of Texas provided testimony on the effect of Texas usury laws and proposed legislative solutions. She stated that the Credit Code basically uses a scheme of identifying fees and charges that are authorized for Texas lenders. If a fee or charge is not listed, it may not be charged. For example, on a regulated consumer loan, attorney's fees may only be collected if they are imposed by a court. Therefore, if a matter is settled out of court, no attorney's fees may be added to the transaction.

Neeley's testimony asserts that restrictions on fees can inhibit the development of creative products. For example, if a bank wanted to offer a "skip a payment" program to its consumer borrowers with simple interest loans, they may not charge a fee for the service. Although the bank would incur real costs to provide the program, in document preparation, review of the request, and other costs, these cannot be recouped. Consequently, the lender has little incentive to provide the service.

In reference to consumer lending, Neeley suggested that the relevant chapters of the Texas Finance Code be comprehensively studied and overhauled. The Texas Legislature should continue to protect Texas consumers by setting interest rates on consumer loans and establishing a rational framework of protections

¹⁷ Alamo Lumber Co. v. Gold, 661 S.W.2d 926, 928 (Tex. 1983).

for consumer loans. The scheme of interest rates for different types (and sizes) of loans might be retained, the limitations on fees and charges discarded, and a new, complete program for insurance and consumer protections be applied uniformly to all direct loans.

Neeley told the Committee that usury laws concerning commercial lending in Texas present impediments to loan arrangements that are permissible in virtually every other state. The opportunity to offer “equity kickers” is limited to qualified commercial loans (real estate secured loans with a value of or exceeding three million dollars and other commercial loans with a value of or exceeding two hundred fifty thousand dollars). Small real estate developers, for example, cannot utilize this option. Equity kickers, if allowed in smaller commercial transactions, could provide flexibility to reduce interest rates and the cash flow costs to the builder, making some otherwise unbankable ventures viable.

Neeley suggested that the Legislature consider eliminating usury ceilings altogether on commercial transactions, which is the law in almost every other state. She further testified that states without commercial interest rate ceilings actually have lower interest rates. Alternatively, she suggested that the requirement for a qualified commercial loan secured by real estate be lowered and made consistent with other business loans.

John Heasley with the Texas Bankers Association provided testimony on the effect of Texas usury laws on jobs and economic development within the state. Texas lost many jobs in the financial industry during the 1980s, partly as a result of its usury laws. Although Texas has a good banking code, friendly business environment, and large market, usury is a hurdle for banks choosing to headquarter here. Out of state banks set up branch locations in the state because of the uncertainties in Texas law. Texas’ geographic location and bilingual population should make it a prime gateway to Latin American finance. Instead, Miami and New York have that distinction. Heasley stressed the importance of changing Texas usury laws as a first step to attracting finance-related business back to Texas.

Recommendation

Allowing sophisticated commercial parties to contract for any rate of interest to which the parties agree would permit the free market to function, would provide additional flexibility in structuring large commercial loans, and would enable Texas headquartered banks to be more competitive in commercial lending. Senate Joint Resolution 22 and Senate Bill 417, 78th Texas Regular Legislative Session, sought to remove the commercial loan usury cap for large commercial loans. This bill and joint resolution passed the Senate but failed to pass the House of Representatives. Therefore, the Committee recommends that the 79th Legislature pass legislation that achieves the goals of Senate Joint Resolution 22 and Senate Bill 417.

CREDIT COUNSELING INDUSTRY

Background and Overview

Consumer debt has more than doubled in the past decade to record levels.¹⁸ Recent figures from the Federal Reserve calculate the outstanding consumer credit in the United States, excluding debt secured by real estate, to be over two trillion dollars. This figure is based on \$743 billion in revolving credit debt (primarily credit card debt), with the remaining \$1,285 billion in non-revolving consumer credit debt (such as automobile, mobile home, or vacation loans).¹⁹ Consumer demand for credit counseling and debt management services grows as Americans incur increasing amounts of debt.

Many credit counseling and debt management companies offer legitimate services to consumers. These services include financial education, credit counseling, and assistance in developing a plan to get their clients out of debt. Legitimate organizations help enable individuals to get out of debt and improve their money management skills to avoid future problems.

In addition to the essential counseling and education components, these organizations can, when appropriate, assist with a debt management plan (DMP). Under a DMP, the consumer sends a single check to the debt management business, which disperses the money among its client's creditors. Many credit counseling and debt management companies may also negotiate with creditors to obtain lower interest rates and lower monthly payments, to stop collection calls, and potentially to forgive past late fees. Traditionally, creditors funded much of the work of the credit counseling and debt management companies. Credit card companies returned a percentage of each monthly payment to the credit counseling and debt management companies to fund their services; this was considered a form of a debt collection fee. Recently, however, as the industry has changed form, credit counseling and debt management companies expect individuals to cover more of the cost of their services.

Typically, reputable credit counseling and debt management companies are mission driven, community-based non-profits which are affiliated with and accredited by the National Foundation for Credit Counseling (NFCC). The NFCC is the oldest and largest organization of its kind; it was founded in 1951 and has more than 1,000 community-based agency offices across the country. NFCC members serve 1.5 million households annually. NFCC has rigorous accreditation guidelines and certification requirements for credit counselors, and member organizations charge a nominal fee for their services.²⁰ The other major credit

¹⁸“Consumer Debt More Than Doubles in Decade,” Eileen Powell, The Washington Times (January 6, 2004).

¹⁹ \$2,027.9 billion projected for June 2004. Federal Reserve Statistical Release G.19, (released August 6, 2004). <http://www.federalreserve.gov/releases/g19/Current/>.

²⁰www.NFCC.org.

counseling industry association is the Association of Independent Consumer Credit Counseling Agencies. However, this association is not as large as NFCC, and their standards are considered less stringent than those of NFCC.²¹

During the last decade, credit counseling/debt management has become a billion-dollar industry. The growth of non-NFCC certified businesses engaging in debt management services has been rapid. Between 1994 and 2003, 1,215 credit counseling agencies applied to the Internal Revenue Service (IRS) for tax exempt status, with over 810 of these applicants during the period of 2000-2003.²² In order to qualify for tax-exempt status as a 501(c)(3), a corporation must be operated exclusively for certain aims such as charitable, religious, or educational, and no part of the corporations net earnings may inure to the benefit of any private individual in the corporation.²³

According to the U.S. Senate Permanent Subcommittee on Investigations report entitled “Profiteering in a Non-Profit Industry: Abusive Practices in Credit Counseling,” many of these companies abuse their non-profit status. They use a for-profit business model and seek to generate substantial revenue for for-profit affiliates. For example, a non-profit credit counseling center may serve simply as a telephone call center to enroll consumers into a debt management program on behalf of a for-profit affiliate which then takes over operations. This report found that the newer industry entrants are not community-based and do not perform face-to-face counseling, instead relying upon a nationwide internet and telephone based model focused upon DMP enrollment without educational and counseling components.²⁴

Deceptive practices have become widespread in the credit counseling and debt management industry. In spite of the for-profit business model of many companies, Texas credit counseling and debt management companies must be certified as 501(c)(3) non-profits by the IRS. Unfortunately, the non-profit status often conveys a level of trust to unsuspecting consumers who mistakenly believe non-profit certification provides a level of consumer protection.

Some companies require that customers pay “voluntary fees” for their services without adequate disclosure that the money is going to the company instead of toward paying down consumer debt. Companies take what a consumer believes to be a first month payment to the DMP and retain this money as a voluntary fee payment or a contribution. Since a client’s first payment goes to the company as a contribution, the client

²¹ “Profiteering in a Non-Profit Industry: Abusive Practices in Credit Counseling,” U.S. Senate Permanent Subcommittee on Investigations (May 24, 2004).

²² Ibid.

²³ 26 U.S.C. § 501(c)(3).

²⁴ “Profiteering in a Non-Profit Industry: Abusive Practices in Credit Counseling,” U.S. Senate Permanent Subcommittee on Investigations (May 24, 2004).

may unknowingly start a month behind on the DMP. Due to misleading practices and lack of adequate disclosure, it is common for consumers to believe they are sending payments to creditors when in fact they are falling further behind in payments.

In addition, some companies create DMPs for consumers but fail to pay bills on time on their behalf, even though they charge very high payments for their services. Aggressive marketing on radio and television by credit counseling and debt management organizations creates new customers who seek debt relief but often find themselves further in debt due to various schemes in certain segments of the credit counseling and debt management industry.

Their non-profit status allows credit counseling and debt management companies to circumvent regulation. The federal Credit Repair Organizations Act, passed in 1996, was created to protect the public from unfair or deceptive advertising and business practices by credit repair organizations.²⁵ However, this act exempts non-profits from regulation and control. Regarding federal action, the IRS is currently auditing and examining the non-profit status of many credit counseling services, and the Federal Trade Commission (FTC) has taken some limited steps to address problems in the industry.²⁶ However, there is scant effective regulation of this industry on the federal level.

Additionally, there are outdated laws on the state level. The laws in place do not adequately address the current character of the credit counseling and debt management industry. Relevant Texas statutes have not been changed since 1967, well before the current shape of the industry emerged. Other states have recently modernized their statutes to regulate the industry and to require fair dealings.

States also are beginning to take a renewed interest in unscrupulous companies within the industry through attorney general lawsuits for fraud against consumers.²⁷ In November 2003, Texas Attorney General Abbott filed suit against AmeriDebt, a credit counseling and debt management company, for violating the Deceptive Trade Practices Act. Nineteen thousand Texans are represented as consumers in this case (see Appendix C).

The U.S. Senate Permanent Subcommittee on Investigations found that the credit counseling industry is currently governed by a patchwork of professional, state and federal standards, some of which are mandatory and others which are voluntary. This includes standards issued by credit counseling professional associations, creditor guidelines, state statutes, federal taxes and fair trade laws. The U.S. Senate

²⁵ 15 U.S.C. § 1679.

²⁶ “Profiteering in a Non-Profit Industry: Abusive Practices in Credit Counseling,” U.S. Senate Permanent Subcommittee on Investigations (May 24, 2004).

²⁷ According to the Permanent Subcommittee on Investigations report, Illinois, Maryland, Minnesota, Missouri, and Texas have filed class actions against AmeriDebt.

Permanent Subcommittee on Investigations report stated that the NFCC professional standards, if applied to the whole industry, “would go a long way toward addressing the abusive practices identified...”²⁸

Summary of Credit Counseling Industry Issues

Credit Counseling Industry Growth - Consumer demand for credit counseling and debt management has grown, and the number of entrants in the industry has risen as a result. As the number of entrants in the industry has climbed, so have the number of aggressive debt management companies and consumer complaints.

Deceptive Practices within Growing Industry - Some companies charge voluntary fees for their services without adequate disclosure and some fail to pay bills on time for consumers enrolled in DMPs. In addition, some companies take what a consumer believes to be a first month's payment to the DMP and keep it as a voluntary fee payment. When the company takes a consumer's first payment as a contribution, the consumer starts a month behind on the DMP program because the debt management company never allocates the consumer's first payment to their creditors.

Abuse of Non-Profit Status and Aggressive Marketing - Nearly all debt management companies are certified as 501(c)(3) non-profit entities; however many of those advertising aggressively on radio and television function as for-profit entities in that profit is generated by the non-profit for the benefit of a for-profit affiliate.

High Costs - Some credit counseling and debt management companies charge very high payments to establish an account. These high costs often place the consumer in a position that is worse than when they initially enrolled in the program.

Scant Regulation at the Federal Level - There is no comprehensive federal regulation of the credit counseling and debt management industry. The federal Credit Repair Organizations Act does not apply to tax-exempt organizations; almost all of the credit counseling and debt management companies maintain tax-exempt status.

Older Statutes at the State Level - State laws related to debt management companies are outdated. The statutes do not address the current character of the debt management industry, an industry that experienced its most explosive growth cycle in the 1990s. The relevant credit laws in Texas have been in place since 1967 without change.

