

SENATE BILL No. 233

By Committee on Ways and Means

3-13

1 AN ACT concerning the uniform consumer credit code; amending K.S.A.
2 16a-1-301 and repealing the existing section.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. K.S.A. 16a-1-301 is hereby amended to read as follows:
6 16a-1-301. In addition to definitions appearing in subsequent articles, in
7 K.S.A. 16a-1-101 through 16a-9-102, and amendments thereto:

8 (1) "Actuarial method" means the method of allocating payments
9 made on a debt between the principal and the finance charge pursuant to
10 which a payment is applied, assuming no delinquency charges or other
11 additional charges are then due, first to the accumulated finance charge
12 and then to the unpaid principal balance. When a finance charge is
13 calculated in accordance with the actuarial method, the contract rate is
14 applied to the unpaid principal balance for the number of days the
15 principal balance is unpaid. At the end of each computational period, or
16 fractional computational period, the unpaid principal balance is increased
17 by the amount of the finance charge earned during that period and is
18 decreased by the total payment, if any, made during the period after the
19 deduction of any delinquency charges or other additional charges due
20 during the period.

21 (2) "Administrator" means the deputy commissioner of the consumer
22 and mortgage lending division appointed by the bank commissioner
23 pursuant to K.S.A. 75-3135, and amendments thereto.

24 (3) "Agreement" means the bargain of the parties in fact as found in
25 their language or by implication from other circumstances including
26 course of dealing or usage of trade or course of performance.

27 (4) "Amount financed" means the net amount of credit provided to
28 the consumer or on the consumer's behalf. The amount financed shall be
29 calculated as provided in rules and regulations adopted by the
30 administrator pursuant to K.S.A. 16a-6-117, and amendments thereto.

31 (5) "Annual percentage rate" means the finance charge expressed as a
32 yearly rate, as calculated in accordance with the actuarial method. The
33 annual percentage rate shall be calculated as provided in rules and
34 regulations adopted by the administrator pursuant to K.S.A. 16a-6-117,
35 and amendments thereto.

36 (6) "Appraised value" means, with respect to any real estate at any

1 time:

2 (a) The total appraised value of the real estate, as reflected in the most
3 recent records of the tax assessor of the county in which the real estate is
4 located;

5 (b) the fair market value of the real estate, as reflected in a written
6 appraisal of the real estate performed by a Kansas licensed or certified
7 appraiser within the past 12 months; or

8 (c) in the case of a nonpurchase money real estate transaction, the
9 estimated market value as determined through an automated valuation
10 model acceptable to the administrator. As used in this paragraph (c),
11 "automated valuation model" means an automated system that is used to
12 derive a property value through the use of publicly available property
13 records and various analytic methodologies such as comparable sales
14 prices, home characteristics and historical home price appreciations.
15 Automated valuation models must be validated by an independent credit
16 rating agency. An automated valuation model provider shall not accept a
17 property valuation assignment when the assignment itself is contingent
18 upon the automated valuation model provider reporting a predetermined
19 property valuation, or when the fee to be paid to the automated valuation
20 model provider is contingent upon the property valuation reached or upon
21 the consequences resulting from the property valuation assignment.

22 (7) "Billing cycle" means the time interval between periodic billing
23 statement dates.

24 (8) "Cash price" of goods, services, or an interest in land means the
25 price at which they are offered for sale by the seller to cash buyers in the
26 ordinary course of business and may include:

27 (a) The cash price of accessories or services related to the sale, such
28 as delivery, installation, alterations, modifications, and improvements; and

29 (b) taxes to the extent imposed on a cash sale of the goods, services,
30 or interest in land. The cash price stated by the seller to the buyer in a
31 disclosure statement is presumed to be the cash price.

32 (9) "Closed end credit" means a consumer loan or a consumer credit
33 sale which is not incurred pursuant to open end credit.

34 (10) "Closing costs" with respect to a debt secured by an interest in
35 land includes:

36 (a) The actual fees paid a public official or agency of the state or
37 federal government, for filing, recording or releasing any instrument
38 relating to the debt; and

39 (b) bona fide and reasonable expenses incurred by the lender in
40 connection with the making, closing, disbursing, extending, readjusting or
41 renewing the debt which are payable to third parties not related to the
42 lender, except that reasonable fees for an appraisal made by the lender or
43 related party are permissible.

1 (11) "Code mortgage rate" means the greater of:

2 (a) 12%; or

3 (b) the sum of:

4 (i) The yield on 30-year fixed rate conventional home mortgage loans
5 committed for delivery within 61 to 90 days accepted under the federal
6 home loan mortgage corporation's or any successor's daily offerings for
7 sale on the last day on which commitments for such mortgages were
8 received in the previous month; and

9 (ii) 5%.

