

HOUSE BILL No. 2267

By Committee on Financial Institutions and Pensions

2-2

1 AN ACT concerning the uniform consumer credit code; relating to
2 consumer loans; amending K.S.A. 16a-2-401, 16a-2-404 and 16a-2-405
3 and repealing the existing sections.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 16a-2-401 is hereby amended to read as follows:
7 16a-2-401. (1) For any consumer loan incurred pursuant to open end
8 credit, including, without limitation, a loan pursuant to a lender credit card,
9 a lender may charge a finance charge at ~~any a rate agreed to by the parties~~
10 *of 36% per annum, inclusive of all fees, interest and charges contained in*
11 *the loan contract, including costs of ancillary products*, subject, however,
12 to the limitations on prepaid finance charges set forth in subsection (6).
13 This subsection does not apply to a consumer loan secured by a first
14 mortgage or a second mortgage.

15 (2) For any consumer loan incurred pursuant to closed end credit, a
16 lender may charge a periodic finance charge, calculated accordingly to the
17 actuarial method, not to exceed: (a) 36% per annum on the portion of the
18 unpaid balance which is \$860 or less, and (b) 21% per annum on the
19 portion of the unpaid balance which exceeds \$860, subject, however to the
20 limitations on prepaid finance charges set forth in subsection (6). This
21 subsection does not apply to a consumer loan secured by a first mortgage
22 or a second mortgage.

23 (3) For any consumer loan secured by a second mortgage or a
24 consumer loan secured by an interest in a manufactured home as defined
25 by 42 U.S.C. § 5402(6), a lender may charge a periodic finance charge,
26 calculated according to the actuarial method, not to exceed 18% per
27 annum, subject, however to the limitations on prepaid finance charges set
28 forth in subsection (6). This subsection does not apply if the lender and the
29 consumer agree in writing that the finance charge for the loan is governed
30 by K.S.A. 16-207(b), and amendments thereto.

31 (4) If the parties to a consumer loan secured by a first mortgage or a
32 consumer loan secured by an interest in a manufactured home as defined
33 by 42 U.S.C. § 5402(6) agree in writing to make the transaction subject to
34 the uniform consumer credit code, then the periodic finance charge for the
35 loan, calculated according to the actuarial method, may not exceed 18%
36 per annum, subject, however to the limitations on prepaid finance charges

1 set forth in subsection (6).

2 (5) This section does not limit or restrict the manner of calculating the
3 finance charge, whether by way of add-on, discount or otherwise, so long
4 as the rate and the amount of the finance charge does not exceed that
5 permitted by this section.

6 (6) Prepaid finance charges on consumer loans are limited as follows:

7 (a) For a consumer loan secured by a first mortgage or a second
8 mortgage, or a consumer loan secured by an interest in a manufactured
9 home as defined by 42 U.S.C. § 5402(6), prepaid finance charges in an
10 amount not to exceed 8% of the amount financed may be charged,
11 provided that the aggregate amount of prepaid finance charges payable to
12 the lender or any person related to the lender do not exceed 5% of the
13 amount financed; and

14 (b) for any other consumer loan, prepaid finance charges in an
15 amount not to exceed the lesser of 2% of the amount financed or \$100 may
16 be charged.

17 Prepaid finance charges permitted under this subsection are in addition
18 to finance charges permitted under subsection (1), (2), (3) and (4), as
19 applicable. Prepaid finance charges permitted under this subsection are
20 fully earned when paid and are non-refundable, unless the parties agree
21 otherwise in writing.

22 (7) The finance charge limitations in subsections (3) and (4) do not
23 apply to a consumer loan the finance charge for which is governed by
24 ~~subsection (h) of K.S.A. 16-207(h)~~, and amendments thereto.

25 (8) If a loan secured by a first mortgage constitutes a "consumer loan"
26 ~~under subsection (17) of K.S.A. 16a-1-301(17)~~, and amendments thereto,
27 by virtue of the loan-to-value ratio exceeding 100% at the time the loan is
28 made, then the periodic finance charge for the loan shall not exceed that
29 authorized by ~~subsection (b) of K.S.A. 16-207(b)~~, and amendments
30 thereto, but the loan is subject to the limitations on prepaid finance charges
31 set forth in ~~paragraph (a) of subsection (6)(a)~~, which prepaid finance
32 charges may be charged in addition to the finance charges permitted under
33 ~~subsection (b) of K.S.A. 16-207(b)~~, and amendments thereto.

