

HOUSE BILL No. 2685

AN ACT relating to payday loans; concerning the regulation thereof; amending K.S.A. 2003 Supp. 16a-2-404 and repealing the existing section.

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

Section 1. K.S.A. 2003 Supp. 16a-2-404 is hereby amended to read as follows: 16a-2-404. (1) On consumer loan transactions in which cash is advanced:

(a) With a short term,
(b) a single payment repayment is anticipated, and
(c) such cash advance is equal to or less than ~~860~~ \$500, a licensed or supervised lender may charge in lieu of the loan finance charges specified in K.S.A. 16a-2-401, and amendments thereto, the following amounts:

(i) On any amount up to and including \$50, a charge of \$5.50 may be added;

(ii) on amounts in excess of \$50, but not more than \$100, a charge may be added equal to 10% of the loan proceeds plus a \$5 administrative fee;

(iii) on amounts in excess of \$100, but not more than \$250 a charge may be added equal to 7% of the loan proceeds with a minimum of \$10 plus a \$5 administrative fee;

(iv) for amounts in excess of \$250 and not greater than the maximum defined in this section, a charge may be added equal to 6% of the loan proceeds with a minimum of \$17.50 plus a \$5 administrative fee.

(2) The *minimum term of any loan under this section shall be 7 days and the maximum term of any loan made under this section shall be 30 days.*

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

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

(b) *date made and due date of each loan.*

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

(5) 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 as stated in subsection (7), including any charges for cashing the loan proceeds if they are given in check form.

(6) Any loan made under this section shall not be repaid by proceeds of another loan made under this section by the same lender or related interest. The proceeds from any loan made under this section shall not be applied to any other loan from the same lender or related interest.

(7) On a consumer loan transaction in which cash is advanced in exchange for a personal check, ~~a~~ *one* return check charge may be charged if the check is deemed insufficient as defined in paragraph (e) of subsection (1) of K.S.A. 16a-2-501, and amendments thereto. *Upon receipt of the check from the consumer, the lender shall immediately stamp the back of the check with an endorsement that states: "Negotiated as part of a loan made under K.S.A. 16a-2-404. Holder takes subject to claims and defenses of maker. No criminal prosecution."*

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

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

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

(9) *A consumer may rescind any consumer loan transaction made*

under the provisions of this section without cost not later than the end of the business day immediately following the day on which the loan transaction was made. To rescind the loan transaction:

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

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

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

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

(a) Use any device or agreement that would have the effect of charging or collecting more fees, charges or interest than allowed by the provisions of this section, including but not limited to:

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

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

(iii) catalog sales; or

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

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

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

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

(i) A hold harmless clause;

(ii) a confession of judgment clause;

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

(11) As used in this section, “related interest” shall have the same meaning as “person related to” in K.S.A. 16a-1-301, and amendments thereto.

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

(13) Notwithstanding that a person may be exempted by virtue of federal law from the interest rate, finance charge and licensure provisions of the Kansas uniform consumer credit code, all other provisions of the code shall apply to both the person and the loan transaction.

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

Sec. 2. K.S.A. 2003 Supp. 16a-2-404 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.