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February 22, 2021

To: House Committee on Financial Institutions and Rural Development

From: Melissa Renick, Assistant Director for Research

Re: The Uniform Consumer Credit Code and Interest Rates

This memorandum provides a brief background on the Kansas Uniform Consumer Credit Code (UCCC or the Code) and its administration, the allowable interest rates and products permitted under the UCCC, and recent law relevant to 2021 HB 2189.

The UCCC and its Administration

Consumer Credit

Enacted in 1973, the UCCC applies to all aspects of consumer credit addressing transactions for personal, family, and household purposes. UCCC transactions include consumer sales (closed-end or revolving, including retail credit card purchases), consumer loans (including purchases using bank credit cards), and consumer leases. Consumer transactions may involve the consumer and retail merchants; banks, savings and loan associations, and credit unions; licensed lenders, including finance companies; and lender credit card companies. In general, transactions greater than \$25,000 are outside the scope of the UCCC, but any transaction may become a consumer credit transaction if the parties to the agreement choose to do so.

The Code Administrator

The Office of the State Bank Commissioner provides oversight of the UCCC. During the 1998 Interim, the Special Committee on Financial Institutions and Insurance studied reorganization of the financial institutions' regulatory agencies. Committee recommendations included consolidation of the Office of the Consumer Credit Commissioner with the Office of the Bank Commissioner. As a result of action by the 1999 Legislature, the Office of the Consumer Credit Commissioner was abolished and the powers and functions transferred to the Office of the State Bank Commissioner. A Deputy Commissioner of Consumer Mortgage and Lending was created, and the Deputy Commissioner was designated as the Administrator of the Uniform Consumer Credit Code (Code Administrator).

Interest Rates

The UCCC establishes three categories of interest rates: closed-end or installment rates (KSA 16a-2-201); open-end or revolving credit rates (16a-2-202); and lender rates (16a-2-401). Closed-end installment contracts calculate in advance the amount financed and the finance charge and provide payment of the calculated total in equal installments at equal intervals, e.g., auto loans. Open-end credit includes revolving credit accounts offered by retailers and lines of credit (e.g. bank credit cards) that are payable in amounts, usually monthly, that are a percentage of the outstanding balance. Lender rates are those charged on loans made by licensed lenders, by supervised financial institutions, and by lender credit card arrangements.

Under current law, closed-end, open-end, and lender rate consumer credit transactions allow a seller to set a finance charge at “any rate agreed to by the parties” subject to the statutory limits of prepaid finance charges. The limitations and computations for the finance charges are as follows:

- **Closed-end** consumer credit sales
 - Sales, other than manufactured homes: maximum amount is two percent of the amount or \$100, whichever is less; or
 - Sales, manufactured homes: maximum amount is five percent of the amount (fee must be used to reduce or “buy-down” the interest rate of the sale).
- **Open-end** consumer credit sales
 - Average daily balance: finance charge is calculated on the sum of the amount of actual daily balances each day during the billing cycle divided by the number of days in the billing cycle; or
 - Ending balance: finance charge is calculated on the unpaid balance of the account at the end of the billing cycle.
- **Lender credit** sales
 - Periodic rate ceilings (loans other than first or second mortgage): 36.0 percent per year on the portion of the unpaid balance which is \$860 or less, and 21.0 percent per year on the portion of the unpaid balance that exceeds \$860 (subject to limitations on prepaid finance charges);
 - Periodic rate ceilings (loans secured by second mortgage, manufactured homes): 18.0 percent per year. The rate would apply to any first mortgage loans made subject to the UCCC; or
 - Prepaid finance charges on consumer loans:
 - First or second mortgage loan or certain manufactured home loans, not to exceed eight percent of the amount financed; however, the total of all prepaid finance charges payable to the lender cannot exceed five percent of the amount financed; or
 - Other consumer credit loans: maximum amount is two percent of the amount or \$100, whichever is less.
 - Payday loan transactions* are subject to special finance charges:

- The loans and the cash advance must be \$500 or less with a finance charge not to exceed 15 percent of the amount of the advance. In addition, the Code includes a provision that the contract interest rate after maturity cannot be more than three percent per month.

* A separate *Briefing Book* article on payday loans has been provided as a resource. It is also available [here](#).