²⁸ “Profiteering in a Non-Profit Industry: Abusive Practices in Credit Counseling,” U.S. Senate Permanent Subcommittee on Investigations (May 24, 2004).

Committee Hearing Summary

The Senate Business & Commerce Committee held a public hearing at the Texas State Capitol on May 3, 2004 to hear testimony on Interim Charge Two. Commissioner Leslie Pettijohn, Office of Consumer Credit Commissioner, presented invited testimony; individuals testifying in public testimony on the topic of consumer credit counseling were Marianne Gray, representing Consumer Credit Counseling Service of Greater Ft. Worth and Lucinda Rocha, representing Consumer Credit Counseling Service of San Antonio.

Commissioner Pettijohn provided background on the credit counseling and debt management industry. She framed the importance of this issue by informing the Committee that household debt is at an all time high and personal savings are at an all time low; foreclosures, delinquencies, and consumer bankruptcy are occurring more frequently. The need for credit counseling and debt management spurs the growth of the industry.

Many new problems have accompanied the proliferation of credit counseling and debt management companies. As people increasingly seek assistance with their finances, misleading and deceptive practices and lack of adequate disclosure often sink these consumers into deeper debt. In Texas, all consumer counseling agencies must be non-profit. Many consumers rely on fact that these organizations are non-profit and therefore do not use due diligence. Complaints have been increasing as more people have negative experiences with consumer counseling agencies and debt management services.

Some enforcement and regulation is done through state attorney general offices, the IRS, and the FTC, but it is very limited. For the most part, the industry regulates itself through their primary association and through accreditations standards. Other states have passed new legislation to address problems in the industry. The current regulatory framework in Texas is a ragged patchwork, and is in dire need of modernization. Pettijohn asserted that Texas needs to modernize our laws by enhancing the regulatory structure and improving consumer protections. The State needs the appropriate regulatory tools to protect against misleading and deceptive practices, and to enable legitimate consumer credit counseling and debt management companies to continue serving consumers in debt.

Pettijohn stated that she is working with the industry, specifically with NFCC accredited consumer credit counseling and debt management companies, to gather input and recommendations. She will determine concrete legislative recommendations (such as standard disclosures and regulatory tools) for changes to Texas law in order to protect consumers and legitimate credit counselors.

Following Commissioner Pettijohn, Marianne Gray provided public testimony to the Committee. She is president and CEO of Consumer Credit Counseling Service (CSSS) of Greater Ft. Worth and board member/immediate past chairman of the NFCC. Gray began her testimony by asking the Committee to “please regulate my non-profit.”

Gray stated that many of the new entrants into the credit counseling industry harm consumers and negatively

impact reputable consumer credit counselors. Consumers need debt relief, financial education, and counseling. NFCC certified counselors provide a holistic approach. They provide services to teach money management skills that enable individuals to get out of debt on their own and prevent problems from recurring in the future. They are also able to refer people to local organizations to cope with possible underlying issues like unemployment, medical problems, or drugs. NFCC agencies typically refer one third of their customers to other agencies in the community, provide one third of their customers with counseling for self help, and assist the other third with a DMP and creditor intervention.

Since the 1990s, Gray says changes have occurred in the credit counseling and debt management industry. Newer entrant organizations do not subscribe to NFCC standards and are not accredited or affiliated with the NFCC. Executives from other industries moved into the non-profit credit counseling industry, and set up non-profits with for-profit affiliates. These companies utilize centralized call centers, heavy advertizing to lure customers, no real counseling or educational component, high fees and ineffective DMPs. These organizations masquerade as non-profits, but taint the true non-profit sector and take advantage of consumers. Creditors have responded to this change in the industry by reducing concession, harming both consumers and true consumer credit counseling agencies.

Gray stated that she was disappointed, saddened, frustrated, and angry at the changes within the industry. She hopes to bring to the attention of the Legislature that unscrupulous companies are doing unconscionable harm to consumers. She would like to work with the federal government, state Legislature, and creditors to protect consumers against bad actors and restore the trust in and integrity of the consumer credit counseling industry.

Lucinda Rocha with Consumer Credit Counseling Service of San Antonio reiterated Gray's comments and concerns. She said that education and counseling are necessary components in helping individuals who seek to credit counseling to achieve self sufficiency. Rocha supports assistance from the State in the form of legislation to rid unscrupulous companies from the non-profit credit counseling industry.

Recommendation

Deceptive practices within the growing credit counseling and debt management industry necessitate a legislative solution. Therefore, the Committee recommends that the 79th Legislature pass legislation addressing the current problems within the industry. Texas should modernize its laws concerning credit counseling and debt management organizations by enhancing the regulatory structure and promulgating uniform standards of consumer protection in this industry. Regulations should be created with input from the Office of Consumer Credit Commissioner, along with members of the credit counseling industry, specifically members of the National Foundation for Consumer Credit, to protect consumers from unscrupulous counseling services, and misleading, deceptive, and harmful practices, as well as to ensure the integrity of the industry.

Appendix A

State Commercial Usury Comparison Chart

STATE COMMERCIAL USURY COMPARISON CHART

The following chart shows how interest on commercial loans is regulated in all states other than Texas.

ALABAMA Any person or persons, corporations, trusts, general partnership or partnerships, limited partnerships or partnerships, or associations may agree to pay any rate of interest on loans with an original principal balance or credit sales of \$2,000 or more. This provision is subject to all laws relating to unconscionability in consumer transactions. (Alabama Code, Title 8, Chapter 8, Section 8-8-5).

<http://www.legislature.state.al.us/CodeofAlabama/1975/coatoc.htm>

ALASKA All loans of more than \$25,000 are exempt from usury limitations. Banks, credit unions, savings and loans, pension funds, insurance companies or mortgage companies may not accept or charge any percent of ownership of profits higher than the interest rate they charge, provided that this restriction does not apply if the principal amount of the loan is \$1 million or more and the term of the loan is 5 years or more. (Alaska Statutes, Title 45, Chapter 45, Article 1, Section 45.45.010).

http://old-www.legis.state.ak.us/cgi-bin/folioisa.dll/stattx01/query=*/doc/{t17224}?

ARKANSAS Up until 1982, the Arkansas Constitution, like that of Texas, provided a general usury limit of 10 percent per annum. In that year, Arkansas amended its Constitution to provide that the maximum rate of interest on loans, other than those made for personal, family or household purposes, “shall not exceed five percent (5%) above the Federal Reserve Discount Rate at the time of the contract.”¹ This “floating” standard worked well in Arkansas for a number of years, but as the economy entered a historic period of low interest rates not seen in almost 50 years, the Federal Reserve Discount Rate was adjusted progressively downward to the current level of 2 percent. Under state law, commercial loans in Arkansas are now capped at 7 percent, which is unrealistically low for all but prime borrowers.

In 1999, depository institutions headquartered in the State of Arkansas were granted federal legislative relief from that state’s constitutional usury limit as part of the Gramm-Leach-Bliley Act.² Since federal law allows both national banks³ and state banks,⁴ which are headquartered out of state, to export their home state interest rate to any other state, Arkansas-chartered banks, as well as national banks located in that state, can now compete in the non-prime commercial loan market in both Arkansas and neighboring states, such as Texas.

¹ Arkansas Const., Art. XIX, §13(a)(1); consumer loans and credit sales are subject to 17 percent limit (§13(b)).

² Pub. Law 106-102, §731; codified at 12 U.S.C. §1831u(f).

³ *Marquette Nat’l v. First of Omaha Service Corp.*, 439-U.S. 299 (1978).

⁴ Reigle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Pub. L. 103-328).

ARIZONA

When the parties agree in writing, interest may be charged at any rate. (Arizona Revised Statutes, Title 44, Chapter 9, Article 1, Section 44-1201).

<http://www.azleg.state.az.us/ars/44/01201.htm>

CALIFORNIA

Among other exemptions, the California Corporation Code exempts from the usury provisions of the California Constitution the following: indebtedness issued by an entity or guaranteed by an entity that is an affiliate of the borrower that, on the day the indebtedness is first issued or entered into, has total assets of at least \$2 million according to its then most recent financial statements; and indebtedness of at least \$300,000 or commitments or lines of credit for at least that amount. These exemptions do not apply to individuals, partnerships with a general partner who is an individual, or a revocable trust with a trustor who is an individual. These exemptions require that the lender have a preexisting personal or business relationship with the borrower or guarantor or that it reasonably appears that the borrower has the capacity to protect its interests. (California Corporation Code, Section 25118).

<http://www.leginfo.ca.gov/>

COLORADO

With respect to a commercial transaction not subject to the Consumer Credit Code, the parties may contract for the payment of any finance charge up to a rate not to exceed an annual percent rate of 45%. (Colorado Statutes, Title 5 Consumer Credit Code, Article 2, Part 5, Section 502 and Colorado Statutes, Title 18, Article 15, Section 18-15-104).

<http://198.187.128.12/colorado/lpext.dll?f=templates&fn=fs-main.htm&2.0>

CONNECTICUT

Among other exemptions, there is an exemption for loans over \$250,000 to a corporation, statutory trust, limited liability company, general, limited or limited liability partnership or association organized for profit or any individual, provided the entity or individual is engaged primarily in commercial, manufacturing, industrial or non-consumer pursuits and the funds received are utilized in such entity's or person's business or investment activities. The exemption applies with respect to a loan made pursuant to a revolving loan agreement, or a loan agreement providing for the making of advances to the borrower from time to time, with a total principal amount of all loans in excess of \$250,000. (Connecticut General Statutes Title 37, Chapter 673, Section 37-9).

<http://www.cga.state.ct.us/2001/pub/Chap673.htm>

DELAWARE

On loans or use of money in excess of \$100,000, not secured by a mortgage against the principal residence of the borrower, there is no interest rate limit. In addition, a corporation may not raise the defense of usury. (Delaware Code Title 6, Subtitle II, Chapter 23, Sections 2301(c) and 2306).

<http://www.delcode.state.de.us/title6/chapter23.htm>

DISTRICT OF
COLUMBIA

Among other exemptions, there are exemptions for any loan over \$1,000 for acquiring or carrying on a business, professional or commercial activity, or acquiring any real or personal property as an investment or for carrying on an investment activity. (District of Columbia Code 2001, Part 5, Title 28, Subtitle II, Chapter 33, Section 28-3301). Corporations may agree to any rate of interest and are prohibited from using the defense of usury. (District Of Columbia Code 2001, Part 5, Title 29, Chapter 1, Section 29-101.04).

<http://dcode.westgroup.com/Find/Default.wl?DocName=DCCODES28-3301&FindType=W&DB=DC-TOC-WEB%3BSTADCTOC&RS=WLW2%2E07&VR=2%2E0>

<http://dcode.westgroup.com/Find/Default.wl?DocName=DCCODES29-101%2E04&FindType=W&DB=DC-TOC-WEB%3BSTADCTOC&RS=WLW2%2E07&VR=2%2E0>

FLORIDA

For loan over \$500,000, interest may be charged and collected at a rate agreed upon, subject to the limits for criminal usury, which is 26% and 45% respectively. (Florida Statutes Title XXXIX, Chapter 687, Sections 687.02 and 687.071).

[statutes->View Statutes->2002->Chapter 687: flsenate.gov](http://statutes-view-statutes-2002-chapter-687-flsenate.gov)

GEORGIA

If the principal amount involved exceeds \$3,000, but is less than \$250,000, the parties may agree in writing to any rate of interest, expressed in simple interest terms. For written contract in which the principal exceeds \$250,000, the parties may establish any rate of interest expressed in simple terms or otherwise, with charges to be paid by the borrower. (Code Of Georgia, Title 7, Chapter 4, Article 1, Section 7-4-2).

