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Melissa Renick  
Assistant Director for  
Research  
785-296-3181  
Melissa.Renick@klrd.ks.gov

# **Kansas Legislator Briefing Book 2016**

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## **Financial Institutions and Insurance**

### **J-2 Payday Loan Regulation**

The Legislature first began its review of payday lending during its 1991 Session. At that time, the Consumer Credit Commissioner requested legislation, citing a concern that check cashing for a fee had become a prevalent practice in Kansas and was being conducted in a manner that would be considered a violation of the Uniform Consumer Credit Code (UCCC). The unregulated entities were advancing money and agreeing to hold a post-dated check for a specified, short period of time, and were collecting charges exceeding those allowed under the UCCC. The Commissioner indicated to the Senate Committee on Financial Institutions and Insurance that as it appeared there was a need for this type of service, there existed a need to regulate the activity in a manner that allowed the activity to take place lawfully while at the same time providing protection to consumers utilizing the check cashing service. The Attorney General also had concurred that such practice violated the UCCC and, consequently, had taken action to enforce the law against the payday lenders. The financial records of seven companies were subpoenaed and examined, and all but one of those companies closed their businesses in Kansas.

SB 363 addressed the concern about excessive interest charges and fees, and the Attorney General supported its passage. In some instances, the annual percentage rate (APR) on these short-term loans ranged from 600 percent to 1600 percent. Despite these rates, neither the Commissioner nor the Attorney General's Office had received many complaints. When the companies closed, the Attorney General received a number of telephone calls from consumers asking when those companies would reopen. Although the bill was recommended favorable for passage by the Senate Committee, it was defeated on final action by a vote of 6-32. The Senate later reconsidered its action and sent the bill back to Committee for possible action at a later date.

Review of payday loan regulation continued for a second year. During the 1992 Session, the Senate Committee further considered SB 363, and the House Committee on Commercial and Financial Institutions reviewed HB 2749. The House Committee recommended its bill favorable for passage. On final action (initial vote had been 80 to 35), however, a member reported in his vote explanation that passage of such legislation would burden poor consumers as it would raise the interest rate tenfold from 36 percent to 360 percent. Fifty members changed their votes, and the legislation was killed. When the Senate returned to its consideration of payday loan regulation, the Consumer Credit Commissioner explained the House action on HB 2749 and

rebutted the conclusion that the bill raised interest rates. The Senate Committee received favorable testimony from both the Attorney General's Office and the payday loan industry and voted to amend SB 363 by inserting the provisions of HB 2749. SB 363, as amended, passed the Senate 40-0 and was referred to the House Committee, which recommended it favorable for passage after considerable discussion. Ultimately, the bill died at the end of the Session.

In the Legislature's third year of consideration of payday loan legislation, both the House and Senate agreed on 1993 HB 2197, and the bill was signed by the Governor with an effective date of April 8, 1993. This new law, made supplemental to and a part of the UCCC, applied to short-term consumer loan transactions with a single repayment schedule, for which cash is advanced in an amount equal to or less than the maximum allowed to a supervised lender (\$680) and subject to the following conditions:

- On any amount up to and including \$50, a finance charge of \$5.50 could be charged; on amounts in excess of \$50 but not more than \$100, the finance charge could be 10 percent of the amount plus a \$5 administrative fee;
- On amounts in excess of \$100 but not more than \$250, the finance charge could be 7 percent of the amount with a \$10 minimum plus a \$5 administrative fee; and
- For amounts in excess of \$250 but less than the maximum amount, the finance charge could be 6 percent of the amount with a minimum of \$17.50 plus a \$5 administrative fee.

The law also provided that:

- The maximum term of the loan cannot exceed 30 days;
- The contract interest rate after maturity cannot be more than 3 percent per month;
- No charge for insurance or any other charge can be made of any nature except as provided, including cashing the loan proceeds if given in a check;

- No loan made under this section may be repaid with the proceeds of another loan made by the same lender;
- If cash is advanced in exchange for a personal check and the check is returned for insufficient funds, only a return check charge provided in the UCCC is allowed; and
- Certain loans made under this section may be unconscionable conduct—the Commissioner is to consider in making such a finding the ability of the borrower to repay the loan and whether the loan meets the amount and terms limitations of this section.