Legislative Review—Finance charges, Rates, and Terms of the Code

During the 2005 Interim, the Special Committee on Financial Institutions and Insurance was charged, among other things, to review HB 2143 and to study the current finance charges, rates, and terms under the UCCC and the impact of the Code on financial institutions, loan companies, and Kansas consumers, and the current regulatory environment in Kansas. The Committee concluded that the interest rate ceiling legislation (HB 2143) should not be recommended and the alternate finance charge for closed-end consumer installment loans legislation (HB 2278) should not be recommended to the 2006 Legislature and recommended new legislation to address the requested HB 2278 amendments. SB 376 was introduced during the 2006 Session. The bill received a hearing in the Senate Committee but no further action was taken, and with HB 2143 and HB 2278, died at the end of the 2006 Session.

HB 2143. The bill would have amended the Code to allow a seller to charge an interest rate not to exceed 21 percent per year. The interest rate ceiling applies to the finance charges under the UCCC: closed-end consumer credit sales; open-end credit sales; and lender credit sales. The bill also would have removed the authority to impose deferral charges on closed-end consumer credit sales. Under current law, the finance charge rates are not capped and instead are subject to the rate agreed to by the parties to the transaction with established limitations on any prepaid finance charges.

HB 2278. The bill would have amended the Code by creating an alternate finance charge to the finance charges specified in KSA 16a-2-401, providing for a sliding-scale rate structure for closed-end consumer installment loans that are financed between \$100 and \$1,500. Specifically, the bill would have allowed a licensee to charge in lieu of the charges specified in law:

- A loan acquisition charge, not exceeding the lesser of 10 percent of the financed amount or \$75; and
- A monthly installment account handling charge, based on a sliding- scale rate. For example, an account handling charge for a loan financed in the amount of \$550 would be up to \$17.50 while the charge for a \$1,100 loan would be an amount up to \$22.50.

HB 2278 also would have defined the terms of the loan with a minimum of four months and a maximum amount of 18 months and 5 days. The bill also would have addressed loan refund rates, prepayments, notification, and contract rates. The rates and charges created by the Act would not apply to payday loans.

Kansas 2021 HB 2189

“36% rate cap”

Open-end and closed-end credit. Among the changes to allowable charges and rates under the UCCC, this bill would establish, in lieu of the law providing open-end credit finance charges are determined by the agreement of the parties involved in the transaction, an annual maximum of 36.0 percent for open-end credit. (The bill would also limit other fees, including monthly maintenance fees, on open-end credit.) As noted previously in this memorandum, closed-end credit finance charges are calculated using the periodic rate ceiling methodology (loans other than first or second mortgage): 36.0 percent per year on the portion of the unpaid balance which is \$860 or less, and 21 percent per year on the portion of the unpaid balance that exceeds \$860. The bill would establish an annual maximum of 36.0 percent for closed-end credit.

Cash advance. As noted previously, payday loan transactions are subject to special limitations for finance charges (loans and cash advance must be \$500 or less with a finance charge not to exceed 15 percent of the amount of the advance [per week or month]). The bill would cap the rate at 36.0 percent annually and would also replace law governing payday lending by establishing a small installment loan that could not exceed \$2,500 with a minimum term of 3 calendar months and a maximum term of 24 months.

Other States Laws and Legislation—Small Dollar Lending

Currently, 32 states permit “small dollar lending”, with many of the states setting maximum interest rates for those loans or providing other restrictions or limitations on their use. “Small dollar lending” is generally considered those unsecured loans issued in amounts up to \$5,000.

Recent State Actions

On January 15, 2021, Illinois became the 18th state (plus the District of Columbia) to impose a rate cap and the second state in the past three months to do so. Nebraska voters approved Nebraska Initiative 428, the Payday Lender Interest Rate Cap Initiative, on November 3, 2020. The stated object of the initiative was to: [a]mend Nebraska statutes to reduce the amount that delayed deposit services licensees, also known as payday lenders, can charge to a maximum annual percentage rate of thirty-six percent; to prohibit payday lenders from evading this rate cap; and to deem void and uncollectable any transaction made in violation of this rate cap. The law became effective upon proclamation of the Governor on December 8, 2020. Other states utilizing the ballot initiative included South Dakota, whose voters approved the 36% cap in 2016 and Colorado in 2017.

New Hampshire put the 36 percent rate cap into effect in 2009 and Montana followed with a similar law in 2010.

The Ohio Legislature also recently placed restrictions on rates, loan amounts, and term limitations (2019 HB 123). Under its Fairness in Lending Act, loans cannot exceed \$1,000. In addition, fees and interest cannot exceed 60 percent of the loan’s original principal and the interest rate is capped at 28 percent per year. The law also specifies loans must be for a term of

at least 91 days (an exception is provided if the monthly payment is not more than 7 percent of a borrower's monthly net income, or 6 percent of gross income). The law further provides loan durations cannot be more than one year and borrowers cannot have more than \$2,500 in outstanding principals across loans.