<http://www.ganet.org/services/ocode/ocgsearch.htm>

HAWAII

Usury ceilings only apply to consumer credit which does not exceed \$250,000 and home business loans secured by a residential mortgage of the debtor which do not exceed \$250,000.

(Hawaii Revised Statutes, Division, Title 26, Chapter 478, Section 478-4(c)).

http://www.capitol.hawaii.gov/hrscurrent/Vol11_Ch0476-0490/HRS0478/HRS_0478-0004.htm

IDAHO

The parties may charge any rate agreed upon. (Idaho Statutes, Title 28, Chapter 22, Section 28-22-104).

<http://www3.state.id.us/cgi-bin/newidst?sctid=280220104.K>

ILLINOIS

Corporations may borrow money at any rate of interest. There is no corporate defense of usury. A state bank, or branch of an out-of-state bank, may charge and collect interest at any rate or rates agreed upon by the bank or branch and the borrower. (Illinois Statutes, Chapter 815, Interest Act 205, Section 4).

<http://www.legis.state.il.us/ilcs/ch815/ch815act205.htm>

INDIANA

With respect to a loan other than a consumer loan or a consumer-related loan, the parties may contract for the payment by the debtor of any loan finance charge. A "consumer related loan" is a loan which is not subject to the provisions of Indiana Code, Title 24, Article 4.5 applying to consumer loans and in which the principal does not exceed \$50,000 if the debtor is a person other than an organization. (Indiana Code, Title 24, Article 4.5, §2-605, §3-605, and §3-602, Uniform Consumer Credit Code).

<http://www.in.gov/legislative/ic/code/title24/ar4.5>

IOWA

Among other exemptions, there is no usury ceiling for written contracts with respect to the following: (1) loans to corporations or real estate investment trusts; (2) a person borrowing money for real property; and (3) a person borrowing money for business or agricultural purposes; and (4) consumer-purpose loans over \$25,000. (Iowa Code, Title XIII, Subtitle 3, Chapter 535, Section 2).

<http://www.legis.state.ia.us/cgi-bin/IACODE/Code2001SUPPLEMENT.pl>

KANSAS

The defense of usury is not available to corporations. (Kansas Statutes, Chapter 17, Article 71, Section 17-7105).

<http://www.kslegislature.org/cgi-bin/statutes/index.cgi/17-7105.html>

KENTUCKY

A corporation may not assert a usury defense unless the principal asset of the corporation is a one- or two-family dwelling. On loans of \$15,000 or more, the parties may agree to any rate. (Kentucky Revised Statutes, Title XXIX, Chapter 360, Sections 360.010 and 360.025).

<http://162.114.4.13/KRS/360-00/010.PDF>

<http://162.114.4.13/KRS/360-00/025.PDF>

LOUISIANA

The usury laws do not apply to loans for commercial or business purposes. (Louisiana Statutes, Civil Code, Article 2924). Co-makers, guarantors or endorses for debtor corporations or partnerships, as well as partnership and corporations, are prohibited from asserting a usury claim as a defense. (Louisiana Revised Statutes, §12:703 and §9:3509(A)). Criminal usury statutes are limited in application. (Louisiana Revised Statutes, §14.511).

<http://www.legis.state.la.us>

- MAINE The legal rate of interest on non-commercial or consumer loans is subject to limits set in the Maine Consumer Credit Code. Commercial loans by financial institutions may be at any rate agreed upon in writing. (Maine Consumer Credit Code, Title 9-B, Section 432).
- <http://janus.state.me.us/legis/statutes/9-b/title9-bsec432.html>
- MARYLAND The parties may agree to any rate on commercial loans over \$15,000 if not secured by residential real property, or \$75,000 if secured by residential real property. Corporations may agree to pay any rate of interest. (Code of Maryland, Commercial Law, Title 12, Subtitle 1, Section 12-103(e)).
- http://mlis.state.md.us/cgi-win/web_statutes.exe
- MASSACHUSETTS The parties may agree in writing to any rate of interest, subject to criminal usury limitations. (General Laws of Massachusetts, Chapter 107, Section 3). There are criminal usury ceilings which do not apply to any person who notifies the Attorney General of his intent to engage in a loan transaction. (General Laws of Massachusetts, Chapter 271, Section 49).
- <http://www.state.ma.us/legis/laws/mgl/107%2D3.htm>
<http://www.state.ma.us/legis/laws/mgl/271%2D49.htm>
- MICHIGAN Corporations may agree in writing to pay any rate of interest as to those transactions of the defense of usury is not available. (Michigan Compiled Laws, Chapter 450, Section 450.1275).
- <http://www.michiganlegislature.org/mileg.asp?page=getObject&objName=mcl-450-1275&userid=>
- MINNESOTA For loans made under a written contract of \$100,00 or more and any extensions, including extensions of installments and related changes in terms, there is no limit on the rate of interest points, finance charges, fees or other charges. Corporations may not raise the defense of usury. (Minnesota Statutes, Sections 334.01 and 334.022).
- <http://www.revisor.leg.state.mn.us/stats/334/01.html>
<http://www.revisor.leg.state.mn.us/stats/334/022.html>
- MISSISSIPPI Usury limits do not apply when the principal balance to be repaid or the amount originally proposed to be advanced exceeds \$2,000, and the parties may agree in writing to any finance charge. (Mississippi Code, Title 75, Chapter 17, Section 75-17-1).
- <http://www.mscode.com/free/statutes/75/017/0001.htm>

- MISSOURI The parties may agree to any rate of interest with respect to the following: loans to a corporation, general partnership, limited partnership or limited liability company; business loans of \$5,000 or more; real estate loans, other than residential real estate loans and loans of less than \$5,000 secured by real estate used for agricultural purposes; and loans of \$5,000 or more secured solely by certificates of stock, bonds, bills of exchange, certificates of deposit, warehouse receipts, or bills of lading pledged as collateral for the repayment of such loans. Corporations may not assert a usury defense.
(Missouri Statutes, Title XXVI, Chapter 408, Sections 408.060 and 408.035).
- <http://www.moga.state.mo.us/statutes/c400-499/4080060.htm>
<http://www.moga.state.mo.us/statutes/c400-499/4080035.htm>
- MONTANA There is no usury ceiling for regulated lenders, which includes banks, savings and loan associations, credit unions, etc. (Montana Code, Title 31, Chapter 1, Part 1, Sections 31-1-107 and 31-1-111).
- <http://data.opi.state.mt.us/bills/mca/31/1/31-1-107.htm>
<http://data.opi.state.mt.us/bills/mca/31/1/31-1-111.htm>
- NEBRASKA Among other exemptions, the usury ceilings do not apply with respect to the following: loans made to any corporation, partnership, limited liability company or trust; the guarantor or surety of any loan to a corporation, partnership, limited liability company or trust; loans with aggregate principal amounts over \$25,000 as to any one financial institution, licensee or permittee. (Nebraska Revised Statutes, Chapter 45, Article 1, Section 45-101.04).
- <http://statutes.unicam.state.ne.us/Corpus/statutes/chap45/R450100104.html>
- NEVADA The parties may contract to any interest rate agreed upon. (Nevada Revised Statutes, Title 8, Chapter 99, Section 99.050).
- <http://www.leg.state.nv.us/nrs/NRS-099.html>
- NEW HAMPSHIRE When the parties agree in writing, there is no limit on the amount of interest that can be charged. (New Hampshire Statutes, Title XXXI, Chapter 336, Section 336:1).
- <http://www.gencourt.state.nh.us/rsa/html/XXXI/336/336-1.htm>
- NEW JERSEY There are no usury ceilings on loans of \$50,000 or more, except certain loan secured by dwellings. (New Jersey Statutes, Title 31, Chapter 1, Section 31:1-1.1(e)). No corporation may assert the defense of usury. (New Jersey Statutes, Title 31, Chapter 1, Section 31:1-6).
- <http://www.njleg.state.nj.us/>

NEW MEXICO In the case of business or commercial loans for business or commercial purposes of \$500,000 or more, a lender may charge any rate of interest agreed by the parties. A corporation may not assert the defense of usury. (New Mexico Statutes, Chapter 56, Article 8, Sections 56-8-9 and 56-8-21).

<http://www.michie.com/newmexico/lpext.dll?f=templates&fn=fs-main.htm&2.0>

NEW YORK There is no usury ceiling for loans of \$2.5 million or more. (Consolidated Laws of New York, General Obligations Law, Chapter 24-a, Article 5, Title 5, Sections 5-501(6)(b) and Penal Law, Title KA190, Article 190, Sections 190.40 and 190.42). Generally, corporate borrowers may not assert a defense of usury under the General Obligations Law, but may assert criminal usury under the Penal Law's ceiling of 25%, subject to other exceptions. One exception allows a rate of 8% above the prime rate published by the Federal Reserve Board with respect to loans to a corporation for business or commercial purposes in the amount of \$100,000 or more that is secured in compliance with the Uniform Commercial Code. (Consolidated Laws of New York, General Obligations Law, Chapter 24-a, Article 5, Title 5, Sections 5-526).

<http://assembly.state.ny.us/leg/?cl=49&a=13>

NORTH CAROLINA The parties may agree to any rate of interest for loans over \$25,000. For-profit corporations may not assert a defense of usury. (General Statutes of North Carolina, Chapter 24, Article 1, Sections 24-1.1 and 24-9).

<http://www.ncga.state.nc.us/statutes/generalstatutes2001/>

NORTH DAKOTA Among other exemptions, usury ceilings do not apply with respect to the following: loans made to corporations, partnerships and certain trusts; loans over \$35,000; and loans by regulated financial institutions. (North Dakota Century Code, Chapter 47, Section 47-14-09).

<http://www.state.nd.us/lr/cencode/CCT47.pdf>

OHIO Among other exceptions, parties may agree to any rate of interest: (a) on loans over \$100,000 or (b) on business loans not secured by an obligor's wages or by household furniture or other consumer goods. [Ohio Rev. Code 1343.01(B)] Corporations may not assert a defense or claim of usury related to corporate obligations. [Ohio Rev. Code 1701.68, 1702.37] However, interest above 25% per annum is prohibited as criminal usury unless the higher rate is "otherwise authorized by law". [Ohio Rev. Code 2905.21(H), 2905.22] It is unclear whether interest above 25% per annum is a form of criminal usury or is "otherwise authorized by law" when the loan qualifies for one of the above exceptions.