10 If the reference rate referred to in subparagraph (i) of paragraph (b) is
11 discontinued, becomes impractical to use, or is otherwise not readily
12 ascertainable for any reason, the administrator may designate a
13 comparable replacement reference rate and, upon publishing notice of the
14 same, such replacement reference rate shall become the reference rate
15 referred to in subparagraph (i) of paragraph (b). The secretary of state shall
16 publish notice of the code mortgage rate not later than the second issue of
17 the Kansas register published each month.

18 (12) "Conspicuous" means a term or clause is conspicuous when it is
19 so written that a reasonable person against whom it is to operate ought to
20 have noticed it. Whether a term or clause is conspicuous or not is for
21 decision by the trier of fact.

22 (13) "Consumer" means the buyer, lessee, or debtor to whom credit is
23 granted in a consumer credit transaction.

24 (14) "Consumer credit sale":

25 (a) Except as provided in paragraph (b), a "consumer credit sale" is a
26 sale of goods, services, or an interest in land in which:

27 (i) Credit is granted either by a seller who regularly engages as a
28 seller in credit transactions of the same kind or pursuant to a credit card
29 other than a lender credit card;

30 (ii) the buyer is a person other than an organization;

31 (iii) the goods, services, or interest in land are purchased primarily for
32 a personal, family or household purpose;

33 (iv) either the debt is by written agreement payable in more than four
34 installments or a finance charge is made; and

35 (v) with respect to a sale of goods or services, the amount financed
36 does not exceed \$25,000.

37 (b) A "consumer credit sale" does not include:

38 (i) A sale in which the seller allows the buyer to purchase goods or
39 services pursuant to a lender credit card; or

40 (ii) a sale of an interest in land, unless the parties agree in writing to
41 make the transaction subject to the uniform consumer credit code.

42 (15) "Consumer credit transaction" means a consumer credit sale,
43 consumer lease, or consumer loan or a modification thereof including a

1 refinancing, consolidation, or deferral.

2 (16) "Consumer lease" means a lease of goods:

3 (a) Which a lessor regularly engaged in the business of leasing makes
4 to a person, other than an organization, who takes under the lease primarily
5 for a personal, family or household purpose;

6 (b) in which the amount payable under the lease does not exceed
7 \$25,000;

8 (c) which is for a term exceeding four months; and

9 (d) which is not made pursuant to a lender credit card.

10 (17) "Consumer loan":

11 (a) Except as provided in paragraph (b), a "consumer loan" is a loan
12 made by a person regularly engaged in the business of making loans in
13 which:

14 (i) The debtor is a person other than an organization;

15 (ii) the debt is incurred primarily for a personal, family or household
16 purpose;

17 (iii) either the debt is payable by written agreement in more than four
18 installments or a finance charge is made; and

19 (iv) either the amount financed does not exceed \$25,000 or the debt is
20 secured by an interest in land.

21 (b) Unless the loan is made subject to the uniform consumer credit
22 code by written agreement, a "consumer loan" does not include:

23 (i) A loan secured by a first mortgage unless:

24 (A) The loan-to-value ratio of the loan at the time when made
25 exceeds 100%; or

26 (B) in the case of subsection (1) of K.S.A. 16a-3-308a, and
27 amendments thereto, the annual percentage rate of the loan exceeds the
28 code mortgage rate; or

29 (ii) a loan made by a qualified plan, as defined in section 401 of the
30 internal revenue code, to an individual participant in such plan or to a
31 member of the family of such individual participant.

32 (18) "Credit" means the right granted by a creditor to a debtor to
33 defer payment of debt or to incur debt and defer its payment.

34 (19) "Credit card" means any card, plate or other single credit device
35 that may be used from time to time to obtain credit. Since this involves the
36 possibility of repeated use of a single device, checks and similar
37 instruments that can be used only once to obtain a single credit extension
38 are not credit cards.

39 (20) "Creditor" means a person who regularly extends credit in a
40 consumer credit transaction which is payable by a written agreement in
41 more than four installments or for which the payment of a finance charge
42 is or may be required and is the person to whom the debt arising from the
43 consumer credit transaction is initially payable on the face of the evidence

1 of indebtedness or, if there is no such evidence of indebtedness, by written
2 agreement. In the case of credit extended pursuant to a credit card, the
3 creditor is the card issuer and not another person honoring the credit card.

4 (21) "Earnings" means compensation paid or payable to an individual
5 or for such individual's account for personal services rendered or to be
6 rendered by such individual, whether denominated as wages, salary,
7 commission, bonus, or otherwise, and includes periodic payments pursuant
8 to a pension, retirement, or disability program.