34 (9) If, within 12 months after the date of the original loan, a lender or
35 a person related to the lender refinances a loan with respect to which a
36 prepaid finance charge was payable to the same lender pursuant to
37 subsection (6), then the following apply:

38 (a) If a prepaid finance charge with respect to the original loan was
39 payable to the lender pursuant to ~~paragraph (a) of subsection (6)(a)~~, then
40 the aggregate amount of prepaid finance charges payable to the lender or
41 any person related to the lender with respect to the new loan may not
42 exceed 5% of the additional amount financed.

43 (b) If a prepaid finance charge with respect to the original loan was

1 payable to the lender pursuant to ~~paragraph (b)~~ of subsection (6)(b), then
2 the aggregate amount of prepaid finance charges payable to the lender or
3 any person related to the lender with respect to the new loan may not
4 exceed the lesser of 2% of the additional amount financed or \$100.

5 (c) For purposes of this subsection, "additional amount financed"
6 means the difference between: (i) The amount financed for the new loan,
7 less the amount of all closing costs incurred in connection with the new
8 loan which are not included in the prepaid finance charges for the new
9 loan; and (ii) the unpaid principal balance of the original loan.

10 (10) For any period in which a finance charge is due on a consumer
11 loan pursuant to open end credit, the parties may agree on a minimum
12 amount.

13 (11) If the parties to a contract for deed to real estate agree in writing
14 to make the transaction subject to the uniform consumer credit code, then
15 the transaction is subject to the same limitations as set forth in subsections
16 (4) and (6) for a consumer loan secured by a first mortgage.

17 (12) This section does not apply to a ~~payday consumer~~ loan
18 *transaction* governed by K.S.A. 16a-2-404, and amendments thereto.

19 Sec. 2. K.S.A. 16a-2-404 is hereby amended to read as follows: 16a-
20 2-404. (1) On consumer loan transactions ~~in which cash is advanced~~
21 *whereby a lender, for a fee, finance charge or other consideration, does*
22 *the following:*

23 (a) ~~With a short term,~~ *Accepts an instrument from the borrower as*
24 *security for a loan;*

25 (b) ~~a single payment repayment is anticipated, and agrees to hold the~~
26 *instrument for a period of time prior to deposit or negotiation of the*
27 *instrument;*

28 (c) ~~such cash advance is equal to or less than \$500, a licensed or~~
29 ~~supervised lender may charge an amount not to exceed 15% of the amount~~
30 ~~of the cash advance~~ *pays to the borrower; credits to the borrower's*
31 *account or pays to another person on the borrower's behalf the amount of*
32 *the instrument, less charges permitted under this section; and*

33 (d) *issues a loan equal to or less than \$500 shall subject such*
34 *consumer loan transaction to the requirements of this section.*

35 (2) The minimum term of any loan under this section shall be ~~7 days~~
36 ~~and the maximum term of any loan made under this section shall be 30~~
37 ~~days~~ *the number of months equal to the sum of the loan principal and all*
38 *applicable charges, divided by the maximum allowable monthly payment.*

39 (3) A lender and related interest shall not have more than ~~two loans~~
40 ~~one loan~~ made under this section outstanding to the same borrower at any
41 ~~one time and shall not make more than three loans to any one borrower~~
42 ~~within a 30 calendar day period.~~ Each lender shall maintain a journal of
43 loan transactions for each borrower which shall include at least the

1 following information:

2 (a) Name, address and telephone number of each borrower; and

3 (b) date made and due date of ~~each~~ the loan.

4 (4) Each loan agreement made under this section shall contain the
5 following notice in at least 10 point bold face type: NOTICE TO
6 BORROWER: KANSAS LAW PROHIBITS THIS LENDER AND
7 THEIR RELATED INTEREST FROM HAVING MORE THAN ~~TWO~~
8 ~~LOANS~~ ONE LOAN OUTSTANDING TO YOU AT ANY ~~ONE~~ TIME. A
9 LENDER CANNOT DIVIDE THE AMOUNT YOU WANT TO
10 BORROW INTO MULTIPLE LOANS IN ORDER TO INCREASE THE
11 FEES YOU PAY.