Kansas was one of the first states to enact legislation specific to the regulation of payday loans. The payday loan statute remained substantively unchanged for a number of years. There have been attempts, however, to amend the law. In 1999, for example, a model act drafted by the Consumer Federation of America was introduced in Kansas as SB 272. The proponent of SB 272 explained at the time of its introduction that it was "legislation addressing the exorbitant interest rates charged by payday loan companies and how such consumer issues fall under the auspices of the UCCC." At the time of the hearing on the bill, other than the sponsor, there were no proponents present to testify on its behalf. The Acting Consumer Credit Commissioner commented to the Senate Committee on Financial Institutions and Insurance the bill "would substantially alter the rates charged by payday loan companies." In testimony on another UCCC bill (SB 301) before the Committee, the Attorney General advised the Committee that while that "office does not take complaints on consumer credit, the Attorney General is of the opinion that the payday loan industry is not in the best interest of society as it spirals people into bankruptcy." Opponents of the bill, several operators of payday loan shops in the state, argued that reducing the allowable interest rate charge to 36 percent would have the effect of putting them out of business. Having heard the issues raised by SB 272, the Committee took no action on the measure.

SB301, as enacted in 1999, made several significant changes in the UCCC. Among those changes was the transfer for the enforcement of the UCCC from the Consumer Credit Commissioner to a newly designated position of Deputy Commissioner for Consumer and Mortgage Lending and the elimination of interest rate caps on consumer loans. One effect of the interest rate amendment was to remove the escalator provision, which adjusted the dollar amount of consumer loans subject to the then highest allowed interest rate. Since that dollar amount also was the cap for payday loans, the bill established that amount, \$860, as the new cap on payday loans.

During the 2001 Session, the Deputy Commissioner (Code Administrator) requested the passage of HB 2193, which would limit the number of loans a consumer could have from a single payday lender to two at any one time and require a "Notice to Borrower" appear on each loan agreement stating that Kansas law prohibits a lender and its related interest from having more than two loans outstanding to the same borrower at any one time. While the bill was amended by the House Committee of the Whole, those amendments were removed from the bill, and the bill passed as proposed by the Deputy Commissioner.

During the 2002 Session, HB 2877 was introduced and would have reduced the allowable charges permitted on payday loans. On loan amounts up to and including \$50, the charge would have been reduced from \$5.50 to \$4.00; on amounts in excess of \$50 but not more than \$100, the charge would have been reduced from 10 percent to 8 percent; on amounts in excess of \$100 but not more than \$250, the charge would have been reduced from 7 percent to 5 percent and the minimum allowable charge would have been reduced from \$10 to \$8; and on amounts of \$250 but not greater than \$860, the charge would have been reduced from 6 percent to 4 percent and the minimum reduced from \$17.50 to \$12.50. HB 2877 did not have a hearing and died in the House Committee on Financial Institutions at the end of the 2002 Session. The Chairpersons of the House Committee on Financial Institutions and the Senate Committee on Financial Institutions and Insurance requested and the Legislative Coordinating Council created an interim Special

Committee on Financial Institutions and Insurance to study, among other topics:

Regulation of "payday" loans and entities making such loans, including allowable loan rates and charges; loan terms and conditions and collection issues; and appropriate levels of regulation of lenders, including the activities of some lenders to associate with federally chartered financial institutions and then claim exemption from state regulation.

The Special Committee on Financial Institutions and Insurance did not meet during the 2002 Interim nor complete a report on its assigned subject matter.