<http://onlinedocs.andersonpublishing.com/revisedcode/>
<http://onlinedocs.andersonpublishing.com/revisedcode/>

- OKLAHOMA The parties may agree to any rate of interest unless the transaction is subject to the Uniform Consumer Credit Code, which generally applies to consumer loans of 45,000 or less or certain loans secured by land, (14A Oklahoma Statutes §3-104, §3-105), and certain extortionate loans (14A Oklahoma Statutes §3-605, and §5-1070. Corporations may not assert a defense of usury. (18 Oklahoma Statutes §1129).
- <http://www2.lsb.state.ok.us/>
- OREGON There is no limit on the interest state or national banks may charge on loans or for the use of money. (Oregon Revised Statutes, Title 53, Chapter 708, Section 708A.255). Consumer finance companies licensed by the state may charge and interest agreed upon with the borrower. (Oregon Revised Statutes, Chapter 725, Section 725.340). With respect to other lenders, the parties may agree upon any rate with respect to loans over \$50,000. (Oregon Revised Statutes, Title 82, Section 82.010(3)).
- <http://www.leg.state.or.us/ors/home.html>
- PENNSYLVANIA Business corporations may not assert usury. (15 Pennsylvania Statutes §1510; 41 Pennsylvania Statutes §§ 201 and 301(f). There is an exemption for business loans over \$10,000. (41 Pennsylvania Statutes §§ 201 and 301(f). There is an exemption for loans of \$5,000 or more secured by stock certificates or negotiable instruments. (41 Pennsylvania Statutes §1).
- <http://members.aol.com/StatutesPA/Index.html>
- RHODE ISLAND There is a usury ceiling equal to the greater of (a) 21% per annum or (b) 9% plus the index which is the domestic prime rate as published in the Money Rates section of The Wall Street Journal. (Rhode Island General Laws, Title 6, Chapter 26, Section 6-26-2).
- <http://www.rilin.state.ri.us/Statutes/Statutes.html>
- SOUTH CAROLINA The parties may agree to any rate of interest except as limited for consumer loans in the Consumer Protection Code. (South Carolina Code of Laws, Title 37, Chapter 3, Part 6, Section 37-3-605).
- <http://www.scstatehouse.net>
- SOUTH DAKOTA The parties may contract to any rate of interest unless it is a consumer transaction specifically limited by the code. (South Dakota Codified Laws, Title 54, Chapter 54-3, Section 54-3-1.1).
- <http://legis.state.sd.us/statutes/>

- TENNESSEE There is a "formula rate" based upon an annual rate of interest 4% four above the average prime loan rate (or the average short-term business loan rate, however denominated) published by the Federal Reserve Board, or 24%, whichever is less; and the limitations period is three years. (Tennessee Code, Title 47, Chapter 14, Part 1, Sections 47-14-102 , 47-14-103, 47-12-111, and 47-14-118).
- <http://198.187.128.12/tennessee/lpext.dll?f=templates&fn=fs-main.htm&2.0>
- UTAH The parties to a lawful contract may agree upon any rate of interest. (Utah Code, Title 15, Chapter 1, Section 15-1-1). The Utah Consumer Credit Code expressly exempts business loans or loans to entities such as corporations. (Utah Code, Title 70C, Chapter 1, Section 70C-1-202).
- <http://www.code-co.com/utah/code>
- VERMONT Among other exceptions, the usury laws do not apply with respect to: obligations of corporations, including municipal and nonprofit corporations; and obligations by any person or entity incurred to finance income-producing business or activity, with certain exceptions for duplexes when used by the borrower as a residence and residential farming operations. (Vermont Statutes, Title 9, Chapter 4, Section 46).
- <http://www.leg.state.vt.us/>
- VIRGINIA The usury defense is not available to corporations, partnerships, limited liability companies, real estate investment trusts and certain joint ventures. (Code of Virginia, Title 6.1, Chapter 7.3, Article 10, Section 6.1-330.76). There is an exemption for loans to any person or entity for business or investment purposes. (Code of Virginia, Title 6.1, Chapter 7.3, Article 10, Section 6.1-330.75).
- <http://leg1.state.va.us>
- WASHINGTON The defense of usury is not available if the transaction was primarily for agriculture, commercial, investment, or business purposes. (Revised Code of Washington, Title 19, Chapter 19.52, Section 19.52.080).
- http://search.leg.wa.gov/wslrcw/RCW_19_TITLE/RCW_19.52_CHAPTER/RCW_19.52.080.htm
- WEST VIRGINIA Corporations, partnerships, limited partnerships or limited liability companies are not permitted to assert usury. (West Virginia Code, Chapter 47, Article 6, Section 47-6-10). Among other exemptions, there are exemptions with respect to: business purpose loans to entities; and business purpose loans to natural persons of \$20,000 or more. (West Virginia Code, Chapter 47, Article 6, Section 47-6-11).
- <http://www.legis.state.wv.us/legishp.html>

WISCONSIN

Among other exceptions, the usury laws do not apply to: loans to corporations or limited liability companies; and loans of \$150,000 or more unless secured by an encumbrance on a one-to-four family dwelling which the borrower uses as his or her principle place of residence. (Wisconsin Statutes, Trade Regulations, Chapter 138, Section 138.05).

<http://www.legis.state.wi.us>

WYOMING

No usury limit unless specified in the Uniform Consumer Credit Code for consumer loans. (Wyoming Statutes, Title 40, Article 1, Section 106[e]).

<http://legisweb.state.wy.us>

Appendix B

**Insured U.S.-Chartered Banks that have
Consolidated Assets of \$300 Million or More**

INSURED U.S.-CHARTERED COMMERCIAL BANKS THAT HAVE CONSOLIDATED ASSETS OF \$300 MILLION OR MORE
RANKED BY CONSOLIDATED ASSETS
as of March 31, 2004

Bank Name Holding Company Name	Natl Rank	Bank Id	Bank Location	Chtr	Consol. Assets (Mil \$)	Domestic Assets (Mil \$)	Dom As % Cons	Cuml As % Cons	Number of Branches		I B	% Fgn Own
BANK OF AMER NA BANK OF AMER CORP	1	480228	CHARLOTTE, NC	NAT	690,573	647,499	94	10	4,645	36	Y	0
JPMORGAN CHASE BK J P MORGAN CHASE & CO	2	852218	NEW YORK, NY	SMB	648,692	382,594	59	19	718	107	Y	0
CITIBANK NA CITIGROUP	3	476810	NEW YORK, NY	NAT	606,191	274,283	45	28	388	356	Y	0
WACHOVIA BK NA WACHOVIA CORP	4	484422	CHARLOTTE, NC	NAT	364,474	343,056	94	33	3,174	5	Y	0
WELLS FARGO BK NA WELLS FARGO & CO	5	451965	SIOUX FALLS, SD	NAT	347,560	347,045	100	38	3,584	3	Y	0
BANK ONE NA BANK ONE CORP	6	173333	CHICAGO, IL	NAT	256,701	236,246	92	42	1,754	9	Y	0
FLEET NA BK FLEETBOSTON FNCL CORP	7	76201	PROVIDENCE, RI	NAT	195,323	178,566	91	45	1,553	165	Y	0
U S BK NA U S BC	8	504713	CINCINNATI, OH	NAT	191,606	191,606	100	47	2,581	1	N	0
SUNTRUST BK SUNTRUST BK	9	675332	ATLANTA, GA	SMB	124,298	124,298	100	49	1,336	1	Y	0
HSBC BK USA HSBC NORTH AMER HOLD	10	413208	BUFFALO, NY	SMB	99,867	89,724	90	50	426	25	Y	100
BANK OF NY BANK OF NY CO	11	541101	NEW YORK, NY	SMB	89,356	65,917	74	52	346	10	Y	0
STATE STREET B&TC STATE STREET CORP	12	35301	BOSTON, MA	SMB	82,198	49,466	60	53	2	10	N	0
KEYBANK NA KEYCORP	13	280110	CLEVELAND, OH	NAT	73,927	72,289	98	54	1,364	1	N	0
BRANCH BKG&TC BB&T CORP	14	852320	WINSTON-SALEM, NC	SNM	70,840	70,840	100	55	863	0	N	0
PNC BK NA PNC FNCL SVC GROUP	15	817824	PITTSBURGH, PA	NAT	67,822	66,567	98	56	881	0	Y	0
BANK ONE NA BANK ONE CORP	16	651411	COLUMBUS, OH	NAT	66,124	66,124	100	57	390	0	N	0
LASALLE BK NA ABN AMRO N AMER HC	17	455534	CHICAGO, IL	NAT	65,098	65,098	100	58	122	1	N	100
FIFTH THIRD BK	18	723112	CINCINNATI, OH	SMB	58,943	58,943	100	59	426	0	N	0

FIFTH THIRD BC MBNA AMERICA BK NA MBNA CORP	19	1830035	WILMINGTON, DE	NAT	57,699	48,890	85	60	2	1	N	0
COMERICA BK COMERICA	20	60143	DETROIT, MI	SMB	54,475	52,529	96	60	382	1	N	0
CITIBANK SD NA CITIGROUP	21	486752	SIOUX FALLS, SD	NAT	53,217	53,217	100	61	0	0	N	0
SOUTHTRUST BK SOUTHTRUST CORP	22	817833	BIRMINGHAM, AL	SMB	52,667	52,667	100	62	764	0	N	0
MANUFACTURERS & TRADERS TC M&T BK CORP	23	501105	BUFFALO, NY	SMB	50,218	50,100	100	63	728	1	Y	22
AMSOUTH BK AMSOUTH BC	24	245333	BIRMINGHAM, AL	SMB	47,408	47,408	100	63	683	0	N	0
NATIONAL CITY BK NATIONAL CITY CORP	25	259518	CLEVELAND, OH	NAT	46,866	46,660	100	64	363	1	Y	0
UNION BK OF CA NA UNIONBANCAL CORP	26	212465	SAN FRANCISCO, CA	NAT	45,464	43,693	96	65	305	6	Y	63
STANDARD FED BK NA ABN AMRO N AMER HC	27	445843	TROY, MI	NAT	45,377	44,210	97	65	279	0	N	100
REGIONS BK REGIONS FC	28	233031	BIRMINGHAM, AL	SMB	45,268	45,268	100	66	797	0	N	0
CHARTER ONE BK NA CHARTER ONE FNCL	29	897273	CLEVELAND, OH	NAT	41,342	41,342	100	66	610	0	N	0
NATIONAL CITY BK IN NATIONAL CITY CORP	30	362445	INDIANAPOLIS, IN	NAT	39,930	39,930	100	67	218	0	N	0
CHASE MANHATTAN BK USA NA J P MORGAN CHASE & CO	31	489913	NEWARK, DE	NAT	38,461	38,461	100	68	1	0	Y	0
BANK OF AMER NA USA BANK OF AMER CORP	32	1417557	PHOENIX, AZ	NAT	36,898	36,898	100	68	0	0	N	0
FIFTH THIRD BK FIFTH THIRD BC	33	913940	GRAND RAPIDS, MI	SMB	36,330	36,330	100	69	627	0	N	0
DEUTSCHE BK TC AMERICAS TAUNUS CORP	34	214807	NEW YORK, NY	SMB	33,981	24,100	71	69	2	6	Y	100
NORTHERN TC NORTHERN TR CORP	35	210434	CHICAGO, IL	SMB	32,234	21,832	68	70	18	2	Y	0
UNION PLANTERS BK NA UNION PLANTERS CORP	36	423355	MEMPHIS, TN	NAT	31,312	30,998	99	70	739	0	N	0
M&I MARSHALL & ILSLEY BK MARSHALL & ILSLEY CORP	37	983448	MILWAUKEE, WI	SMB	31,021	31,021	100	70	247	0	N	0
HUNTINGTON NB HUNTINGTON BSHRS	38	12311	COLUMBUS, OH	NAT	30,834	30,732	100	71	433	0	Y	0
BANK OF THE WEST BANCWEST CORP	39	804963	SAN FRANCISCO, CA	SNM	29,566	29,566	100	71	300	0	N	99
CITIZENS BK OF MA	40	14409	BOSTON, MA	SNM	28,965	28,965	100	72	315	1	N	2

