



March 7, 2013

To: House Committee on Financial Institutions

From: Douglass Wareham, Kansas Bankers Association

**Re: SB 52: Usury Rate for Residential Real Estate Mortgages**

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today in support of **SB 52**, which would adjust the cap that Kansas places on the interest rate that can be charged for residential real estate loans. Currently, there is a floating cap on such loans: *the yield on thirty-year fixed rate conventional home mortgages committed for delivery within 61 to 90 days accepted under the Federal Home Loan Mortgage Corporation's daily offerings for sale on the last day on which commitments for such mortgages were received in the preceding month unless otherwise specifically authorized by law – plus 1 ½ percent*. This is commonly referred to as the Freddie Mac rate plus 1 ½ percent rate. Freddie Mac is a federal agency which sets the rate at the beginning of each month. This rate is also published by the Secretary of State on its website and in the *Kansas Register*.

According to research conducted by our office, it appears that this has been the rate in Kansas since 1978. In 1980, Congress enacted a Federal preemption of state laws regarding any interest rate limits on first mortgage liens for residential real estate as a provision in the Depository Institutions Deregulation and Monetary Control Act of 1980. In order for a state to keep its interest rate cap, it had to "opt out" of this preemption by April 1, 1983. Kansas was one of fifteen states that did opt out, so as to enable the continuation of this interest rate cap. Since that time, seven of the fifteen states have removed these interest rate caps, making Kansas one of eight states that still has one.

As you are aware, interest rates have fallen to historical record lows, and have hovered just above 4% for the past twelve months. In October of 2012, the Freddie Mac rate that was initially published was 1.9%, making the maximum rate for the month 3.4%. Many Kansas banks that had contracted to sell loans to buyers in the secondary market were unable to fulfill the terms of their contract. Those contracts had locked in an interest rate that was right around 4%. Banks had a choice to make: either violate the Kansas usury law, or violate the agreement with the secondary market purchaser. The KBA office started receiving calls from distressed bankers immediately. Miraculously, Freddie Mac adjusted its rate before noon, putting the maximum rate back up above 4%. Most of the loans that were previously on hold, were able to be closed.

Kansas Bankers Association

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**SB 52** is our attempt to try to ensure that this uncertainty for the secondary market does not occur again. In raising the maximum rate from Freddie Mac plus 1 ½% to Freddie Mac plus 3 ½%, we believe there is a minimal chance that the rate that is locked in with a 30-60 day window for closing will be in jeopardy of becoming usurious during that time. In other words, we believe the chance that the rate will drop that significantly during that period of time is minimal.

We ask the committee to keep in mind that this is a maximum rate. It will not keep a lender and borrower from agreeing to a lower rate, should the market so dictate. Mortgage rates have always been very competitive, as there is a wide array of potential lenders from which to choose, and there is much evidence that consumers do shop for the most competitive terms.

In conclusion, while there are other options to resolving the problem that nearly shut down the secondary market for residential real estate loans in Kansas. **SB 52** represents our attempt to ensure that even with the fluctuations of the market, a lender and borrower both can rely on the rate that they locked in by agreement, and that the loan for the purchase of a home can close as intended.

Thank you for your time, and we would respectfully request your favorable action on **SB 52**.