The 2004 Legislature passed a measure, HB 2685, addressing the regulation of payday loans. The bill:

- Established a seven-day minimum term for any loan;
- Limited the number of loans to three for any borrower within a 30-day period and required lenders to keep a journal of all loan transactions which includes the name, address, and telephone number of the borrower, and the date each loan is made and the date each is due;
- Required the lender, upon receipt of a check from the borrower, to immediately stamp the check with an endorsement that states: "Negotiated as part of a loan made under KSA 16a-2-404. Holder takes subject to claims and defenses of maker. No criminal prosecution";
- Allowed a borrower, under the terms specified, to rescind the transaction without cost not later than the end of the business day following the day on which the transaction was made; and
- Outlined a list of acts or practices prohibited in connection with a payday loan.

The Senate Committee on Financial Institutions and Insurance also had reviewed a payday loan bill, SB 439, that would have created a maximum loan amount (\$500, rather than \$860) and a flat fee (not more than \$15 per \$100 loaned). The bill

received a hearing, but no action was taken on the bill and the bill died in Committee.

### ***Finance Charge, Protections for Military Borrowers***

The Office of the State Bank Commissioner's representatives brought legislation to the 2005 Legislature to enhance enforcement of both mortgage brokers under the Kansas Mortgage Business Act and supervised lenders under the Code. Senate Sub. for HB 2172 contained the provisions of another measure, Sub. for SB 223, a bill which included provisions for both mortgage brokers and supervised lenders. In addition to the additional enforcement powers and penalties created by the bill, the legislation also amended the finance charges for payday loans under the UCCC (KSA 16a-2-404). The finance charge for cash advances equal to or less than \$500 is to be an amount not to exceed 15 percent of the amount of the cash advance. The bill also required publication of the notice in payday loan agreements in Spanish.

In addition, Senate Sub. for HB 2172 enacted new law concerning military borrowers, with lender provisions to:

- Not garnish any wages or salary for service in the armed forces;
- Defer all collection activity against a borrower who is deployed to combat or combat support posting for the duration of such posting;
- Not contact any person in the military chain of command of a borrower in an attempt to make collection;
- Honor all terms of the repayment agreement; and
- Not make any loan to any military borrower whenever the base commander has declared such person's place of business off limits to military personnel.

A military borrower is defined as any member of the Armed Forces of the United States, any member of the National Guard, or any member of the Armed Forces Reserve.

More recently, the Special Committee on Financial Institutions and Insurance convened during the 2005 Interim to study topics that included a broad review of the Uniform Consumer Credit Code. A proposed nondepository lending model, a closed-end installment loan (proposed in 2005 HB 2278, 2006 SB 376), was reviewed by the Committee. A hearing was held on SB 376 during the 2006 Session, but no action was taken on the bill and it died in Committee.

### ***Recent Legislative Proposals***

The regulation of payday lending again was addressed during the most recent legislative sessions. 2007 SB 217 and HB 2244 would have added requirements to the law regulating payday lenders. Under the proposals, consumers would not be allowed to have more than two outstanding loans at any one time, and they would not be allowed more than five consecutive loans with the same lender. Under terms of both bills, a statewide database would have been developed to ensure compliance. The House Committee on Insurance and Financial Institutions held a hearing on HB 2244 and a related bill, HB 2245 (addressing vehicle title loans), during the 2007 Session; no action was taken on either bill at the time of the hearing. The 2008 Legislature introduced an additional measure to address payday lending, HB 2717, (a bill similar to HB 2244), without the database requirements. No action was taken on the payday lending legislation or the vehicle title legislation during the 2007-2008 biennium. Similar legislation was not introduced during the 2009 Session.

The 2010 Legislature introduced legislation (SB 503) that would have required a \$1 surcharge to be assessed on each payday and title loan. The surcharge would have been paid by the borrower to the lender and then remitted to the Office of the State Bank Commissioner (OSBC). The moneys would then have been transferred to the Professional Development Fund (Department of Education) and expended to fund professional development programs or topics that dealt with personal financial literacy. The OSBC had indicated in the fiscal note that the bill would generate approximately \$1.2 million from the estimated 1.2

million payday and title loans that will be issued in FY 2011. The bill was referred to the Senate Financial Institutions and Insurance Committee; the bill died in Committee.