CITIZENS FNCL GROUP

COMPASS BK COMPASS BSHRS	41	697633	BIRMINGHAM, AL	SMB	27,396	27,396	100	72	399	0	N	0
FIRST TENNESSEE BK NA MMPHS FIRST TENNESSEE NATIONAL CORP	42	485559	MEMPHIS, TN	NAT	26,847	26,847	100	73	221	0	N	0
BANKNORTH NA BANKNORTH GROUP	43	497404	PORTLAND, ME	NAT	26,847	26,847	100	73	420	0	N	0
CAPITAL ONE BK	44	2253891	GLEN ALLEN, VA	SMB	26,344	24,364	92	73	0	2	N	0
TREASURY BK NA COUNTRYWIDE FC	45	1469211	ALEXANDRIA, VA	NAT	23,733	23,733	100	74	1	0	N	0
NATIONAL BK OF COMMERCE NATIONAL COMMERCE FNCL CORP	46	460855	MEMPHIS, TN	NAT	22,772	22,772	100	74	486	0	N	0
MELLON BK NA MELLON FNCL CORP	47	934329	PITTSBURGH, PA	NAT	21,918	18,995	87	74	26	1	Y	0
NORTH FORK BK NORTH FORK BC	48	332907	MATTITUCK, NY	SNM	21,407	21,407	100	75	175	0	N	0
HARRIS T&SB HARRIS FC	49	75633	CHICAGO, IL	SMB	21,337	21,256	100	75	55	0	N	100
BRANCH B&TC OF VA BB&T CORP	50	969723	RICHMOND, VA	SNM	20,827	20,827	100	75	534	0	N	0
RBC CENTURA BK ROYAL BK HOLD	51	1494240	ROCKY MOUNT, NC	SMB	20,198	20,198	100	75	269	1	N	99
BANK ONE DE NA BANK ONE CORP	52	427719	WILMINGTON, DE	NAT	19,552	19,552	100	76	0	0	N	0
NATIONAL CITY BK MI/IL NATIONAL CITY CORP	53	42541	BANNOCKBURN, IL	NAT	19,200	19,200	100	76	419	0	N	0
CITIBANK NEVADA NA CITIGROUP	54	455365	LAS VEGAS, NV	NAT	19,060	19,060	100	76	0	0	N	0
HIBERNIA NB HIBERNIA CORP	55	112837	NEW ORLEANS, LA	NAT	18,675	18,675	100	77	237	0	N	0
WELLS FARGO BK NORTHWEST NA WELLS FARGO & CO	56	688079	OGDEN, UT	NAT	17,124	17,124	100	77	0	0	N	0
PROVIDENT BK PROVIDENT FNCL GROUP	57	612618	CINCINNATI, OH	SMB	16,714	16,714	100	77	78	0	Y	0
COLONIAL BK NA COLONIAL BANCGROUP	58	570231	MONTGOMERY, AL	NAT	16,456	16,456	100	77	290	1	Y	0
DISCOVER BK MORGAN STANLEY	59	30810	GREENWOOD, DE	SNM	15,851	15,851	100	78	0	0	N	0
MERRILL LYNCH B&TC MERRILL LYNCH & CO	60	324902	PLAINSBORO TOWNSHIP, NJ	SNM	15,253	15,253	100	78	0	0	N	0
COMMERCE BK NA	61	363415	CHERRY HILL, NJ	NAT	14,305	14,305	100	78	133	0	N	0

COMMERCE BC NATIONAL CITY BK OF PA NATIONAL CITY CORP CITY NB	62	178020	PITTSBURGH, PA	NAT	13,839	13,839	100	78	218	1	N	0
CITY NAT CORP	63	63069	BEVERLY HILLS, CA	NAT	13,009	13,009	100	78	70	0	N	0
ASSOCIATED BK NA ASSOCIATED BANC-CORP	64	917742	GREEN BAY, WI	NAT	12,939	12,939	100	78	187	0	N	0
PROVIDIAN NB PROVIDIAN CORP	65	121709	TILTON, NH	NAT	12,713	12,713	100	79	2	0	N	0
COMMERCE BK NA COMMERCE BSHRS	66	601050	KANSAS CITY, MO	NAT	12,300	12,300	100	79	163	0	N	0
SKY BK SKY FNCL GROUP	67	576710	SALINEVILLE, OH	SMB	11,889	11,889	100	79	288	0	N	0
TCF NB TCF FC	68	266271	WAYZATA, MN	NAT	11,820	11,820	100	79	372	0	N	0
BANK OF AMER GEORGIA NA BANK OF AMER CORP	69	2962652	ATLANTA, GA	NAT	11,742	11,742	100	79	0	0	N	0
ZIONS FIRST NB ZIONS BC	70	276579	SALT LAKE CITY, UT	NAT	11,690	11,690	100	80	149	0	N	0
FIRST-CITIZENS B&TC FIRST CITIZENS BSHRS	71	491224	RALEIGH, NC	SNM	11,337	11,337	100	80	351	0	N	0
BANK OF OK NA BOK FC	72	339858	TULSA, OK	NAT	11,200	11,183	100	80	76	0	N	0
CITIZENS BK RI CITIZENS FNCL GROUP	73	1000409	PROVIDENCE, RI	SNM	11,080	11,080	100	80	68	0	N	2
BANCORPSOUTH BK BANCORPSOUTH INC	74	606046	TUPELO, MS	SNM	10,579	10,579	100	80	244	0	N	0
FIRSTMERIT BK NA FIRSTMERIT CORP	75	67311	AKRON, OH	NAT	10,422	10,422	100	80	185	0	N	0
INVESTORS B&TC INVESTORS FNCL SVC CORP	76	911807	BOSTON, MA	SNM	10,099	10,094	100	80	0	0	N	0
BANK OF HAWAII BANK OF HAWAII CORP	77	795968	HONOLULU, HI	SMB	10,070	9,331	93	81	90	0	Y	0
FROST NB CULLEN/FROST BKR	78	682563	SAN ANTONIO, TX	NAT	10,045	10,045	100	81	84	0	N	0
VALLEY NB VALLEY NBC	79	229801	PASSAIC, NJ	NAT	9,969	9,969	100	81	125	0	N	0
FIRST HAWAIIAN BK BANCWEST CORP	80	980661	HONOLULU, HI	SNM	9,856	9,305	94	81	61	0	Y	99
KEY BK USA NA KEYCORP	81	2332602	CLEVELAND, OH	NAT	9,826	9,826	100	81	0	0	N	0
CALIFORNIA B&TC ZIONS BC	82	837260	SAN DIEGO, CA	SNM	9,559	9,559	100	81	98	0	Y	0
BANK OF AMER OR NA	83	2867056	PORTLAND, OR	NAT	9,213	9,213	100	81	0	0	N	0

BANK OF AMER CORP OLD NB	84	208244	EVANSVILLE, IN	NAT	9,033	9,033	100	82	169	0	N	0
OLD NATIONAL BANCORP CAROLINA FIRST BK SOUTH FNCL GROUP	85	310727	GREENVILLE, SC	SNM	8,643	8,643	100	82	98	0	N	0
TD WATERHOUSE BK NA TD WATERHOUSE GROUP	86	2121196	JERSEY CITY, NJ	NAT	8,535	8,535	100	82	1	0	N	95
WILMINGTON TC WILMINGTON TR CORP	87	272218	WILMINGTON, DE	SNM	8,368	8,368	100	82	62	0	N	0
HUDSON UNITED BK HUDSON UNITED BC	88	919308	MAHWAH, NJ	SNM	7,954	7,954	100	82	223	0	N	0
TRUSTMARK NB TRUSTMARK CORP	89	342634	JACKSON, MS	NAT	7,927	7,927	100	82	149	0	N	0
FLEET BK RI NA FLEETBOSTON FNCL CORP	90	2267991	PROVIDENCE, RI	NAT	7,876	7,876	100	82	0	0	N	0
WHITNEY NB WHITNEY HOLDING CORP	91	873138	NEW ORLEANS, LA	NAT	7,846	7,846	100	82	138	1	N	0
ISRAEL DISCOUNT BK OF NY DISCOUNT BC	92	320119	NEW YORK, NY	SNM	7,829	6,483	83	82	6	0	Y	100
NATIONAL CITY BK NATIONAL CITY CORP	93	374149	LOUISVILLE, KY	NAT	7,798	7,798	100	83	121	0	N	0
FIRST BK FIRST BANKS INC	94	169653	SAINT LOUIS, MO	SMB	7,328	7,328	100	83	152	0	N	0
GREATER BAY BK NA GREATER BAY BC	95	1156539	PALO ALTO, CA	NAT	7,200	7,200	100	83	43	0	N	0
ARVEST BK ARVEST BANK GROUP INC	96	311845	FAYETTEVILLE, AR	SMB	7,034	7,016	100	83	208	0	N	0
FIRST MIDWEST BK FIRST MIDWEST BC	97	1007846	ITASCA, IL	SMB	6,809	6,809	100	83	74	0	N	0
BANCO POPULAR NORTH AMER POPULAR	98	2736291	NEW YORK, NY	SMB	6,652	6,652	100	83	96	0	Y	100
FIRST NB OF OMAHA LAURITZEN CORP	99	527954	OMAHA, NE	NAT	6,472	6,472	100	83	21	0	N	0
UNITED STATES TC OF NY CHARLES SCHWAB CORP	100	2333412	NEW YORK, NY	SMB	6,338	6,287	99	83	5	0	Y	0
FIRST REPUBLIC BK	101	131360	LAS VEGAS, NV	SNM	6,291	6,291	100	83	27	0	N	0
MELLON TR OF NEW ENGLAND NA MELLON FNCL CORP	102	44602	BOSTON, MA	NAT	6,288	6,288	100	83	1	0	N	0
SOUTHWEST BK OF TX NA SOUTHWEST BC OF TX	103	676656	HOUSTON, TX	NAT	6,104	6,104	100	84	55	0	N	0
CITIBANK DE CITIGROUP	104	490115	NEW CASTLE, DE	SNM	6,097	6,097	100	84	0	0	N	0
FIRST UNION DIRECT BK NA	105	2578240	AUGUSTA, GA	NAT	6,094	6,094	100	84	0	0	N	0

WACHOVIA CORP

BRANCH BKG&TC OF SC BB&T CORP	106	392228	GREENVILLE, SC	SNM	5,987	5,987	100	84	94	0	N	0
BANK OF TOKYO-MITSUBISHI TC	107	968605	NEW YORK, NY	SNM	5,973	5,219	87	84	0	0	Y	100
RIGGS BK NA RIGGS NAT CORP	108	922728	MCLEAN, VA	NAT	5,873	5,499	94	84	48	1	Y	0
UMB BK NA UMB FC	109	936855	KANSAS CITY, MO	NAT	5,776	5,776	100	84	123	0	N	0
UNITED CMRL BK UCBH HOLD	110	43173	SAN FRANCISCO, CA	SNM	5,714	5,605	98	84	36	1	N	0
CATHAY BK CATHAY GENERAL BC	111	595869	LOS ANGELES, CA	SNM	5,679	5,679	100	84	43	0	N	0
PACIFIC CAP BK NA PACIFIC CAP BC	112	785062	SANTA BARBARA, CA	NAT	5,624	5,624	100	84	51	0	N	0
REPUBLIC BK REPUBLIC BC	113	1003848	LANSING, MI	SNM	5,534	5,534	100	84	48	0	N	0
CITIZENS BK CITIZENS BKG CORP	114	222147	FLINT, MI	SMB	5,476	5,476	100	84	129	0	N	0
TEXAS ST BK TEXAS RGNL BSHRS	115	1017658	MCALLEN, TX	SMB	5,444	5,444	100	85	72	0	N	0
BANK LEUMI USA BANK LEUMI LE-ISRAEL CORP	116	101019	NEW YORK, NY	SNM	5,442	4,957	91	85	8	0	Y	97
COMMUNITY FIRST NB COMMUNITY FIRST BSHRS	117	654757	FARGO, ND	NAT	5,415	5,415	100	85	171	0	N	0
INTERNATIONAL BK OF CMRC INTERNATIONAL BSHRS CORP	118	1001152	LAREDO, TX	SNM	5,323	5,323	100	85	83	0	N	0
PROVIDENT BK OF MD PROVIDENT BSHRS CORP	119	437521	BALTIMORE, MD	SNM	5,253	5,253	100	85	116	0	N	0
CALIFORNIA NB FBOP CORP	120	2643438	LOS ANGELES, CA	NAT	5,196	5,196	100	85	8	0	N	0
FIRST COMMONWEALTH BK FIRST COMMONWEALTH FNCL CORP	121	42420	INDIANA, PA	SNM	5,174	5,174	100	85	102	0	N	0
CITIBANK USA NA CITIGROUP	122	112855	SIOUX FALLS, SD	NAT	5,094	5,094	100	85	0	0	N	0
NORTHERN TR BK OF FLORIDA NA NORTHERN TR CORP	123	665931	MIAMI, FL	NAT	4,961	4,961	100	85	28	0	Y	0
COMMERCE BK PA NA COMMERCE BC	124	883810	PHILADELPHIA, PA	NAT	4,950	4,950	100	85	53	0	N	0
IRWIN UNION B&TC IRWIN FC	125	130943	COLUMBUS, IN	SMB	4,792	4,612	96	85	24	0	N	0
COLUMBUS B&TC	126	395238	COLUMBUS, GA	SNM	4,741	4,741	100	85	20	1	N	0

