COALITION FOR A COMPETITIVE KANSAS

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Testimony of
Matt Hickam
Coalition for a Competitive Kansas
Before the
House Committee on Judiciary
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Support for **HB 2224** – Repealing the Kansas Restraint of Trade Act (KRTA)

Support with amendment for **HB 2255** – Amending the KRTA to apply a reasonableness analysis to all but horizontal price fixing

Opposition of HB **2277** – Amending KRTA to apply a reasonableness analysis to all but horizontal conduct

In response to the Kansas Supreme Court's troublesome decision in *O'Brien v. Leegin* (2012), a wide range of businesses and other groups in Kansas are calling on the legislature to reform the Kansas Restraint of Trade Act (KRTA) this session. At a time when economic growth and job creation are state and national priorities, the Coalition for a Competitive Kansas advocates for a fair and reasonable regulatory framework to govern business practices in our state. Specifically, the Coalition seeks legislative reform of the KRTA, which, as currently written and interpreted, makes Kansas a less attractive state in which to operate a business. The Coalition believes that, by bringing the KRTA in line with federal law, Kansas can ensure a welcoming operating environment for business and remain competitive among neighboring states.

The last time the Kansas legislature undertook reform of the KRTA was back in 2000. Derek Schmidt, then-Legislative Liaison and Special Counsel to Governor Graves, provided written testimony to both the House and Senate Judiciary Committees, in which he stated:

> "[I]t became apparent to us that although the *standards* in current law are sufficient, the enforcement mechanisms, the remedies, and certain other provisions of current law are woefully inadequate. Current Kansas antitrust law is best described as a 'hodgepodge' of specific provisions that were created over a period of years. The earliest portion of the law dates from 1889 (See, e.g., K.S.A. 50-112), and most of the law has not been updated since 1923. Frequently, new provisions were piled atop older provisions without reconciling the two. The result is a statute that contains many antiquated, archaic, ill-coordinated and burdensome provisions…"

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Just so. With the passage of HB 1462 (1973), the Kansas legislature added just another provision to the KRTA. Codified as K.S.A. 50-801 under Article 8, which is appropriately entitled "Miscellaneous Provisions," the statute allowed for treble damages in KRTA cases. This statute was piled atop of the older provision contained in K.S.A. 50-115, which allows for "full consideration" damages. While the treble damages was modeled after the federal standard, the antiquated, archaic, ill-coordinated and burdensome "full consideration" provision in K.S.A. 50-115 was retained. Not until the passage of HB 2855 (2000) did the legislature put the two statutes under the same article, moving K.S.A. 50-801 to its current place as codified in K.S.A. 50-161. This history only further confirms that the history of KRTA reform has indeed been ill-coordinated. With the current momentum for KRTA reform this session, the legislature should take this opportunity to resolve the conflict between "full consideration" damages and treble damages as currently codified in the KRTA.

"Full consideration" damages are a relic of 19th Century antitrust law

The notion of awarding "full consideration" damages in private actions for antitrust violations dates back to the 19th Century. Indeed, during the passage of the Sherman Act in 1890, Congress considered including a provision awarding full consideration as damages for violation of federal antitrust law. See Edward D. Cavanagh, *Detrebling Antitrust Damages: An Idea Whose Time Has Come?*, 61 Tulane Law Review 777 (1986-1987). Instead, Congress opted to include treble damages in the Sherman Act, and that has been the measure of damages under federal antitrust law ever since.

In keeping with the history of federal antitrust legislation, Kansas first enacted antitrust legislation in 1889. Unlike the Sherman Act, however, Kansas included "full consideration" damages in its antitrust legislation. The Kansas full consideration statute, K.S.A. 50-115, has remained in substantially the same form ever since 1889, and this even though Kansas antitrust legislation underwent significant revision in 1985 and 2000. While at first glance the lack of reform to K.S.A. 50-115 may suggest its enduring virtue, a better explanation is the historical dearth of private litigation concerning antitrust violations in Kansas courts. Indeed, other than the landmark decision in *O'Brien v. Leegin*, the Coalition is aware of only one other reported Kansas case citing to K.S.A. 50-115, *Winters v. Kansas Hospital Service Association, Inc.*, a 1977 Kansas Court of Appeals case.

