

HOUSE BILL No. 2244

By Representatives McCray-Miller and Faust-Goudeau, Carlin, Crow, Dillmore, Flaharty, Garcia, Gatewood, Hawk, Henderson, Horst, Lane, McLachlan, Menghini, Neighbor, Palmer, Peterson, Pottorff, Powers, Rardin, Sawyer, Storm, Svaty, Swenson, Trimmer, Vickrey, Wetta and Winn

1-26

13 AN ACT amending the uniform consumer credit code; relating to payday
14 loans; amending K.S.A. 2006 Supp. 16a-2-404 and repealing the exist-
15 ing section.

16
17 *Be it enacted by the Legislature of the State of Kansas:*

18 Section 1. K.S.A. 2006 Supp. 16a-2-404 is hereby amended to read
19 as follows: 16a-2-404. (1) On consumer loan transactions in which cash is
20 advanced:

21 (a) With a short term,
22 (b) a single payment repayment is anticipated, and
23 (c) such cash advance is equal to or less than \$500, a licensed or
24 supervised lender may charge an amount not to exceed 15% of the
25 amount of the cash advance.

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

29 ~~(3) A lender and related interest shall not have more than two loans~~
30 ~~made under this section outstanding to the same borrower at any one~~
31 ~~time and shall not make more than three loans to any one borrower within~~
32 ~~a 30-calendar-day period. No lender or related interest shall make a loan~~
33 ~~under this section which results in a borrower having more than two~~
34 ~~outstanding loans under this section with any lender. Each lender shall~~
35 maintain a journal of loan transactions for each borrower which shall
36 include at least the following information:

37 (a) Name, address and telephone number of each borrower; and
38 (b) date made and due date of each loan.

39 (4) Each loan agreement made under this section shall contain the
40 following notice in at least 10 point bold face type: NOTICE TO BOR-
41 ROWER: KANSAS LAW PROHIBITS THIS LENDER AND THEIR
42 RELATED INTEREST FROM ~~HAVING MORE THAN MAKING~~
43 ~~YOU A LOAN IF YOU CURRENTLY HAVE TWO LOANS OUT-~~

1 ~~STANDING TO YOU AT ANY ONE TIME WITH ANY LENDER. A~~
2 ~~LENDER CANNOT DIVIDE THE AMOUNT YOU WANT TO BOR-~~
3 ~~ROW INTO MULTIPLE LOANS IN ORDER TO INCREASE THE~~
4 ~~FEES YOU PAY.~~

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

6 (a) Provide the notice set forth in this subsection in both English and
7 Spanish; and

8 (b) obtain the borrower's signature or initials next to the English ver-
9 sion of the notice or, if the borrower advises the lender that the borrower
10 is more proficient in Spanish than in English, then next to the Spanish
11 version of the notice.

12 *(5) After a borrower's fifth consecutive loan, another loan may not be*
13 *made to that borrower within seven calendar days after the fifth consec-*
14 *utive loan is paid in full. After maturity of the borrower's fifth consecutive*
15 *loan, the borrower may pay the balance in full or, the borrower and the*
16 *lender shall enter into an agreement to repay the loan in installments*
17 *subject to the requirements of subsection (6).*

18 ~~(5)~~ (6) The contract rate of any loan made under this section shall
19 not be more than 3% per month of the loan proceeds after the maturity
20 date. No insurance charges or any other charges of any nature whatsoever
21 shall be permitted, except as stated in subsection ~~(7)~~ (8), including any
22 charges for cashing the loan proceeds if they are given in check form.

23 ~~(6)~~ (7) Any loan made under this section shall not be repaid by pro-
24 ceeds of another loan made under this section by the same lender or
25 related interest. The proceeds from any loan made under this section
26 shall not be applied to any other loan from the same lender or related
27 interest.

28 ~~(7)~~ (8) On a consumer loan transaction in which cash is advanced in
29 exchange for a personal check, one return check charge may be charged
30 if the check is deemed insufficient as defined in paragraph (e) of subsec-
31 tion (1) of K.S.A. 16a-2-501, and amendments thereto. Upon receipt of
32 the check from the consumer, the lender shall immediately stamp the
33 back of the check with an endorsement that states: "Negotiated as part
34 of a loan made under K.S.A. 16a-2-404. Holder takes subject to claims
35 and defenses of maker. No criminal prosecution."