SYNOVUS FC MERCANTILE-SAFE DEPOSIT & TC	127	208927	BALTIMORE, MD	SNM	4,703	4,703	100	85	22	0	N	0
MERCANTILE BSHRS CORP EAST-WEST BK	128	197478	SAN MARINO, CA	SNM	4,617	4,617	100	85	38	0	N	0
EAST WEST BC AMCORE BK NA	129	938840	ROCKFORD, IL	NAT	4,569	4,569	100	86	54	0	N	0
AMCORE FNCL FULTON BK	130	474919	LANCASTER, PA	SNM	4,513	4,513	100	86	74	0	N	0
FULTON FNCL CORP FIRST NB OF PA	131	379920	GREENVILLE, PA	NAT	4,482	4,482	100	86	141	0	N	0
FNB CORP WESTAMERICA BK	132	697763	SAN RAFAEL, CA	SME	4,392	4,392	100	86	89	0	N	0
WESTAMERICA BC OCEAN BK	133	663834	MIAMI, FL	SNM	4,346	4,346	100	86	22	0	N	0
OCEAN BSHRS SAFRA NB OF NY	134	918918	NEW YORK, NY	NAT	4,306	3,656	85	86	2	0	Y	99
SNENY HOLD SILICON VALLEY BK	135	802866	SANTA CLARA, CA	SME	4,244	4,244	100	86	22	0	N	0
SILICON VALLEY BSHRS FIRST-CITIZENS B&T CO	136	93721	COLUMBIA, SC	SNM	4,231	4,231	100	86	153	0	N	0
FIRST CITIZENS BC FIRST CHARTER BK	137	45627	CHARLOTTE, NC	SME	4,230	4,230	100	86	57	0	N	0
FIRST CHARTER CORP TRUST CO OF NJ	138	31303	JERSEY CITY, NJ	SNM	4,204	4,204	100	86	90	0	N	0
HOUSEHOLD BK SB NA HSEC NORTH AMER HOLD	139	2129008	LAS VEGAS, NV	NAT	4,119	4,119	100	86	0	0	N	51
MB FNCL BK NA M B FNCL	140	656733	CHICAGO, IL	NAT	4,108	4,107	100	86	42	0	N	0
CITIZENS BUS BK CVB FC	141	933966	ONTARIO, CA	SNM	4,001	4,001	100	86	36	0	N	0
NBT BK NA NBT BC	142	702117	NORWICH, NY	NAT	3,989	3,989	100	86	110	0	N	0
FIRST NB OF FLORIDA FIRST NAT BSHRS OF FLORIDA	143	1401529	NAPLES, FL	NAT	3,971	3,971	100	86	59	0	N	0
FIRST INTRST BK FIRST INTRST BANCSYSTEM	144	659855	BILLINGS, MT	SME	3,863	3,863	100	86	67	0	N	0
COMMUNITY BK NA COMMUNITY BK SYS	145	202907	CANTON, NY	NAT	3,809	3,809	100	87	123	0	N	0
UNITED BK UNITED BSHRS	146	1010930	PARKERSBURG, WV	SME	3,729	3,729	100	87	46	0	N	0
AMALGAMATED BK UNITE	147	661308	NEW YORK, NY	SNM	3,636	3,636	100	87	9	0	N	0
MONOGRAM CREDIT CARD BK	148	1212846	ALPHARETTA, GA	SNM	3,576	3,576	100	87	0	0	N	0

NATIONAL PENN BK NATIONAL PENN BSHRS	149	802110	BOYERTOWN, PA	NAT	3,514	3,514	100	87	70	0	N	0
CORUS BK NA CORUS BSHRS	150	259031	CHICAGO, IL	NAT	3,498	3,498	100	87	13	0	N	0
WESBANCO BK WESBANCO	151	645625	WHEELING, WV	SMB	3,364	3,364	100	87	82	0	N	0
COMMERCEBANK NA COMMERCEBANK HC	152	83638	CORAL GABLES, FL	NAT	3,358	3,356	100	87	8	0	Y	99
U S BK NA ND U S BC	153	2582023	FARGO, ND	NAT	3,338	3,338	100	87	1	0	N	0
CHARLES SCHWAB BK NA CHARLES SCHWAB CORP	154	3150447	RENO, NV	NAT	3,267	3,267	100	87	0	0	N	0
ATLANTIC BK OF NY	155	90403	NEW YORK, NY	SNM	3,215	3,215	100	87	19	1	N	100
MBNA AMERICA DE NA MBNA CORP	156	2621379	WILMINGTON, DE	NAT	3,207	3,207	100	87	0	0	N	0
STERLING BK STERLING BSHRS	157	978154	HOUSTON, TX	SNM	3,159	3,159	100	87	38	0	N	0
NATIONAL BK OF ARIZONA ZIONS BC	158	1004368	TUCSON, AZ	NAT	3,146	3,146	100	87	55	0	N	0
1ST SOURCE BK 1ST SOURCE CORP	159	991340	SOUTH BEND, IN	SMB	3,144	3,144	100	87	60	0	N	0
NEVADA ST BK ZIONS BC	160	456960	LAS VEGAS, NV	SNM	3,128	3,128	100	87	64	0	N	0
UNITED CMNTY BK UNITED CMNTY BK	161	1017939	BLAIRSVILLE, GA	SNM	3,104	3,104	100	87	42	0	N	0
BANCFIRST BANCFIRST CORP	162	1386251	OKLAHOMA CITY, OK	SNM	3,015	3,015	100	87	93	0	N	0
NATIONAL BK OF SC SYNOVUS FC	163	580623	SUMTER, SC	NAT	2,999	2,999	100	87	47	0	N	0
UMPQUA BK UMPQUA HC	164	143662	ROSEBURG, OR	SNM	2,983	2,983	100	87	67	0	N	0
U S TC NA CHARLES SCHWAB CORP	165	1853856	GREENWICH, CT	NAT	2,963	2,963	100	87	14	0	N	0
CHITTENDEN TC CHITTENDEN CORP	166	40305	BURLINGTON, VT	SNM	2,939	2,939	100	87	63	0	N	0
S&T BK S&T BC	167	936426	INDIANA, PA	SNM	2,906	2,906	100	88	48	0	N	0
UNION ST BK USB HC	168	644600	NANUET, NY	SNM	2,905	2,905	100	88	26	0	N	0
REPUBLIC BK REPUBLIC BSHRS	169	5939	SAINT PETERSBURG, FL	SNM	2,904	2,904	100	88	73	0	N	0
UNITED BK	170	365325	FAIRFAX, VA	SMB	2,871	2,871	100	88	40	0	N	0

UNITED BSHRS

LOCAL OKLAHOMA BK LOCAL FNCL CORP	171	604378	OKLAHOMA CITY, OK	SMB	2,865	2,865	100	88	53	0	N	0
WACHOVIA BANK OF DE NA WACHOVIA CORP	172	1224812	WILMINGTON, DE	NAT	2,854	2,854	100	88	26	0	N	0
FARMERS & MRCH BK	173	871769	LONG BEACH, CA	SMB	2,814	2,814	100	88	15	0	N	0
COMMERCE BK SHORE NA COMMERCE BC	174	9115	FORKED RIVER, NJ	NAT	2,795	2,795	100	88	29	0	N	0
PACIFIC NORTHWEST BK WELLS FARGO & CO	175	882671	SEATTLE, WA	SNM	2,791	2,791	100	88	59	0	N	0
BANK TX NA BOK FC	176	533852	DALLAS, TX	NAT	2,785	2,785	100	88	29	0	N	0
MIZUHO CORP BK USA	177	229913	NEW YORK, NY	SMB	2,769	2,740	99	88	1	1	Y	100
UNIZAN BANK NA UNIZAN FINANCIAL CORP	178	764414	CANTON, OH	NAT	2,756	2,756	100	88	48	0	N	0
COLE TAYLOR BK TAYLOR CAP GRP	179	412135	ROSEMONT, IL	SMB	2,711	2,711	100	88	12	0	N	0
BANNER BK BANNER CORP	180	352772	WALLA WALLA, WA	SNM	2,708	2,708	100	88	39	0	N	0
INTRUST BK NA INTRUST FC	181	557858	WICHITA, KS	NAT	2,679	2,679	100	88	49	0	N	0
HANCOCK BK HANCOCK HC	182	463735	GULFPORT, MS	SNM	2,671	2,671	100	88	53	0	N	0
LAREDO NB INCUS	183	800750	LAREDO, TX	NAT	2,662	2,662	100	88	19	0	N	71
COMMERCE BK NORTH COMMERCE BC	184	782904	RAMSEY, NJ	SNM	2,645	2,645	100	88	9	0	N	0
INTEGRA BK NA INTEGRA BANK CORP	185	23241	EVANSVILLE, IN	NAT	2,635	2,635	100	88	79	0	N	0
BANK MIDWEST NA DICKINSON FC II	186	635859	KANSAS CITY, MO	NAT	2,621	2,621	100	88	62	0	N	0
MELLON 1ST BUS BK NA MELLON FNCL CORP	187	627863	LOS ANGELES, CA	NAT	2,602	2,602	100	88	5	0	N	0
SUN NB SUN BC NJ	188	925710	VINELAND, NJ	NAT	2,589	2,589	100	88	81	0	N	0
YARDVILLE NB YARDVILLE NAT BC	189	156916	YARDVILLE, NJ	NAT	2,567	2,567	100	88	16	0	N	0
ROCKLAND TC INDEPENDENT BC	190	613008	ROCKLAND, MA	SNM	2,537	2,537	100	88	51	0	N	0
HARLEYSVILLE NB&TC	191	284819	HARLEYSVILLE, PA	NAT	2,503	2,503	100	88	37	0	N	0

HARLEYSVILLE NAT CORP VECTRA BK COLORADO NA ZIONS BC	192	933957	FARMINGTON, NM	NAT	2,471	2,471	100	89	57	0	N	0
ALLEGiant BK ALLEGiant BANCORP INC	193	419152	SAINT LOUIS, MO	SNM	2,470	2,470	100	89	38	0	N	0
COMMUNITY TR BK INC COMMUNITY TR BC	194	509811	PIKEVILLE, KY	SMB	2,450	2,450	100	89	88	0	N	0
PROSPERITY BK PROSPERITY BSHRS	195	664756	EL CAMPO, TX	SNM	2,444	2,444	100	89	60	0	N	0
MERCANTILE BK SOUTH FNCL GROUP	196	1396652	ORLANDO, FL	SNM	2,443	2,443	100	89	27	0	N	0
PNC BK DE PNC FNCL SVC GROUP	197	83311	WILMINGTON, DE	SNM	2,421	2,421	100	89	38	0	N	0
CITY NB OF FLORIDA CITY NAT BSHRS	198	814430	MIAMI, FL	NAT	2,415	2,415	100	89	16	0	N	0
FIRST NB FIRST NB GROUP	199	659257	EDINBURG, TX	NAT	2,410	2,410	100	89	21	0	N	0
GOLD BK GOLD BC	200	579252	LEAWOOD, KS	SMB	2,361	2,361	100	89	19	0	N	0
SANDY SPRING BK SANDY SPRING BC	201	506922	OLNEY, MD	SMB	2,361	2,361	100	89	32	0	N	0
SOUTHWEST BK MARSHALL & ILSLEY CORP	202	543253	SAINT LOUIS, MO	SMB	2,354	2,354	100	89	7	0	N	0
JOHNSON BK JOHNSON FNCL GRP	203	58243	RACINE, WI	SMB	2,321	2,321	100	89	33	0	N	0
VALLEY INDEPENDENT BK RABOBANK INTL HOLD BV	204	877369	EL CENTRO, CA	SMB	2,278	2,278	100	89	26	0	N	100
CENTRAL PACIFIC BK CENTRAL PACIFIC FNCL CORP	205	701062	HONOLULU, HI	SNM	2,261	2,261	100	89	21	0	N	0
IBERIABANK IBERIBANK CORP	206	808176	LAFAYETTE, LA	SMB	2,260	2,260	100	89	48	0	N	0
WASHINGTON TR BK WTB FC	207	58971	SPOKANE, WA	SNM	2,260	2,260	100	89	28	0	N	0
AMBOY NB AMBOY BC	208	9807	OLD BRIDGE, NJ	NAT	2,256	2,256	100	89	19	0	N	0
MECHANICS BK	209	936462	RICHMOND, CA	SNM	2,235	2,235	100	89	29	0	N	0
TEXAS CAP BK NA TEXAS CAP BSHRS	210	2618780	DALLAS, TX	NAT	2,233	2,233	100	89	6	0	N	0
MID-STATE B&TC MID-ST BSHRS	211	24266	ARROYO GRANDE, CA	SNM	2,219	2,219	100	89	41	0	N	0
BSB B&TC BSB BC	212	13309	BINGHAMTON, NY	SNM	2,219	2,219	100	89	18	0	N	0
CITY NB OF WV	213	1011526	CHARLESTON, WV	NAT	2,216	2,216	100	89	54	0	N	0