Aside from Kansas, five other states currently have "full consideration" statutes: South Carolina, Tennessee, Colorado, Wisconsin, and Indiana (See APPENDIX A). Again, most of these statutes date to the late-19th or early-20th Century. See 1897 (22) 434 [South Carolina]; 1891 Acts, C. 218, § 6 [Tennessee]; L. 1935, c. 52, § 486 [Wisconsin]; Acts 1897, c. 104, s. 5 [Indiana]. Colorado is the only state to add a "full consideration" statute to its books in the last 25 years. See Laws 1992, H.B. 82-1082, § 1.

"Full consideration" damages are not only missing from most other states' antitrust legislation, but are also completely absent from the rest of Kansas's statute books (See APPENDIX B). Kansas statutes designed to deter particular types of wrongdoing, including the Kansas Consumer Protection Act, Kansas Uniform Securities Act, Kansas Wage Payment Act, and

Kansas Workers Compensation Act, are all completely devoid of anything approaching "full consideration" as the measure of damages, opting instead for actual or treble damages, specific civil penalties, and reasonable attorney's fees.

"Full consideration" damages lead to dramatically unjust results

Utilizing "full consideration" as the measure of damages for all Kansas antitrust cases is too crude a remedy for private antitrust litigation. As one academic has noted, the Kansas full consideration statute assumes that antitrust violation result in a rise in prices of 50%. "Suppose a good were competitively priced at $100, and a cartel then raised its price by $50, to $150. If the awarded damages were $150, this would be treble the damages (i.e., three times the $50 increment)." Robert Lande, *New Options for State Indirect Purchaser Legislation*, 61 Alabama Law Review 472 (2009-2010). The problem, as this academic noted, is that even true cartel overcharges average much less than 50%.

What is more, using "full consideration" as the measure for damages leads judgments arbitrarily unequal to the level of culpability. For example, suppose two companies selling products for $1,000 violate the KRTA. The violation of the first company resulted in a price increase of $5, while the violation of the second company resulted in a price increase of $500. The damages in these cases would be the same: $1000 for each product sold. Thus, the first company would pay damages 200 times the actual damages inflicted, while the second company would only pay damages 2 times the actual damages inflicted. As this illustration shows, "full consideration" damages punish all violators to the same extent regardless of their level of culpability. Indeed, it is for this very reason that Kansas's "full consideration" statute has been singled out by one academic, who argued that Kansas's statute should be preempted by federal law because it is "not based on normal damage principles." Donald I. Baker, *Revisiting History – What Have We Learned About Private Antitrust Enforcement That We Would Not Recommend to Others?*, 16 Loyola Consumer L. Rev. 379 (2003-2004).

Comparisons between KRTA violators aside, the "full consideration" provision of the KRTA is subject to serious abuse, leading to damages awards crippling to Kansas business. In the modern economy, high-priced items are bought and sold in large quantities at small profit margins. Automobiles are a fitting example. Suppose a car company has an exclusive purchase arrangement with a tire manufacturer, because their tires have achieved a certain level of safety and quality certification. A court subsequently finds this exclusive arrangement to be a violation of the KRTA, and finds that it caused the sale of the $25,000 car to have been raised by $10. Under the KRTA, the plaintiff would be entitled to full consideration (the full amount paid for the car), plus treble damages, attorney fees and the plaintiff gets to keep the car. All this, even though the actual damages were only $10. The potential for such outrageous judgments shows the need to repeal the "full consideration" provision in K.S.A. 50-115. To that end, the Coalition feels that the "treble damages" provision in K.S.A. 50-161 provides for a fairer measure of damages for KRTA violations, while at the same time maintaining serious deterrence to antitrust violations.