The states of Arizona, Arkansas, Connecticut, Georgia, Maryland, Massachusetts, New Jersey, New York, North Carolina, New Mexico, Pennsylvania, Vermont, and West Virginia prohibit payday loans.

A chart of the referenced rate caps in state law appears in the Appendix. Summary information is also provided for the surrounding states and Kansas.

Federal Action

In November 2019, legislation effectively establishing a 36.0 percent rate cap for consumer loans termed the "Veterans and Consumers Fair Credit Act" was introduced (S. 2833 and H.R. 5050). The bills were introduced to extend the Military Lending Act's rate cap (36.0 percent) for consumer loans and ban on mandatory arbitration to all covered loans. Both bills died at the conclusion of the 116th Congress. To date, similar legislation has not been introduced in the 117th Congress.

Summary of State Law for Certain Consumer Loan Transactions

State	Statutory Citation	Maximum Loan Amount	Minimum Loan Terms	Finance Charges
Colorado	5-3.1-101 <i>et seq.</i>	A lender shall not lend an amount greater than \$500 nor shall the amount financed exceed \$500 at any time to a consumer.	There shall be no maximum loan term. The minimum loan term shall be six months from the loan transaction date.	A lender may charge a finance charge for each deferred deposit loan or payday loan that must not exceed an annual percentage rate of 36%. If the loan is prepaid prior to the maturity of the loan term, the lender shall refund to the consumer a prorated portion of the finance charge based upon the ratio of time left before maturity to the loan term. A lender may charge only those charges expressly authorized in this article in connection with a deferred deposit loan or payday loan.
	4 Code of Colo. Reg. 902-1, Rule 17			<p>(A) Origination/Acquisition Fee The finance charge permitted by §5-3.1-105, C.R.S. of up to 20% of the first \$300 loaned plus 7.5% of any amount loaned in excess of \$300 may be referred to as an "origination" or "acquisition" fee.</p> <p>(C) Interest Rate The interest rate of up to 45% per annum permitted by §5-3.1-105, C.R.S. may be assessed only on the amount financed of \$500 or less. It may not be assessed on the origination/acquisition fee or monthly maintenance fees.</p> <p>(D) Monthly Maintenance Fees 1. A monthly maintenance fee may be charged for each month the loan is outstanding after the first 30 days of the loan. The number of monthly maintenance fees</p>

				<p>permitted is equal to the number of months in the loan term less one month. For example, on a six-month loan, a monthly maintenance fee may be charged at the end of the second through sixth months if the loan is outstanding during that time.</p> <p>2. A monthly maintenance fee may be charged on each \$100 increment of the amount financed. No fee may be collected on amounts of less than \$100. For example, on a \$350 loan, the permitted monthly maintenance fee is \$22.50 (three increments of \$100 x \$7.50 = \$22.50).</p> <p>3. A monthly maintenance fee is not earned until the end of the month. If a payday loan is prepaid in full at any time during a month, no monthly maintenance fee may be collected for that month.</p> <p>4. The monthly maintenance fee may be based on the amount financed rather than the actual balance remaining each month.</p>
Montana	31-1-701 <i>et seq.</i>	The minimum amount of a deferred deposit loan is \$50 and the amount, exclusive of fees allowed, may not exceed \$300.		A licensee may not charge a fee for making or carrying each deferred deposit loan authorized by this part that exceeds 36% per annum, exclusive of the insufficient funds' fees.
Nebraska	45-901 <i>et seq.</i> 2020 Initiative 428	No licensee shall at any one time hold from any one maker a check or checks in an aggregate face amount of more than \$500.	Not to exceed 34 days	(1) A licensee shall not impose an annual percentage rate greater than 36% in connection with a delayed deposit transaction. Any delayed deposit transaction made in violation of this section is void, and the licensee making such delayed deposit transaction has no right to collect, receive, or