CITY HC REPUBLIC B&TC REPUBLIC BANCORP INC	214	316840	LOUISVILLE, KY	SNM	2,169	2,169	100	89	21	0	N	0
SIGNATURE BK ZOHAR HASHEMESH LE HASHKAOT	215	2942690	NEW YORK, NY	SNM	2,168	2,168	100	89	7	0	N	31
PLAINSCAPITAL BK MAEDGEN & WHITE	216	637451	LUBBOCK, TX	SMB	2,152	2,152	100	89	17	0	N	0
FIRST NB ALASKA	217	114260	ANCHORAGE, AK	NAT	2,151	2,151	100	89	27	0	N	0
FIRST IN BK NA FIRST IN CORP	218	889876	INDIANAPOLIS, IN	NAT	2,140	2,140	100	89	9	0	N	0
FRONTIER BK FRONTIER FC	219	150071	EVERETT, WA	SMB	2,132	2,132	100	89	36	0	N	0
SECOND NB SECOND BC	220	351122	WARREN, OH	NAT	2,112	2,112	100	89	29	0	N	0
SAN DIEGO NB FBOP CORP	221	127260	SAN DIEGO, CA	NAT	2,105	2,105	100	89	14	0	N	0
IMPERIAL CAP BK ITLA CAP CORP	222	1349890	LA JOLLA, CA	SNM	2,069	2,069	100	89	16	0	N	0
WASHINGTON TC WASHINGTON TR BC	223	816603	WESTERLY, RI	SNM	2,055	2,055	100	90	12	0	N	0
MAIN ST BK MAIN ST BK	224	467630	COVINGTON, GA	SNM	2,031	2,031	100	90	28	0	N	0
MELLON UNITED NB MELLON FNCL CORP	225	53033	MIAMI, FL	NAT	2,013	2,013	100	90	13	0	Y	0
RIVERSIDE NB OF FLORIDA RIVERSIDE BKG CO	226	101233	FORT PIERCE, FL	NAT	2,003	2,003	100	90	47	0	N	0
ASSOCIATED BK MN NA ASSOCIATED BANC-CORP	227	870258	MINNEAPOLIS, MN	NAT	1,963	1,963	100	90	20	0	N	0
CAPITAL CITY BK CAPITAL CITY BK GROUP	228	876634	TALLAHASSEE, FL	SMB	1,954	1,954	100	90	61	0	N	0
MIDWEST B&TC MIDWEST BANC HOLD	229	968436	ELMWOOD PARK, IL	SMB	1,953	1,953	100	90	14	0	N	0
COMMUNITY BKS COMMUNITY BKS	230	138211	MILLERSBURG, PA	SNM	1,936	1,936	100	90	43	0	N	0
PRIVATEBANK & TC PRIVATEBANCORP	231	1842065	CHICAGO, IL	SNM	1,926	1,926	100	90	5	0	N	0
METLIFE BK NA METLIFE	232	2777650	BRIDGEWATER, NJ	NAT	1,919	1,919	100	90	0	0	N	0
OAK BROOK BK FIRST OAK BROOK BSHRS	233	847643	OAK BROOK, IL	SNM	1,918	1,918	100	90	10	0	N	0
FIRST AMER BK FIRST AMER BK CORP	234	850036	CARPENTERSVILLE, IL	SNM	1,904	1,904	100	90	33	0	N	0
CALIFORNIA CMRC BK	235	750864	CENTURY CITY, CA	SNM	1,903	1,686	89	90	1	0	Y	0

CITIGROUP

CITY BK CB BSHRS	236	776060	HONOLULU, HI	SNM	1,875	1,875	100	90	20	0	N	0
BREMER BK NA OTTO BREMER FOUNDATION	237	800657	SOUTH SAINT PAUL, MN	NAT	1,872	1,872	100	90	28	0	N	0
CHINATRUST BK USA CHINA TR HC	238	996260	TORRANCE, CA	SNM	1,820	1,820	100	90	17	0	N	100
FIRST TR CORP	239	665052	DENVER, CO	SNM	1,819	1,819	100	90	0	0	N	0
COLUMBIA ST BK COLUMBIA BKG SYS	240	2078290	TACOMA, WA	SNM	1,796	1,796	100	90	33	0	N	0
HANCOCK BK OF LOUISIANA HANCOCK HC	241	1464122	BATON ROUGE, LA	SNM	1,777	1,777	100	90	55	0	N	0
HANMI BK HANMI FC	242	657365	LOS ANGELES, CA	SMB	1,757	1,757	100	90	14	0	N	0
FAR EAST NB SINOPAC BC	243	676160	LOS ANGELES, CA	NAT	1,750	1,750	100	90	11	0	N	100
WEST SUBURBAN BK WEST SUBURBAN BC	244	375034	LOMBARD, IL	SNM	1,744	1,744	100	90	30	0	N	0
PEOPLES BK NA PEOPLES BC	245	577128	MARIETTA, OH	NAT	1,711	1,711	100	90	50	0	N	0
AMERICAN ST BK AMERICAN ST FNCL CORP	246	822154	LUBBOCK, TX	SNM	1,704	1,704	100	90	26	0	N	0
FIRST FNCL BK NA FIRST FNCL BC	247	165628	HAMILTON, OH	NAT	1,701	1,701	100	90	39	0	N	0
BANK OF NORTH GEORGIA SYNOVUS FC	248	832377	ALPHARETTA, GA	SNM	1,693	1,693	100	90	9	0	N	0
HUDSON VALLEY BK HUDSON VALLEY HOLD CORP	249	436711	YONKERS, NY	SNM	1,689	1,689	100	90	15	0	N	0
FIRST CMNTY BK NA FIRST CMNTY BSHRS	250	2353595	BLUEFIELD, VA	NAT	1,688	1,688	100	90	47	0	N	0
FREMONT BK FREMONT BC	251	739560	FREMONT, CA	SNM	1,687	1,687	100	90	20	0	N	0
WEST COAST BK WEST COAST BC	252	593865	LAKE OSWEGO, OR	SNM	1,681	1,681	100	90	44	0	N	0
WELLS FARGO FNCL BK WELLS FARGO & CO	253	363956	SIOUX FALLS, SD	SNM	1,681	1,681	100	90	0	0	N	0
BANK OF STOCKTON 1867 WESTERN FC	254	479268	STOCKTON, CA	SNM	1,680	1,680	100	90	15	0	N	0
BOSTON PRIVATE B&TC BOSTON PRIVATE FNCL HOLD	255	964700	BOSTON, MA	SNM	1,677	1,677	100	90	5	0	N	0
COMMUNITY BK	256	770367	PASADENA, CA	SNM	1,670	1,670	100	90	16	0	N	0

STERLING NB STERLING BC	257	64619	NEW YORK, NY	NAT	1,668	1,664	100	90	6	0	Y	0
STILLWATER NB&TC SOUTHWEST BC	258	398350	STILLWATER, OK	NAT	1,666	1,666	100	90	8	0	N	0
PINNACLE BK PINNACLE BC	259	913856	PAPILLION, NE	SMB	1,661	1,661	100	90	55	0	N	0
FARMERS FIRST BK SUSQUEHANNA BSHRS	260	682611	LITITZ, PA	SNM	1,661	1,661	100	90	42	0	N	0
PARK NB PARK NAT CORP	261	489623	NEWARK, OH	NAT	1,656	1,656	100	90	27	0	N	0
CHEMICAL B&TC CHEMICAL FC	262	542649	MIDLAND, MI	SMB	1,655	1,655	100	91	61	0	N	0
FIRST ST BK NM FIRST ST BC	263	236751	TAOS, NM	SMB	1,640	1,640	100	91	31	0	N	0
F&M BK-WI CITIZENS BKG CORP	264	282141	KAUKAUNA, WI	SMB	1,628	1,628	100	91	62	0	N	0
UNIVEST NB&TC UNIVEST CORP OF PA	265	354310	SOUDERTON, PA	NAT	1,612	1,612	100	91	41	0	N	0
CENTURY B&TC CENTURY BC	266	377908	SOMERVILLE, MA	SNM	1,599	1,599	100	91	18	0	N	0
GREAT SOUTHERN BK GREAT SOUTHERN BANCORP INC	267	572374	REEDS SPRING, MO	SNM	1,597	1,597	100	91	28	0	N	0
LAKELAND BK LAKELAND BC	268	687009	NEWFOUNDLAND, NJ	SNM	1,585	1,585	100	91	37	0	N	0
BANKERS TC NA BTC FC	269	811046	DES MOINES, IA	NAT	1,584	1,584	100	91	7	0	N	0
BANKERS BK COMMUNITY FNCL SVC	270	740931	ATLANTA, GA	SMB	1,577	1,577	100	91	0	0	N	0
PARKWAY B&TC PARKWAY BC	271	1001639	HARWOOD HEIGHTS, IL	SNM	1,569	1,569	100	91	16	0	N	0
FIRST CMRL BK SYNOVUS FC	272	44134	BIRMINGHAM, AL	SNM	1,548	1,536	99	91	9	1	N	0
FIRST FNCL BK NA FIRST FC	273	693345	TERRE HAUTE, IN	NAT	1,530	1,530	100	91	14	0	N	0
BANK OF LANCASTER CTY NA STERLING FNCL CORP	274	872711	STRASBURG, PA	NAT	1,525	1,525	100	91	33	0	N	0
FARMERS & MECHANICS BK MERCANTILE BSHRS CORP	275	802129	FREDERICK, MD	SMB	1,518	1,518	100	91	54	0	N	0
MANUFACTURERS BK	276	930965	LOS ANGELES, CA	SNM	1,511	1,511	100	91	8	0	N	100
HARRIS BK BARRINGTON NA HARRIS FC	277	938233	BARRINGTON, IL	NAT	1,509	1,509	100	91	6	0	N	100
FIRST BK	278	216922	TROY, NC	SNM	1,495	1,495	100	91	55	0	N	0