More recently, SB 30 and HB 2036 were introduced during the 2013 Session. The bills would amend the UCCC to prevent lenders from making payday loans to a consumer that already has two outstanding loans with any lender. Restrictions would also be established on the amount of consecutive loans allowable between a particular borrower and lender. Additionally, the bill would permit the Code Administrator (OSBC) to establish an Internet database; a verification fee of up to \$1.00 could be charged by the OSBC/vendor to each lender that would be required to access the database prior to making a new loan. SB 30 was referred to the Senate Financial Institutions and Insurance Committee, and HB 2036 was referred to the House Financial Institutions Committee.

### ***Payday Lending Activity – Kansas***

The Office of the State Bank Commissioner (the Division of Consumer and Mortgage Lending) maintains an on-line database available to the public, of entities that are authorized to engage in the practice of consumer lending or mortgage business entities, as well as those lenders. The searchable database contains the license number, company name, company location, and date of next renewal and is with surrendered or inactive licenses. Both lists are accessible on the OSBC's website at: <https://online.osbckansas.org/Lookup/LicenseLookup.aspx>.

In January 2014, the Deputy Commissioner for Consumer and Mortgage Lending provided testimony to the House Financial Institutions Committee on financial products and regulation. Data provided by the Deputy Commissioner (Code Administrator) indicated that as of June 30, 2015, the OSBC had issued supervised loan licenses to 65 companies and 326 locations (includes 11 on-line lenders). Calendar Year 2014 reports submitted by payday lenders indicated 1,006,388 payday loans were made to Kansas consumers for a total amount of \$391.2 million. The average

payday loan amount was \$388. In 1995, 36 locations offered payday loans in Kansas.

### ***Federal Financial Regulatory Reform, Consumer Protections and Payday Loans***

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act into law ("Dodd-Frank Act", PL 111-203). Title X of the Dodd-Frank Act, entitled the Consumer Financial Protection Act of 2010, established a Bureau of Consumer Financial Protection (the CFPB) within the Federal Reserve System with rulemaking, enforcement and supervisory powers over a number of financial products and services and the entities selling them (including payday and student loans). The law also transferred to the CFPB the primary rulemaking and enforcement authority over several federal consumer protection laws, including the Truth in Lending Act. The CFPB does not, however, have the authority to establish usury limits (such as a cap on interest rates) on payday loans. Among the provisions applicable to the use of payday loans (short-term loan products) is Title XII of the Dodd-Frank Act, the Improving Access to Mainstream Financial Institutions Act of 2010. Rather than specific regulations affecting payday lending, the Act provides incentives to financial institutions to offer low-cost alternatives – small-dollar loan products with lower interest rates and less predatory practices. The Act authorizes the Secretary of the Treasury to establish grants to provide these low-cost loans.

The CFPB is evaluating what rules may be appropriate to address the "sustained use of short-term, high-cost credit products" (various types of small dollar loans). Rulemaking, according to comments published by the CFPB, might include "disclosures or address acts of practices in connection with these products." A final rule is not anticipated until late 2016 or early 2017. It is unclear, at this point, how the rule might impact the Kansas UCCC, the regulatory role assigned to the Code Administrator and the OSBC, and supervised lenders.

For more information, please contact:

Melissa Renick, Assistant Director for Research  
[Melissa.Renick@klrd.ks.gov](mailto:Melissa.Renick@klrd.ks.gov)

Whitney Howard, Research Analyst  
[Whitney.Howard@klrd.ks.gov](mailto:Whitney.Howard@klrd.ks.gov)

Kansas Legislative Research Department  
300 SW 10th Ave., Room 68-West, Statehouse  
Topeka, KS 66612  
Phone: (785) 296-3181  
Fax: (785) 296-3824