Treble damages plus reasonable attorneys fees more than adequately protects consumers and is in accordance with federal law

The Coalition understands the antitrust law is designed primarily to protect consumers from the adverse effects of anticompetitive conduct. To that end, antitrust law has historically contained certain deterrence provisions, such as treble damages and the awarding of reasonable attorneys fees to a successful antitrust plaintiff. Both of these latter remedies are already present in the KRTA. See K.S.A. 50-161. As the experience of federal antitrust litigation shows, these remedies more than adequately protect consumers from antitrust violations while appropriately deterring anticompetitive business conduct. The provision for treble damages in particular accomplishes the dual task of penalizing antitrust violations while awarding successful antitrust plaintiff an appropriately heightened judgment for such violations.

Lastly, eliminating the "full consideration" provisions in K.S.A. 50-115 would bring Kansas law in line with federal statutes. Much of the impetus for KRTA reform at this time has arisen in response to the Kansas Supreme Court's decision in *O'Brien v. Leegin*, where the Court flaunted federal precedent and set the State of Kansas on a path decidedly hostile to business and economic growth in Kansas. By repealing K.S.A. 50-115, this legislature can take just another step toward making sure that Kansas law retains a semblance of historical antitrust jurisprudence that is both business-friendly and protective of consumers.

APPENDIX A

Kansas is 1 of Only 6 States with a "Full Consideration" Antitrust Damages Statute

State	Statute/First Enacted	Statutory Language
South Carolina	S.C. Code Ann. § 39-3-30 First enacted: **1897**	"Any person who may be injured or damaged by any such arrangement, contract, agreement, trust or combination… may sue for and recover… the **full consideration or sum paid**…"
Tennessee	Tenn. Code Ann. § 47-25-106 First enacted: **1891**	"Any person who may be injured or damaged by any such arrangement, contract, agreement, trust, or combination… may sue for and recover… from any person operating such trust or combination, the **full consideration or sum paid**…"
Colorado	Colo. Rev. Stat. Ann. § 6-4-121 First enacted: **1992**	"All contracts or agreements made by any person while a member of any combination, conspiracy, trust, or pool… which are… connected with any violation of this article, either directly or indirectly, shall be void, and no recovery thereon or benefit therefrom shall be had by or for any such person. **Any payments made upon… such contract or agreement… may be recovered** in an action by the party making the payment…"
Wisconsin	Wis. Stat. Ann. § 133.14 First enacted: **1935**	"All contracts or agreements made by any person while a member of any combination or conspiracy… and which… [are] connected with any violation of such section, either directly or indirectly, shall be void and no recovery thereon or benefit therefrom may be had by or for such person. **Any payments made upon… such contract or agreement… may be recovered**… by the party making any such payment…'
Indiana	Ind. Code Ann. § 24-1-1-5 First enacted: **1897**	"Any person or persons or corporations that may be injured or damaged by any such arrangement, contract, agreement, trust, or combination described in Section 1 of this chapter… may sue for and recover… the **full consideration or sum paid**… for any goods, wares, merchandise, or articles, the sale of which is controlled by such combination or trust."

APPENDIX B

Survey of Statutes Regarding Treble Damages, Civil Penalties, and Damages for Reasonable Attorneys Fees

Act/Topic	Statute	Statutory Language
Clayton Act – Federal Antitrust	15 U.S.C.A. 15	(a) Except as provided in subsection (b) of this section, any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, **and shall recover threefold the damages by him sustained**, and the cost of suit, including a **reasonable attorney's fee**.
Kansas Consumer Protection Act – Private Remedies	K.S.A. 50-364	(b) A consumer who is aggrieved by a violation of this act may recover, but not in a class action, **damages or a civil penalty as provided in subsection (a) of K.S.A. 50-636** and amendments thereto, whichever is greater (e) Except for services performed by the office of the attorney general or the office of a county or district attorney, the court may award to the prevailing party **reasonable attorney fees**, including those on appeal, limited to the work reasonably performed if: (1) The consumer complaining of the act or practice that violates this act has brought or maintained an action the consumer knew to be groundless and the prevailing party is the supplier; or a supplier has committed an act or practice that violates this act and the prevailing party is the consumer; and (2) an action under this section has been terminated by a judgment, or settled.
Kansas Consumer Protection Act – General Civil Penalties Statute	K.S.A. 50-636	(a) The commission of any act or practice declared to be a violation of this act shall render the violator liable to the aggrieved consumer, or the state or a county as provided in subsection (c), for the payment of a **civil penalty**, recoverable in an individual action, including an action brought by the attorney general or county attorney or district attorney, in a sum set by the court of not more than **$10,000 for each violation**. An aggrieved consumer is not a required party in actions brought by the attorney general or a county or district attorney pursuant to this section. (b) Any supplier who willfully violates the terms of any court order issued pursuant to this act shall forfeit and pay a **civil penalty of not more than $20,000 per violation**, in addition