FIRST BC													
CIB BK	279	881133	HILLSIDE, IL	SNM	1,493	1,493	100	91	13	1	N	0	
CIB MARINE BSHRS													
STATE FNCL BK NA	280	925840	HALES CORNERS, WI	NAT	1,486	1,486	100	91	30	0	N	0	
STATE FS CORP													
AMARILLO NB	281	353555	AMARILLO, TX	NAT	1,485	1,485	100	91	14	0	N	0	
AMARILLO NAT BC													
SOUTHSIDE BK	282	361167	TYLER, TX	SNM	1,475	1,475	100	91	10	0	N	0	
SOUTHSIDE BSHRS													
FIDUCIARY TC INTL	283	160614	NEW YORK, NY	SNM	1,472	1,448	98	91	0	1	Y	0	
FRANKLIN RESOURCES													
MACATAWA BK	284	2634351	HOLLAND, MI	SNM	1,451	1,451	100	91	15	0	N	0	
MACATAWA BC													
TRI COUNTIES BK	285	100562	CHICO, CA	SNM	1,450	1,450	100	91	45	0	N	0	
TRICO BSHRS													
PEOPLES B&TC	286	749242	TUPELO, MS	SNM	1,448	1,448	100	91	47	0	N	0	
PEOPLES HOLDING COMPANY													
CENTRAL TR BK	287	853952	JEFFERSON CITY, MO	SNM	1,447	1,447	100	91	8	0	N	0	
CENTRAL BANCOMPANY INC													
HUMBOLDT BK	288	1416381	EUREKA, CA	SNM	1,440	1,440	100	91	41	0	N	0	
HUMBOLDT BC													
STATE BK OF LONG ISLAND	289	651103	NEW HYDE PARK, NY	SNM	1,431	1,431	100	91	14	0	N	0	
STATE BC													
COBIZ BK NA	290	56557	DENVER, CO	NAT	1,423	1,423	100	91	12	0	N	0	
COBIZ													
BANK OF THE OZARKS	291	107244	LITTLE ROCK, AR	SNM	1,421	1,421	100	91	23	0	N	0	
BANK OF THE OZARKS INC													
FIRST NB&TC	292	399142	KOKOMO, IN	NAT	1,415	1,415	100	91	29	0	N	0	
HASTEN BSHRS													
STANDARD B&TC	293	19730	HICKORY HILLS, IL	SNM	1,414	1,414	100	91	33	0	N	0	
STANDARD BSHRS													
MONROE BK & TR	294	364449	MONROE, MI	SNM	1,414	1,414	100	91	22	0	N	0	
MBT FC													
NATIONAL BK OF CMRC	295	682732	BIRMINGHAM, AL	NAT	1,413	1,413	100	91	17	0	N	0	
ALABAMA NBC													
AMERICAN CHARTERED BK	296	231242	SCHAUMBURG, IL	SNM	1,409	1,409	100	91	3	0	N	0	
AMERICAN CHARTERED BC													
SHOREBANK	297	141734	CHICAGO, IL	SNM	1,404	1,404	100	91	10	0	N	0	
SHOREBANK CORP													
FIRST NB&TC TREASURE COAST	298	34537	STUART, FL	NAT	1,401	1,401	100	91	30	0	N	0	
SEACOAST BKG CORP OF FLORIDA													
BUSEY BK	299	416245	URBANA, IL	SNM	1,400	1,400	100	91	19	0	N	0	
FIRST BUSEY CORP													
BANKWEST OF NEVADA	300	2197098	LAS VEGAS, NV	SNM	1,381	1,381	100	91	3	0	N	0	

Appendix C

Attorney General Press Release
*Attorney General Abbot Files Suit Against
Non-Profit Credit Counseling Service*

News Releases

Wednesday, November 19, 2003

- [Child Support](#)
- [Consumer Protection](#)
- [Crime Victim Services](#)
- [Criminal Justice](#)
- [Cyber Crimes Unit](#)
- [Opinions](#)
- [Open Government](#)
- [Senior Texans](#)
- [Texas-Mexico Border](#)

- [About Greg Abbott](#)
- [News Releases](#)
- [Publications](#)
- [About the Agency](#)
- [Employment](#)
- [Volunteers/Internships](#)
- [Conferences](#)
- [E-mail Subscriptions](#)
- [Medicaid Fraud Control Unit](#)

Attorney General Abbott Files Suit Against Non-profit Credit Counseling Service

AmeriDebt actions involve 19,000 Texas consumers

AUSTIN - Texas Attorney General Greg Abbott today filed [suit](#) against the nonprofit consumer credit counseling and debt management service AmeriDebt Inc. and its affiliated for-profit enterprises, alleging multiple violations of the Texas Deceptive Trade Practices Act.

The Attorney General notes that AmeriDebt has advertised itself as an IRS-approved nonprofit counseling service for consumers strapped with heavy debt. In fact, he said, the company uses those claims as a deception and cover to solicit "voluntary donations" from consumers for services, while setting in motion lucrative transactions of its high-profit businesses.

"This appears to be yet another shrewd tactic of gaining consumers' confidence by hiding behind the word 'nonprofit,' all the while gouging and taking advantage of those who are attempting to responsibly manage personal debt and regain their creditworthiness," said Attorney General Abbott.

Today's lawsuit seeks temporary and permanent injunctions to stop the numerous misrepresentations being made by AmeriDebt and its for-profit affiliates. The suit also asks the court to order restitution for consumers who paid what they thought were "voluntary donations" to this nonprofit, among other unwarranted expenses.

Named in the suit along with AmeriDebt are Debtworks Inc., which negotiates with the consumers' creditors and processes payments, and Infinity Resources Group Inc., which supposedly offers and finalizes consolidation loans. The suit says an individual defendant, Andris Pukke controls interactions with consumers among the three entities. All are based in Maryland. The Federal Trade Commission and the State of Minnesota are also expected to file similar actions today.

Of 19,000 Texas consumers enrolled in the AmeriDebt program, only 50 have actually obtained a debt consolidation loan, the suit alleges. AmeriDebt promotes these loans as one of its overall goals, but Infinity, the actual lender, rarely approves them.

Ameridebt advertises in radio, television and print media as a nonprofit counseling organization that offers to negotiate payment terms with consumers' creditors, as well as lend assistance in obtaining debt consolidation loans.

Consumers intially sign contracts with AmeriDebt and, at the company's urging, pay a nonrefundable donation because they are led to believe the "nonprofit" services as represented cannot be maintained without public contributions, the suit says. Consumers also assume throughout the process they are dealing only with the nonprofit AmeriDebt, which purports to disburse a consumer's monthly installment payments among creditors.

However, once a consumer signs a contract with AmeriDebt, that person's file is transferred to the for-profit Debtworks, which negotiates with creditors, maintains a debt management plan and provides all customer service. Infinity Resources was established to execute debt consolidation loans, though very few consumers were able to qualify for these.

AmeriDebt calculates the consumer's "contribution" as an amount equal to what that person will pay for debt services. The suit says most consumers are deceived into thinking that their first payment goes to pay off creditors, when AmeriDebt actually keeps the whole amount. Over time, creditors begin assessing penalties and late fees against consumers for nonpayment. When consumers attempt to contact the company to find out about these late fees, they find themselves in a "negotiation process" that further delays payment, putting them deeper in arrears with creditors.

AmeriDebt claims it can reduce the amount of consumer debt by up to 50 percent; scale back the amount of time to pay off debt to three to five years; and put a halt to harassing debt collectors. The Attorney General's lawsuit disputes these claims.

Through the deceptive use of its for-profit enterprises, AmeriDebt generated more than \$70 million in revenue in 2002 and \$50 million in 2001, spending \$10 million each year in advertising.

[View Plaintiff's Original Petition](#)

-30-

Appendix D

Committee Minutes

MINUTES

SENATE COMMITTEE ON BUSINESS & COMMERCE

Monday, May 3, 2004

10:00 a.m.

Betty King Committee Hearing Room, 2E.20

Pursuant to a notice posted in accordance with Senate Rule 11.18, a public hearing of the Senate Committee on Business & Commerce was held on Monday, May 3, 2004, in the Betty King Committee Hearing Room, 2E.20, at Austin, Texas.

MEMBERS PRESENT:

Senator Troy Fraser, Chairman
Senator Kip Averitt, Vice-Chairman
Senator Kim Brimer
Senator Eddie Lucio, Jr.
Senator Leticia Van de Putte

MEMBERS ABSENT:

Senator Kenneth Armbrister
Senator John Carona
Senator Craig Estes
Senator Mike Jackson

The Chairman called the meeting to order at 10:05 a.m. There being a quorum present, the following business was transacted:

Chairman Fraser made brief opening remarks and advised that the Committee would be discussing Interim Charge #2. The Interim Charge instructs the Committee to study the current structure of Texas' usury laws in order to determine how they are affected by federal law and how state law impacts new economic development and job production in the State. This Charge also instructs the Committee to complete a thorough assessment of the credit counseling and debt management industry, including recommendations for improving services.

The Chairman advised that the Committee hearing would be structured to address the two major issues within the Charge separately. The first issue under consideration would be usury, and the second issue would be credit counseling and debt management. Chairman Fraser then called Leslie Pettijohn, Consumer Credit Commissioner, to present her testimony on the usury issue; Commissioner Pettijohn would be called later for testimony on the credit counseling issue.

Commissioner Pettijohn testified on Texas' credit laws, commercial usury and consumer loans. Following the Commissioner's testimony and response to members' questions, the Chairman called Everette Jobe, General Counsel of the Texas Department of Banking, to discuss the impact of Texas' usury laws on commercial lending.

Upon completion of Mr. Jobe's testimony and response to members' inquiries, Chairman Fraser called for public testimony on the usury issue. Witnesses testifying and responding to members' questions are listed in the order of their appearance:

Val Perkins, Texas Business Law Foundation;
Bill Stinson, Texas Association of Realtors;
Karen Neeley, Independent Bankers Association of Texas; and,
John Heasley, Texas Bankers Association.

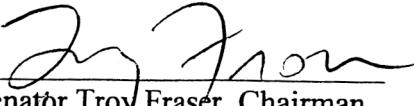
Following Mr. Heasley's testimony, Chairman Fraser called Commissioner Pettijohn to present her testimony on the consumer credit counseling and debt management issue. On completion of Commissioner Pettijohn's testimony, the Chairman called for public testimony. The following witnesses testified:

Marianne Gray, Consumer Credit Counseling Service of Greater Fort Worth, and
Lucinda Rocha, Consumer Credit Counseling of Greater San Antonio.

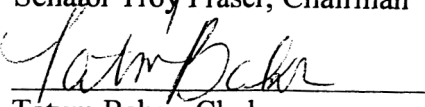
Gail Cunningham, Consumer Credit Counseling Service of Wichita Falls, registered for the issue but did not wish to testify.

Chairman Fraser then closed public testimony, and thanked everyone for their attendance and participation.

There being no further business, at 12:42 p.m. Senator Fraser moved that the Committee stand recessed subject to the call of the Chairman. Without objection, it was so ordered.



Senator Troy Fraser, Chairman



Tatum Baker, Clerk

WITNESS LIST

Business & Commerce Committee
May 3, 2004 -10:00 A.M.

Commercial Loans

ON: Stinson, Bill Vice President of Government Affairs
(Texas Association of Realtors), Austin, TX

Consumer Credit Counseling

FOR: Gray, Marianne President (Consumer Credit Counseling
Service of Greater Fort Worth), Fort Worth, TX

ON: Pettijohn, Leslie Commissioner (Office of Consumer
Credit Commissioner), Austin, TX
Rocha, Lucinda (Consumer Credit Counseling of
Greater San Antonio), San Antonio, TX

Registering, but not testifying:

For: Cunningham, Gail Vice President (Consumer Credit
Counseling Service), Wichita Falls, TX

Usury Law

FOR: Perkins, Val Attorney (Texas Business Law
Foundation), Houston, TX

ON: Heasley, John (Texas Bankers Association), Austin, TX
Jobe, Everette General Counsel (Texas Department of
Banking), Austin, TX
Neeley, Karen Attorney (Independent Bankers
Association of Texas), Austin, TX
Pettijohn, Leslie Commissioner (Office of Consumer
Credit Commissioner), Austin, TX