12 Prior to consummation of the loan transaction, the lender must:

13 (a) Provide the notice set forth in this subsection in both English and
14 Spanish; ~~and~~

15 (b) obtain the borrower's signature or initials next to the English
16 version of the notice or, if the borrower advises the lender that the
17 borrower is more proficient in Spanish than in English, then next to the
18 Spanish version of the notice; *and*

19 (c) *provide disclosure of periodic payments, total repayment, total*
20 *loan costs, annual percentage rate inclusive of monthly fees, loan*
21 *duration, notice of the borrower's right to revoke ACH payment*
22 *authorization and right to rescind.*

23 (5) ~~The contract~~ maximum rate of any loan made under this section
24 shall ~~not be more than 3% per month of the loan proceeds after the~~
25 ~~maturity date~~ *no more than 36% per annum. The maximum monthly fee or*
26 *charge for any loan made under this section shall be 5% of the original*
27 *loan principal or \$20, whichever is less. These fees shall not be added to*
28 *the original contracted loan for purposes of calculating interest. Loans*
29 *made under this section may be refinanced, however, any refinanced loan*
30 *shall have a maximum rate of 36% per annum and shall not be subject to*
31 *any monthly fee or charges. No insurance charges or any other charges of*
32 *any nature whatsoever shall be permitted, except as stated in subsection*
33 *(7), including any charges for cashing the loan proceeds if they are given*
34 *in check form. Notwithstanding any provision of law to the contrary, the*
35 *total loan charges for any loan made under this section shall not exceed*
36 *50% of the loan principal. For purposes of this calculation, all charges*
37 *made in accordance with the loan shall be considered except: (a) An*
38 *allowable returned check charge or late charge in accordance with*
39 *subsection (7); and (b) interest charges on loans that are refinanced*
40 *according to this subsection.*

41 ~~(6) Any loan made under this section shall not be repaid by proceeds~~
42 ~~of another loan made under this section by the same lender or related~~
43 ~~interest. The proceeds from any loan made under this section shall not be~~

1 applied to any other loan from the same lender or related interest (a) The
2 total required monthly payment of a loan made under this section shall not
3 exceed the greater of 5% of the borrower's verified gross monthly income
4 or 6% of the borrower's verified net monthly income. Income shall be
5 verified according to rules and regulations promulgated by the
6 administrator. Such rules and regulations shall include guidance for
7 reasonably relying on evidence of recurring deposits to a depository
8 account or one or more recent paychecks.

9 (b) The lender shall accept prepayment from a borrower prior to the
10 loan due date and shall not charge the borrower a fee or penalty if the
11 consumer prepays the loan. Upon prepayment of the loan, all finance
12 charges, inclusive of interest and all fees, are pro rata refundable.
13 Prorated monthly fees shall be based on a ratio of the number of days the
14 loan was outstanding to the number of days for which the loan was
15 originally contracted.

16 (c) All loans made under this section shall be precomputed and
17 require full amortization of balance to zero with all payments reducing
18 principal.

19 (d) If any payment is more than 10 days delinquent, the lender may
20 accelerate the loan balance, but shall only collect prorated interest and
21 fees earned to date.

22 (7) On a consumer loan transaction in which cash is advanced in
23 exchange for a personal check, one return check charge or late charge may
24 be charged if the check is deemed insufficient as defined in ~~paragraph (e)~~
25 ~~of subsection (1) of K.S.A. 16a-2-501(I)(e)~~, and amendments thereto. The
26 maximum return check charge or late charge is the lesser of 5% of the
27 original loan principal or \$20, plus any amount passed from another
28 financial institution. Upon receipt of the check from the consumer, the
29 lender shall immediately stamp the back of the check with an endorsement
30 that states: "Negotiated as part of a loan made under K.S.A. 16a-2-404.
31 Holder takes subject to claims and defenses of maker. No criminal
32 prosecution."

33 (8) In determining whether a consumer loan transaction made under
34 the provisions of this section is unconscionable conduct under K.S.A. 16a-
35 5-108, and amendments thereto, consideration shall be given, among other
36 factors, to:

37 (a) The ability of the borrower to repay within the terms of the loan
38 made under this section; or

39 (b) the original request of the borrower for amount and term of the
40 loan are within the limitations under this section.

41 (9) A consumer may rescind any consumer loan transaction made
42 under the provisions of this section without cost not later than the end of
43 the business day immediately following the day on which the loan

1 transaction was made. To rescind the loan transaction:

2 (a) A consumer shall inform the lender that the consumer wants to
3 rescind the loan transaction;

4 (b) the consumer shall return the cash amount of the principal of the
5 loan transaction to the lender; and

6 (c) the lender shall return any fees that have been collected in
7 association with the loan.