9 (22) "Finance charge" means all charges payable directly or indirectly
10 by the consumer and imposed directly or indirectly by the creditor as an
11 incident to or as a condition of the extension of credit. The finance charge
12 shall be calculated as provided in rules and regulations adopted by the
13 administrator pursuant to K.S.A. 16a-6-117, and amendments thereto.

14 (23) "First mortgage" means a first priority mortgage lien or similar
15 real property security interest.

16 (24) "Goods" includes goods not in existence at the time the
17 transaction is entered into and merchandise certificates, but excludes
18 money, chattel paper, documents of title, and instruments.

19 (25) Except as otherwise provided, "lender" includes an assignee of
20 the lender's right to payment but use of the term does not in itself impose
21 on an assignee any obligation of the lender with respect to events
22 occurring before the assignment.

23 (26) "Lender credit card" means a credit card issued by a supervised
24 lender.

25 (27) "Loan":

26 (a) Except as provided in paragraph (b), a "loan" includes:

27 (i) The creation of debt by the lender's payment of or agreement to
28 pay money to the debtor or to a third party for the account of the debtor;

29 (ii) the creation of debt either pursuant to a lender credit card or by a
30 cash advance to a debtor pursuant to a credit card other than a lender credit
31 card;

32 (iii) the creation of debt by a credit to an account with the lender upon
33 which the debtor is entitled to draw immediately; ~~and~~

34 (iv) the forbearance of debt arising from a loan; *and*

35 (v) *the provision of a cash advance or funds to a consumer in*
36 *exchange for which such consumer assigns to, conveys to or otherwise*
37 *confers upon the person or entity advancing the cash advance or funds,*
38 *the right to receive the proceeds, or any part thereof, of the settlement,*
39 *insurance payment, or award of damages obtained as a result of:*

40 (1) *Such consumer's civil action, statutory or regulatory claim for*
41 *which damages may be awarded to the claiming party; or*

42 (2) *a cause of action or legal claim upon which a civil action or*
43 *statutory claim described in clause (1) may be based, regardless of*

1 *whether the right to receive the proceeds is non-recourse.*

2 (b) A "loan" does not include:

3 (i) The payment or agreement to pay money to a third party for the
4 account of a debtor if the debt of the debtor arises from a sale or lease and
5 results from use of either a credit card issued by a person primarily in the
6 business of selling or leasing goods or services or any other credit card
7 which may be used for the purchase of goods or services and which is not
8 a lender credit card; *or*

9 (ii) *providing professional legal services or the advancement of*
10 *litigation expenses by an attorney admitted to practice law in this state to*
11 *an individual on a contingency basis.*

12 (28) "Loan-to-value ratio," at any time for any loan secured by an
13 interest in real estate, means a fraction expressed as a percentage:

14 (a) The numerator of which is the aggregate unpaid principal balance
15 of all loans secured by a first mortgage or a second mortgage encumbering
16 the real estate at such time; and

17 (b) the denominator of which is the appraised value of the real estate.

18 (29) "Merchandise certificate" means a writing issued by a seller not
19 redeemable in cash and usable in its face amount in lieu of cash in
20 exchange for goods or services.

21 (30) "Official fees" means:

22 (a) Fees and charges prescribed by law which actually are or will be
23 paid to public officials for determining the existence of or for perfecting,
24 releasing, or satisfying a security interest related to a consumer credit sale,
25 consumer lease, or consumer loan; or

26 (b) premiums payable for insurance in lieu of perfecting a security
27 interest otherwise required by the creditor in connection with the sale,
28 lease, or loan, if the premium does not exceed the fees and charges
29 described in paragraph (a) which would otherwise be payable.

30 (31) "Open end credit" means an arrangement pursuant to which:

31 (a) A creditor may permit a consumer, from time to time, to purchase
32 goods or services on credit from the creditor or pursuant to a credit card, or
33 to obtain loans from the creditor or pursuant to a credit card;

34 (b) the unpaid balance of amounts financed and the finance and other
35 appropriate charges are debited to an account;

36 (c) the finance charge, if made, is computed on the outstanding
37 unpaid balances of the consumer's account from time to time; and

38 (d) the consumer has the privilege of paying the balances in
39 installments.

40 (32) "Organization" means a corporation, limited liability company,
41 government or governmental subdivision or agency, trust, estate,
42 partnership, cooperative or association.

43 (33) "Person" includes a natural person or an individual, and an

1 organization.