				<p>retain any principal, interest, fees, or any other charges in connection with such delayed deposit transaction.</p> <p>(2) The fees set forth in this section shall not be charged to individuals on active duty military or their spouses or dependents in an amount that exceeds what is allowed under 10 U.S.C. 987, as such section existed on Jan. 1, 2018.</p>
New Hampshire	399A:1 <i>et seq.</i>	\$500	At least 7 days and not more than 30 days	The annual percentage rate for payday loans shall not exceed 36%.
Ohio	1321.35 <i>et seq.</i>	The total amount of the loan does not exceed \$1,000.	<p>(1) Subject to division (B)(2) of this section, the minimum duration of the loan is 91 days, and the maximum duration of the loan is one year.</p> <p>(2) The minimum duration of the loan may be less than 91 days if the total monthly payment on the loan does not exceed an amount that is 6% of the borrower's verified gross monthly income or 7% of the borrower's verified net monthly income, whichever is greater.</p> <p>If the duration of a short-term loan is 91 days or greater, the licensee shall determine the recommended length of a loan based on the borrower's verified monthly income as described in division (B)(2) of §1321.39 of the Revised Code. The licensee shall provide the borrower with a written copy of its recommendation, which is not binding on the borrower.</p>	<p>A licensee may charge, collect, and receive only the following fees and charges in connection with a short-term loan:</p> <p>(A) Interest not exceeding a rate of 28% per annum;</p> <p>(B) (1) Except as otherwise provided in division (B)(2) of this section, a monthly maintenance fee that does not exceed the lesser of 10% of the originally contracted loan amount or \$30, provided the fee is not added to the loan balance on which interest is charged; (2) A licensee shall not charge, collect, or receive a monthly maintenance fee if the borrower is a person on active duty in the armed forces of the United States or a dependent of that person.</p> <p>(C) If the originally contracted loan amount is \$500 or more, a loan origination charge in the amount of 2% of the originally contracted loan amount, provided the loan origination charge is not added to</p>

				<p>the loan balance on which interest is charged;</p> <p>(D) One check collection charge per loan not exceeding an amount equal to \$20 plus any amount passed on from other financial institutions for each check, negotiable order of withdrawal, share draft, or other negotiable instrument returned or dishonored for any reason, provided that the terms and conditions upon which check collection charges will be charged to the borrower are set forth in the written loan contract described in division (C) of §1321.39 of the Revised Code;</p> <p>(E) If a licensee provides the proceeds of a loan in the form of a check, a fee to cash that check in an amount not exceeding \$10;</p> <p>(F) Damages, costs, and disbursements to which the licensee may become entitled to by law in connection with any civil action to collect a loan after default, except that the total amount of damages and costs shall not exceed the originally contracted loan amount.</p> <p>Notwithstanding any provision of §1321.35 to 1321.48 of the Revised Code to the contrary, a licensee shall not charge, collect, or receive in connection with a short-term loan a total amount of fees and charges that exceeds 60% of the originally contracted loan amount. For purposes of this section, all charges made in connection with the loan shall be included when calculating the total loan charges except for all of the</p>
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				following: (A) The check collection charge authorized under §1321.40 of the Revised Code; (B) The check cashing fee authorized under §1321.40 of the Revised Code; (C) The interest charges on a loan that is refinanced in accordance with §1321.401 of the Revised Code.
South Dakota	54-4-36 <i>et seq.</i>	\$500		No licensee may contract for or receive finance charges pursuant to a loan in excess of an annual rate of 36%, including all charges for any ancillary product or service and any other charge or fee incident to the extension of credit. A violation of this section is a Class 1 misdemeanor. Any loan made in violation of this section is void and uncollectible as to any principal, fee, interest, or charge.
Kansas	16a-2-404 16a-2-405	Cash advance equal to or less than \$500	Minimum term is seven days and the maximum term is 30 days	A licensed or supervised lender may charge an amount not to exceed 15% of the amount of the cash advance. The contract rate of any loan made under this section shall not be more than 3% per month of the loan proceeds after the maturity date. No insurance charges or any other charges of any nature whatsoever shall be permitted, except returned check fees, including any charges for cashing the loan proceeds if they are given in check form.
Missouri	408.500 to 408.506	\$500 or less	Minimum of 14 days and a maximum of 31 days	A lender may only charge simple interest and fees in accordance with §§408.100 and 408.140. No other charges of any nature shall be permitted except as provided by this section, including any

				charges for cashing the loan proceeds if they are given in check form. However, no borrower shall be required to pay a total amount of accumulated interest and fees in excess of 75% of the initial loan amount on any single loan authorized pursuant to this section for the entire term of that loan and all renewals authorized by §408.500 and this section.
Oklahoma	Okla. Stat. tit. 59, §3101 <i>et seq.</i>	\$500 exclusive of the finance charge	Not less than 12 days or more than 45 days from the date the instrument is accepted by the lender	A deferred deposit lender may charge a finance charge for each deferred deposit loan that does not exceed \$15 for every \$100 advanced up to the first 300 of the amount advanced; for the advance amounts in excess of \$300, the lender may charge an additional finance charge of \$10 for every \$100 advanced in excess of \$300.

Sources: "Payday Lending State Statutes," National Conference of State Legislatures (11/2020). Confirmed with review of Conference of State Bank Supervisors' Consumer Finance Laws (11/2020)