		to other penalties that may be imposed by the court, as the court shall deem necessary and proper. For the purposes of this section, the district court issuing an order shall retain jurisdiction, and in such cases, the attorney general, acting in the name of the state, or the appropriate county attorney or district attorney may petition for recovery of civil penalties. (c) In administering and pursuing actions under this act, the attorney general and the county attorney or district attorney are authorized to sue for and collect reasonable expenses and investigation fees as determined by the court. Civil penalties or contempt penalties sued for and recovered by the attorney general shall be paid into the general fund of the state. Civil penalties and contempt penalties sued for and recovered by the county attorney or district attorney shall be paid into the general fund of the county where the proceedings were instigated.
Kansas Consumer Protection Act – Disclaimer or Limitation of Implied Warranties Forbidden	K.S.A. 50-639	(e) A disclaimer or limitation in violation of this section is void. If a consumer prevails in an action based upon breach of warranty, and the supplier has violated this section, the court may, in addition to any damages recovered, award **reasonable attorney fees** and a **civil penalty under K.S.A. 50-636**, and amendments thereto, to be paid by the supplier who gave the improper disclaimer.
Kansas Uniform Securities Act	K.S.A. 17-12a509	(b) *Liability of seller to purchaser.* A person is liable to the purchaser if the person sells a security in violation of K.S.A. 17-12a301, and amendments thereto, or by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make a statement made, in light of the circumstances under which it is made, not misleading, the purchaser not knowing the untruth or omission and the seller not sustaining the burden of proof that the seller did not know and, in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by the following: (1) The purchaser may maintain an **action to recover the consideration paid for the security, less the amount of any income received on the security**, and interest from the date of the purchase at the rate provided for interest on judgments by K.S.A. 16-204, and amendments thereto, costs, and **reasonable attorneys' fees** determined by the court, upon the tender of the security, **or for actual damages as provided in paragraph (3)**. (2) The tender referred to in paragraph (1) may be made any time before entry of judgment. Tender requires only notice in a record of ownership of the security and

		willingness to exchange the security for the amount specified. A purchaser that no longer owns the security may recover actual damages as provided in paragraph (3). (3) Actual damages in an action arising under this subsection are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it, and interest from the date of the purchase at the rate provided for interest on judgments by K.S.A. 16-204, and amendments thereto, costs, and reasonable attorneys' fees determined by the court.
Kansas Wage Payment Act – Civil Penalty	K.S.A. 44-315	(b) If an employer willfully fails to pay an employee wages as required by K.S.A. 44-314, and amendments thereto, or as required under subsection (a) of this section, such employer shall be liable to the employee **for the wages due** and also shall be liable to the employee for **a penalty in the fixed amount of 1% of the unpaid wages for each day**, except Sunday and legal holidays, upon which such failure continues after the eighth day after the day upon which payment is required **or in an amount equal to 100% of the unpaid wages, whichever is less**. *Note: Kansas Wage Payment Act does not allow employee to recover reasonable attorney fees.*
Kansas Workers Compensation Act – Failure to Pay Compensation When Due	K.S.A. 44-512a	(a) In the event any compensation, including medical compensation, which has been awarded under the workers compensation act, is not paid when due to the person, firm or corporation entitled thereto, **the employee shall be entitled to a civil penalty**, to be set by the administrative law judge and assessed against the employer or insurance carrier liable for such compensation **in an amount of not more than $100 per week** for each week any disability compensation is past due and in an amount for each past due medical bill equal to the larger of either the sum of $25 or the sum equal to 10% of the amount which is past due on the medical bill, if: (1) Service of written demand for payment, setting forth with particularity the items of disability and medical compensation claimed to be unpaid and past due, has been made personally or by registered mail on the employer or insurance carrier liable for such compensation and its attorney of record; and (2) payment of such demand is thereafter refused or is not made within 20 days from the date of service of such demand. (b) After the service of such written demand, if the payment of disability compensation or medical compensation set forth in the written demand is not made within 20 days from the date of service of such written demand, plus any civil penalty, as