8 (10) A person shall not commit or cause to be committed any of the
9 following acts or practices in connection with a consumer loan transaction
10 subject to the provisions of this section:

11 (a) Use any device or agreement that would have the effect of
12 charging or collecting more fees, charges or interest, or which results in
13 more fees, charges, or interest being paid by the consumer, than allowed
14 by the provisions of this section, including, but not limited to:

15 (i) Entering into a different type of transaction with the consumer;

16 (ii) entering into a sales/leaseback or rebate arrangement;

17 (iii) catalog sales; or

18 (iv) entering into any other transaction with the consumer or any
19 other person that is designed to evade the applicability of this section;

20 (b) use, or threaten to use the criminal process in any state to collect
21 on the loan;

22 (c) sell any other product of any kind in connection with the making
23 or collecting of the loan;

24 (d) include any of the following provisions in a loan document:

25 (i) A hold harmless clause;

26 (ii) a confession of judgment clause;

27 (iii) a provision in which the consumer agrees not to assert a claim or
28 defense arising out of the contract.

29 (11) As used in this section:

30 (a) "Related interest" ~~shall have~~ *has* the same meaning as "person
31 related to" in K.S.A. 16a-1-301, and amendments thereto; *and*

32 (b) "*instrument*" means any check, draft, nonpurchase vehicle
33 security or other instrument or authorization to transfer or withdraw funds
34 from an account that is signed by the borrower and made payable to a
35 person subject to this section.

36 (12) Any person who facilitates, enables or acts as a conduit or agent
37 for any third party who enters into a consumer loan transaction with the
38 characteristics set out in ~~paragraphs (a) and (b)~~ of subsection (1)(a) *and*
39 (b) shall be required to obtain a supervised loan license pursuant to K.S.A.
40 16a-2-301, and amendments thereto, regardless of whether the third party
41 may be exempt from licensure provisions of the Kansas uniform consumer
42 credit code.

43 (13) Notwithstanding that a person may be exempted by virtue of

1 federal law from the interest rate, finance charge and licensure provisions
 2 of the Kansas uniform consumer credit code, all other provisions of the
 3 code shall apply to both the person and the loan transaction.

4 *(14) Lenders who enter into consumer loan transactions under this*
 5 *section shall, on an annual basis, provide the following information to the*
 6 *administrator, in a uniform manner prescribed by the administrator:*

- 7 *(a) Total number of borrowers;*
- 8 *(b) total number of loans;*
- 9 *(c) average loan size;*
- 10 *(d) total contracted loan charges;*
- 11 *(e) total loan actual charges paid;*
- 12 *(f) number of defaulted loans;*
- 13 *(g) number of charged-off loans;*
- 14 *(h) dollar value of charged-off loans;*
- 15 *(i) number of returned check/late charges and dollar value of such*
 16 *charges;*
- 17 *(j) average contracted annual percentage rate;*
- 18 *(k) average experienced annual percentage rate;*
- 19 *(l) total number of locations;*
- 20 *(m) average number of borrowers per location; and*
- 21 *(n) any other nonprivate information the administrator may deem*
 22 *necessary.*

23 *The administrator shall publish, at least annually, an aggregate report*
 24 *to the public that contains all the the information provided by lenders*
 25 *under this subsection.*

26 ~~(14)~~ (15) This section shall be supplemental to and a part of the
 27 uniform consumer credit code.

28 Sec. 3. K.S.A. 16a-2-405 is hereby amended to read as follows: 16a-
 29 2-405. (a) Any person who makes a loan under the provisions of K.S.A.
 30 16a-2-404, and amendments thereto, shall:

31 (1) Not garnish any wages or salary paid to a military borrower for
 32 service in the armed forces.

33 (2) Defer all collection activity against a military borrower who has
 34 been deployed to a combat or combat support posting for the duration of
 35 such posting.

36 (3) Not contact any person in the military chain of command of a
 37 military borrower in an attempt to collect such loan.

38 (4) Honor all terms of any repayment agreement between the person
 39 making such loan and:

40 (A) The military borrower; or

41 (B) any military counselor or third party credit counselor negotiating
 42 on behalf of the military borrower.

43 (5) Not make any loan to any military borrower whenever the

1 military base commander has declared such person's place of business off
2 limits to military personnel.

3 *(6) Not charge any monthly maintenance fees to a military borrower*
4 *or to their dependents.*

5 (b) For the purposes of this section, "military borrower" means any of
6 the following that have been called to active duty:

7 (1) Any member of the armed forces of the United States;

8 (2) any member of the national guard; or

9 (3) any member of the armed forces reserves.

10 (c) This section shall be supplemental to and a part of the uniform
11 consumer credit code.

12 Sec. 4. K.S.A. 16a-2-401, 16a-2-404 and 16a-2-405 are hereby
13 repealed.

14 Sec. 5. This act shall take effect and be in force from and after its
15 publication in the statute book.