36 ~~(8)~~ (9) In determining whether a consumer loan transaction made
37 under the provisions of this section is unconscionable conduct under
38 K.S.A. 16a-5-108, and amendments thereto, consideration shall be given,
39 among other factors, to:

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

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

- 1 ~~(9)~~ (10) A consumer may rescind any consumer loan transaction made
2 under the provisions of this section without cost not later than the end
3 of the business day immediately following the day on which the loan
4 transaction was made. To rescind the loan transaction:
- 5 (a) A consumer shall inform the lender that the consumer wants to
6 rescind the loan transaction;
- 7 (b) the consumer shall return the cash amount of the principal of the
8 loan transaction to the lender; and
- 9 (c) the lender shall return any fees that have been collected in asso-
10 ciation with the loan.
- 11 ~~(10)~~ (11) A person shall not commit or cause to be committed any of
12 the following acts or practices in connection with a consumer loan trans-
13 action subject to the provisions of this section:
- 14 (a) Use any device or agreement that would have the effect of charg-
15 ing or collecting more fees, charges or interest, or which results in more
16 fees, charges, or interest being paid by the consumer, than allowed by
17 the provisions of this section, including but not limited to:
- 18 (i) Entering into a different type of transaction with the consumer;
19 (ii) entering into a sales/leaseback or rebate arrangement;
20 (iii) catalog sales; or
21 (iv) entering into any other transaction with the consumer or any
22 other person that is designed to evade the applicability of this section;
- 23 (b) use, or threaten to use the criminal process in any state to collect
24 on the loan;
- 25 (c) sell any other product of any kind in connection with the making
26 or collecting of the loan;
- 27 (d) include any of the following provisions in a loan document:
- 28 (i) A hold harmless clause;
29 (ii) a confession of judgment clause;
30 (iii) a provision in which the consumer agrees not to assert a claim or
31 defense arising out of the contract.
- 32 ~~(11)~~ (12) As used in this section:
- 33 (a) “Related interest” shall have the same meaning as “person related
34 to” in K.S.A. 16a-1-301, and amendments thereto; *and*
- 35 (b) “consecutive loan” means a new loan agreement that the lender
36 or such lender’s related interest enters into with the same borrower not
37 later than seven calendar days after a previous loan made to that borrower
38 is paid in full.
- 39 ~~(12)~~ (13) Any person who facilitates, enables or acts as a conduit or
40 agent for any third party who enters into a consumer loan transaction with
41 the characteristics set out in paragraphs (a) and (b) of subsection (1) shall
42 be required to obtain a supervised loan license pursuant to K.S.A. 16a-2-
43 301, and amendments thereto, regardless of whether the third party may

1 be exempt from licensure provisions of the Kansas uniform consumer
2 credit code.

3 ~~(13)~~ (14) Notwithstanding that a person may be exempted by virtue
4 of federal law from the interest rate, finance charge and licensure pro-
5 visions of the Kansas uniform consumer credit code, all other provisions
6 of the code shall apply to both the person and the loan transaction.

7 (15) (a) *The administrator, or a single third party provider selected*
8 *by the administrator, may develop, implement and maintain a statewide*
9 *common database for the purposes of verifying compliance with the*
10 *requirements of this section and such database shall:*

11 (i) *Provide access through an internet connection or, if real time ac-*
12 *cess through an internet connection becomes unavailable due to the da-*
13 *tabase provider's technical problems through an alternative verification*
14 *mechanism, including verification by telephone;*

15 (ii) *require lenders to input whatever information is required by this*
16 *section or rules and regulations adopted by the administrator;*

17 (iii) *provide that an inquiry to the database by a lender shall only*
18 *state that a person is eligible or ineligible for a new loan made subject to*
19 *this section and a description of the reason for the determination;*

20 (iv) *provide that only the person seeking the transaction may make a*
21 *direct inquiry to the database provider to request a more detailed expla-*
22 *nation of a particular transaction that was the basis for the ineligibility*
23 *determination. Any information regarding any person's transactional his-*
24 *tory is confidential, is not subject to public inspection, is not a public*
25 *record and shall not be disclosed to any person other than the adminis-*
26 *trator. The provisions of subsection (b) of K.S.A. 45-229, and amendments*
27 *thereto, shall not apply to the provisions of this paragraph;*

28 (v) *provide adequate safeguards to ensure that consumer information*
29 *contained in the database is kept strictly confidential;*

30 (vi) *does not allow the lender to enter loan information into the da-*
31 *tabase that would be in violation of this section;*

32 (vii) *provide the administrator access to the database, or other reports*
33 *or records as deemed necessary by the administrator for examination or*
34 *investigation to ensure compliance with this act; and*

35 (viii) *other requirements deemed necessary by the administrator*
36 *adopted pursuant to rules and regulations;*

37 (b) *no person shall enter into any payday loan agreement with a bor-*
38 *rower prior to verifying by means of a statewide common database ap-*
39 *proved by the administrator that the proposed loan agreement is permis-*
40 *sible under the provisions of this section. A loan made in violation of this*
41 *subsection shall be void and the borrower shall not be obligated to pay*
42 *any principal, interest or other fees in connection with the loan;*

43 (c) *a lender shall update the statewide common database by inputting*

- 1 *all information required pursuant to this section at the time that:*
2 *(i) A loan is made subject to this section;*
3 *(ii) a borrower's loan is paid in full; or*
4 *(iii) a lender determines a loan is in default;*
5 *(d) a verification fee, not to exceed \$1 per transaction, may be charged*
6 *lenders for access to the database.*
7 ~~(14)~~ (16) This section shall be supplemental to and a part of the uni-
8 form consumer credit code.
9 Sec. 2. K.S.A. 2006 Supp. 16a-2-404 is hereby repealed.
10 Sec. 3. This act shall take effect and be in force from and after its
11 publication in the statute book.