		provided in subsection (a), if such compensation was in fact past due, then all past due compensation and any such penalties shall become immediately due and payable. Service of written demand shall be required only once after the final award. Subsequent failures to pay compensation, including medical compensation, shall entitle the employee to apply for the civil penalty without demand. The employee may maintain an action in the district court of the county where the cause of action arose for the collection of such past due disability compensation and medical compensation, any civil penalties due under this section and **reasonable attorney fees** incurred in connection with the action.
Kansas Workers Compensation Act – General Attorneys Fees Provision	K.S.A. 44-536	(a) With respect to any and all proceedings in connection with any initial or original claim for compensation, **no claim of any attorney for services rendered in connection with the securing of compensation for an employee or the employee's dependents**, whether secured by agreement, order, award or a judgment in any court **shall exceed a reasonable amount for such services or 25% of the amount of compensation recovered and paid, whichever is less**, in addition to actual expenses incurred, and subject to the other provisions of this section. Except as hereinafter provided in this section, in death cases, total disability and partial disability cases, the amount of attorney fees shall not exceed 25% of the sum which would be due under the workers compensation act beyond 415 weeks of permanent total disability based upon the employee's average weekly wage prior to the date of the accident and subject to the maximum weekly benefits provided in K.S.A. 44-510c, and amendments thereto.
Kansas Workers Compensation Act – **Administrative Action** for Fraudulent Practices	K.S.A. 44-5,120	(g) If, after such hearing, the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, determines that the person or persons charged have engaged in a fraudulent or abusive act or practice the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, shall issue an order or summary order requiring such person to cease and desist from engaging in such act or practice and, in the exercise of discretion, may order any one or more of the following: (1) Payment of a **monetary penalty of not more than $2,000 for each and every act constituting the fraudulent or abusive act or practice, but not exceeding an aggregate penalty of $20,000 in a one-year period**; (2) redress of the injury by requiring the refund of any premiums paid by and requiring the payment of any moneys withheld from, any employee, employer, insurance

		company or other person or entity adversely affected by the act constituting a fraudulent or abusive act or practice; (3) **repayment of an amount equal to the total amount that the person received** as benefits or any other payment under the workers compensation act and any amount that the person otherwise benefited as a result of an act constituting a fraudulent or abusive act or practice, with interest thereon determined so that such total amount, plus any accrued interest thereon, bears interest, from the date of the payment of benefits or other such payment or the date the person was benefited, at the current rate of interest prescribed by law for judgments under subsection (e)(1) of K.S.A. 16-204 and amendments thereto per month or fraction of a month until repayment.
Kansas Workers Compensation Act – **Private Action** for Fraudulent Practices	K.S.A. 44-5,121	(a) Any person who has suffered economic loss by a fraudulent or abusive act or practice shall have a cause of action against any other person **to recover such loss which was paid as benefits or other amounts of money which were paid** under the workers compensation act **and to seek relief for other monetary damages** from such other person based on a fraudulent or abusive act or practice, except that such other monetary damages shall not include damages for nonpecuniary loss.
Actions on insurance policies	K.S.A. 40-256	That in all actions hereafter commenced, in which judgment is rendered against any insurance company as defined in K.S.A. 40-201, and including in addition thereto any fraternal benefit society and any reciprocal or interinsurance exchange on any policy or certificate of any type or kind of insurance, if it appear from the evidence that such company, society or exchange **has refused without just cause or excuse to pay the full amount of such loss**, the court in rendering such judgment shall allow the plaintiff a **reasonable sum as an attorney's fee** for services in such action, including proceeding upon appeal, to be recovered and collected as a part of the costs: *Provided, however*, That when a tender is made by such insurance company, society or exchange before the commencement of the action in which judgment is rendered and the amount recovered is not in excess of such tender no such costs shall be allowed.
Actions on insurance policies – fire and casualty	K.S.A. 40-908	That in all actions now pending, or hereafter commenced in which judgment is rendered against any insurance company on any policy given to insure any property in this state against loss by fire, tornado, lightning or hail, the court in rendering such judgment shall allow the plaintiff a **reasonable sum as an attorney's fee** for services in such action including proceeding upon appeal to be recovered and collected as a part of the

