

## Substitute for HOUSE BILL No. 2635

By Committee on Financial Institutions

2-17

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9 AN ACT amending the uniform consumer credit code; relating to ad-  
10 ditional charges; amending K.S.A. 2003 Supp. 16a-2-501 and repealing  
11 the existing section.

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

14 Section 1. K.S.A. 2003 Supp. 16a-2-501 is hereby amended to read  
15 as follows: 16a-2-501. (1) In addition to the finance charge permitted by  
16 the parts of this article on maximum finance charges for consumer credit  
17 sales and consumer loans (parts 2 and 4), a creditor may contract for and  
18 receive the following additional charges in connection with a consumer  
19 credit transaction:

20 (a) Official fees and taxes;

21 (b) charges for insurance as described in subsection (2);

22 (c) delinquency charges permitted under K.S.A. 16a-2-502, and  
23 amendments thereto, and service charges for insufficient checks permit-  
24 ted under paragraph (e);

25 (d) charges for other benefits, including insurance, conferred on the  
26 consumer, if the benefits are of value to the consumer and if the charges  
27 are reasonable in relation to the benefits, are of a type which is not for  
28 credit, and are excluded as permissible additional charges from the fi-  
29 nance charge by rules and regulations adopted by the administrator;

30 (e) a service charge for an insufficient check as defined and author-  
31 ized by this subsection:

32 (i) For the purposes of this subsection, "insufficient check" means  
33 any check, order or draft drawn on any bank, credit union, savings and  
34 loan association, or other financial institution for the payment of money  
35 and delivered in payment, in whole or in part, of preexisting indebtedness  
36 of the drawer or maker, which is refused payment by the drawee because  
37 the drawer or maker does not have sufficient funds in or credits with the  
38 drawee to pay the amount of the check, order or draft upon presentation,  
39 provided that any check, order or draft which is postdated or delivered  
40 to a payee who has knowledge at the time of delivery that the drawer or  
41 maker did not have sufficient funds in or credits with the drawee to pay  
42 the amount of the check, draft or order upon presentation shall not be  
43 deemed an insufficient check.

1 (ii) “Written notice” shall be presumed to have been given a drawer  
2 or maker of an insufficient check when notice is sent by ~~restricted first~~  
3 ~~class mail as defined by K.S.A. 60-103, and amendments thereto,~~ ad-  
4 dressed to the person to be given notice of such person’s address as it  
5 appears on the insufficient check or to such person’s last known address  
6 *or notice provided on a regular monthly statement provides clear notice*  
7 *of the insufficient check charge being assessed.*

8 (iii) When an insufficient check has been given to a payee, the payee  
9 may charge and collect a \$10 insufficient check service charge from the  
10 drawer or maker, subject to limitations contained in this subsection or, if  
11 a larger amount is provided within the contract, the larger amount, if the  
12 payee has given the drawer or maker oral or written notice of demand  
13 that the amount of the insufficient check plus the insufficient check serv-  
14 ice charge be paid to the payee within 14 days from the giving of notice.  
15 In no event shall the amount of such insufficient check service charge  
16 exceed \$30.

17 (iv) If the drawer or maker of an insufficient check does not pay the  
18 amount of the insufficient check plus the insufficient check service charge  
19 provided for in subsection (iii) to the payee within 14 days from the giving  
20 of notice as provided in subsection (iii), the payee may add the insufficient  
21 check service charge to the outstanding balance of the preexisting in-  
22 debtedness of the drawer or maker to draw interest at the contract rate  
23 applicable to the preexisting indebtedness.

24 (v) Notwithstanding the provisions of subparagraph (iii), if an insuf-  
25 ficient check has been given to a creditor under a lender credit card, the  
26 creditor may charge a service charge for the insufficient check in an  
27 amount not to exceed the amount agreed to by the drawer or maker.

28 (2) An additional charge may be made for insurance written in con-  
29 nection with the transaction, including vendor’s single interest insurance  
30 with respect to which the insurer has no right of subrogation against the  
31 consumer but excluding other insurance protecting the creditor against  
32 the consumer’s default or other credit loss:

33 (a) With respect to insurance against loss of or damage to property,  
34 or against liability, if the creditor furnishes a clear and specific statement  
35 in writing to the consumer setting forth the cost of the insurance if ob-  
36 tained from or through the creditor and stating that the consumer may  
37 choose the person through whom the insurance is to be obtained; and

38 (b) with respect to consumer credit insurance providing life, accident  
39 and health, or loss of employment coverage, if the insurance coverage is  
40 not a factor in the approval by the creditor of the extension of credit, and  
41 this fact is clearly disclosed in writing to the consumer, and if, in order  
42 to obtain the insurance in connection with the extension of credit, the  
43 consumer gives specific affirmative written indication of the consumer’s

1 desire to do so after written disclosure to the consumer of the cost thereof.

2 (3) With respect to a consumer loan or a consumer credit sale in  
3 either case pursuant to open end credit, a creditor may charge the fol-  
4 lowing fees in an amount not to exceed that agreed to by the consumer:

5 (a) Fees on a monthly or annual basis;

6 (b) over-limit fees; and

7 (c) cash advance fees. The fees permitted under this subsection are  
8 in addition to any finance charges, additional charges or other charges  
9 permitted by the uniform consumer credit code.

10 (4) *A charge not exceeding \$5 per payment, if the borrower makes a*  
11 *single installment payment by authorizing a creditor, verbally or in writ-*  
12 *ing, to write a check or process a payment through use of the automated*  
13 *clearing house procedures on the borrower's checking account, subject to*  
14 *the following limitations:*

15 (A) *No charge shall be assessed if the creditor also collects a delin-*  
16 *quency fee on the same installment; and*

17 (B) *no charge shall be assessed where the consumer has agreed in*  
18 *writing with the creditor to make all scheduled payments through the use*  
19 *of the automated clearing house procedures.*

20 Sec. 2. K.S.A. 2003 Supp. 16a-2-501 is hereby repealed.

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