2 (34) (a) "Person related to" with respect to an individual means:

3 (i) The spouse of the individual;

4 (ii) a brother, brother-in-law, sister, sister-in-law of the individual;

5 (iii) an ancestor or lineal descendant of the individual or the
6 individual's spouse;

7 (iv) any other relative, by blood, adoption or marriage, of the
8 individual or such individual's spouse who shares the same home with the
9 individual.

10 (b) "Person related to" with respect to an organization means:

11 (i) A person directly or indirectly controlling, controlled by or under
12 common control with the organization;

13 (ii) an officer or director of the organization or a person performing
14 similar functions with respect to the organization or to a person related to
15 the organization;

16 (iii) the spouse of a person related to the organization;

17 (iv) a relative by blood, adoption or marriage of a person related to
18 the organization who shares the same home with such person.

19 (35) "Prepaid finance charge" means any finance charge paid
20 separately in cash or by check before or at consummation of a transaction,
21 or withheld from the proceeds of the credit at any time. Prepaid finance
22 charges shall be calculated as provided in rules and regulations adopted by
23 the administrator pursuant to K.S.A. 16a-6-117, and amendments thereto.

24 (36) "Presumed" or "presumption" means that the trier of fact must
25 find the existence of the fact presumed unless and until evidence is
26 introduced which would support a finding of its nonexistence.

27 (37) "Principal" means the total of the amount financed and the
28 prepaid finance charges, except that prepaid finance charges are not added
29 to the amount financed to the extent such prepaid finance charges are paid
30 separately in cash or by check by the consumer. The administrator may
31 adopt rules and regulations regarding the determination or calculation of
32 the principal or the principal balance pursuant to K.S.A. 16a-6-117, and
33 amendments thereto.

34 (38) "Sale of goods" includes any agreement in the form of a
35 bailment or lease of goods if the bailee or lessee agrees to pay as
36 compensation for use a sum substantially equivalent to or in excess of the
37 aggregate value of the goods involved and it is agreed that the bailee or
38 lessee will become, or for no other or a nominal consideration has the
39 option to become, the owner of the goods upon full compliance with such
40 bailee's or lessee's obligations under the agreements.

41 (39) "Sale of an interest in land" includes a lease in which the lessee
42 has an option to purchase the interest and all or a substantial part of the
43 rental or other payments previously made by the lessee are applied to the

1 purchase price.

2 (40) "Sale of services" means furnishing or agreeing to furnish
3 services and includes making arrangements to have services furnished by
4 another.

5 (41) "Second mortgage" means a second or other subordinate priority
6 mortgage lien or similar real property security interest.

7 (42) "Seller": Except as otherwise provided, "seller" includes an
8 assignee of the seller's right to payment but use of the term does not in
9 itself impose on an assignee any obligation of the seller with respect to
10 events occurring before the assignment.

11 (43) "Services" includes:

12 (a) Work, labor, and other personal services;;

13 (b) privileges with respect to transportation, hotel and restaurant
14 accommodations, education, entertainment, recreation, physical culture,
15 hospital accommodations, funerals, cemetery accommodations, and the
16 like; and

17 (c) insurance.

18 (44) "Supervised financial organization" means a person, other than
19 an insurance company or other organization primarily engaged in an
20 insurance business:

21 (a) Organized, chartered, or holding an authorization certificate under
22 the laws of any state or of the United States which authorize the person to
23 make loans and to receive deposits, including a savings, share, certificate
24 or deposit account; and

25 (b) subject to supervision by an official or agency of such state or of
26 the United States.

27 (45) "Supervised lender" means a person authorized to make or take
28 assignments of supervised loans, either under a license issued by the
29 administrator (K.S.A. 16a-2-301, and amendments thereto) or as a
30 supervised financial organization (subsection (44) of K.S.A. 16a-1-301,
31 and amendments thereto).

32 (46) "Supervised loan" means a consumer loan, including a loan
33 made pursuant to open end credit, with respect to which the annual
34 percentage rate exceeds 12%.

35 (47) "Written agreement" means an agreement such as a promissory
36 note, contract or lease that is evidence of or relates to the indebtedness. A
37 letter that merely confirms an oral agreement does not constitute a written
38 agreement for purposes of this subsection unless signed by the person
39 against whom enforcement is sought.

40 (48) "Written administrative interpretation" means any written
41 communication from the consumer credit commissioner which is the
42 official interpretation as so stated in said written communication by the
43 consumer credit commissioner of the Kansas uniform consumer credit

1 code and rules and regulations pertaining thereto.

2 Sec. 2. K.S.A. 16a-1-301 is hereby repealed.

3 Sec. 3. This act shall take effect and be in force from and after its

4 publication in the statute book.