		costs: *Provided, however,* That when a tender is made by such insurance company before the commencement of the action in which judgment is rendered and the amount recovered is not in excess of such tender no such costs shall be allowed.
Kansas Public Utilities Act	K.S.A. 66-176	Any public utility or common carrier which violates any of the provisions of law for the regulation of public utilities or common carriers shall forfeit, for every offense, to the person, company or corporation aggrieved thereby, the **actual damages sustained by the party aggrieved**, together with the costs of suit and **reasonable attorney fees**, to be fixed by the court. *Note: up until 1995, this statute allowed for treble damages plus reasonable attorney fees. See 1995 Kansas Laws Ch. 36 (H.B. 2095).*
Bribery	K.S.A. 19-821	No sheriff shall, directly or indirectly, ask, demand or receive, for any service to be by him performed in the discharge of any of his official duties, any greater fees than are allowed by law, **on pain of forfeiting treble damages to the party aggrieved**, and in being fined in a sum not less than twenty-five dollars nor more than two thousand dollars.
Kansas Cigarette and Tobacco Products Act	K.S.A. 79-3397(c)	The plaintiff in any action commenced hereunder in the district court of the county wherein such plaintiff resides, or the district court of the county of the defendant's principal place of business, **may sue for and recover treble the damages sustained**. In addition, any person who is threatened with injury or additional injury by reason of any person's violation may commence an action in such district court to enjoin any such violation, and any damages suffered may be sued for and recovered in the same action in addition to injunctive relief. In any action commenced under this act, the plaintiff may be allowed **reasonable attorney fees** and costs. The remedies provided herein shall be alternative and in addition to any other remedies provided by law.
Kansas Liquor Control Act	K.S.A. 41-701(g)	In addition, any supplier, wholesaler, distributor, manufacturer or importer violating the provisions of this section relating to fixing, maintaining or controlling the resale price of alcoholic liquor, beer or cereal malt beverage shall be liable in a civil action to **treble the amount of any damages awarded plus reasonable attorney fees** for the damaged party."
Worthless Checks	K.S.A. 60-2610	(a) If a person gives a worthless check, the person shall be liable to the holder of the check for the amount of the check, the incurred court costs, the incurred service charge, interest at the statutory rate and the costs of collection including but not limited to reasonable attorney fees, plus an amount equal to the greater of the following:

		(1) Damages equal to **three times the amount of the check but not exceeding the amount of the check by more than $500**; or (2) $100. The court may waive all or part of the attorney fees provided for by this subsection, if the court finds that the damages and other amounts awarded are sufficient to adequately compensate the holder of the check. In the event the court waives all or part of the attorney fees, the court shall make written findings of fact as to the specific reasons that the amounts awarded are sufficient to adequately compensate the holder of the check.
Fair Debt Collection Practices Act	15 U.S.C.A. 1692k	(a) Amount of damages. Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this subchapter with respect to any person is liable to such person in an amount equal to the sum of-- (1) **any actual damage sustained** by such person as a result of such failure; (2)(A) in the case of any action by an individual, **such additional damages as the court may allow, but not exceeding $1,000**; or (B) in the case of a class action, (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of $500,000 or 1 per centum of the net worth of the debt collector; and (3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a **reasonable attorney's fee** as determined by the court. On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the **defendant attorney's fees** reasonable in relation to the work expended and costs.
Telephone Consumer Protection Act	47 U.S.C.A. 227	(3) Private right of action. A person or entity may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State-- (A) an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation, (B) an action to recover for **actual monetary loss** from such a violation, **or to receive $500 in damages for each such violation, whichever is greater**, or (C) both such actions. If the court finds that the defendant **willfully or knowingly**

		violated this subsection or the regulations prescribed under this subsection, **the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B)** of this paragraph.
Lanham Act – Federal Trademark	15 U.S.C.A. 1117	(a) Profits; damages and costs; attorney fees. When a violation of any right of the registrant of a mark registered in the Patent and Trademark Office, a violation under section 1125(a) or (d) of this title, or a willful violation under section 1125(c) of this title, shall have been established in any civil action arising under this chapter, the plaintiff shall be entitled, subject to the provisions of sections 1111 and 1114 of this title, and subject to the principles of equity, to recover (1) **defendant's profits**, (2) **any damages sustained by the plaintiff**, and (3) the costs of the action. The court shall assess such profits and damages or cause the same to be assessed under its direction. In assessing profits the plaintiff shall be required to prove defendant's sales only; defendant must prove all elements of cost or deduction claimed. In assessing damages the court may enter judgment, according to the circumstances of the case, for any sum above the amount found as actual damages, not exceeding three times such amount. If the court shall find that the amount of the recovery based on profits is either inadequate or excessive the court may in its discretion enter judgment for such sum as the court shall find to be just, according to the circumstances of the case. Such sum in either of the above circumstances shall constitute compensation and not a penalty. **The court in exceptional cases may award reasonable attorney fees to the prevailing party.** (b) Treble damages for use of counterfeit mark. In assessing damages under subsection (a) for any violation of section 1114(1)(a) of this title or section 220506 of Title 36, **in a case involving use of a counterfeit mark or designation** (as defined in section 1116(d) of this title), **the court shall**, unless the court finds extenuating circumstances, **enter judgment for three times such profits or damages, whichever amount is greater, together with a reasonable attorney's fee**, if the violation consists of (1) intentionally using a mark or designation, knowing such mark or designation is a counterfeit mark (as defined in section 1116(d) of this title), in connection with the sale, offering for sale, or distribution of goods or services; or (2) providing goods or services necessary to the commission of a violation specified in paragraph (1), with the intent that the recipient of the goods or services would

		put the goods or services to use in committing the violation. In such a case, the court may award prejudgment interest on such amount at an annual interest rate established under section 6621(a)(2) of Title 26, beginning on the date of the service of the claimant's pleadings setting forth the claim for such entry of judgment and ending on the date such entry is made, or for such shorter time as the court considers appropriate.
Truth in Lending Act	15 U.S.C.A. 1640	(a) Individual or class action for damages; amount of award; factors determining amount of award. Except as otherwise provided in this section, any creditor who fails to comply with any requirement imposed under this part, including any requirement under section 1635 of this title, subsection (f) or (g) of section 1641 of this title, or part D or E of this subchapter with respect to any person is liable to such person in an amount equal to the sum of-- (1) **any actual damage sustained** by such person as a result of the failure; (2) (A) (i) **in the case of an individual action twice the amount of any finance charge in connection with the transaction**, (ii) in the case of an individual action relating to a consumer lease under part E of this subchapter, 25 per centum of the total amount of monthly payments under the lease, except that the liability under this subparagraph shall not be less than $100 nor greater than $1,000, (iii) in the case of an individual action relating to an open end consumer credit plan that is not secured by real property or a dwelling, twice the amount of any finance charge in connection with the transaction, with a minimum of $500 and a maximum of $5,000, or such higher amount as may be appropriate in the case of an established pattern or practice of such failures; or (iv) in the case of an individual action relating to a credit transaction not under an open end credit plan that is secured by real property or a dwelling, not less than $400 or greater than $4,000; or (B) in the case of a class action, such amount as the court may allow, except that as to each member of the class no minimum recovery shall be applicable, **and the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same creditor shall not be more than the lesser of $500,000 or 1 per centum of the net worth of the creditor;**

		(3) in the case of any successful action to enforce the foregoing liability or in any action in which a person is determined to have a right of rescission under section 1635 or 1638(e)(7) of this title, the costs of the action, together with **a reasonable attorney's fee** as determined by the court.