



**E-1**  
**Kansas Health  
Insurance Mandates**

**E-2**  
**Kansas Uniform  
Consumer Credit Code**

**E-3**  
**Payday Loan  
Regulation and Update  
on Small Dollar Lending  
in Kansas**

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# **Kansas Legislator Briefing Book 2018**

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## **Financial Institutions and Insurance**

### **E-2 Kansas Uniform Consumer Credit Code**

#### **Background**

Enacted in 1973, the Kansas Uniform Consumer Credit Code (UCCC or Code) applies to all aspects of consumer credit addressing transactions for personal, family, and household purposes. UCCC transactions include consumer sales (closed-end or revolving, including retail credit card purchases), consumer loans (including purchases using bank credit cards), and consumer leases. Consumer transactions may involve the consumer and retail merchants; banks, savings and loan associations, and credit unions; licensed lenders, including finance companies; and lender credit card companies. In general, transactions greater than \$25,000 are outside the scope of the UCCC, but any transaction may become a consumer credit transaction if the parties to the agreement choose to do so.

The Office of the State Bank Commissioner provides oversight of the UCCC. During the 1998 Interim, the Special Committee on Financial Institutions and Insurance studied reorganization of the financial institutions' regulatory agencies. Committee recommendations included consolidation of the Office of the Consumer Credit Commissioner with the Office of the Bank Commissioner. As a result of action by the 1999 Legislature, the Office of the Consumer Credit Commissioner was abolished and the powers and functions transferred to the Office of the State Bank Commissioner (OSBC). A Deputy Commissioner of Consumer Mortgage and Lending was created, and the Deputy Commissioner was designated as the Administrator of the UCCC.

#### **Interest Rates**

The UCCC establishes three categories of interest rates: closed-end or installment rates (KSA 16a-2-201); open-end or revolving credit rates (KSA 16a-2-202); and lender rates (KSA 16a-2-401). Closed-end installment contracts calculate in advance the amount financed and the finance charge and provide payment of the calculated total in equal installments at equal intervals, e.g., auto loans. Open-end credit includes revolving credit accounts offered by retailers and lines of credit (e.g. bank credit cards) that are payable in amounts, usually monthly, that are a percentage of the outstanding balance. Lender rates are those charged on

loans made by licensed lenders, by supervised financial institutions, and by lender credit card arrangements.

Under current law, closed-end, open-end, and lender rate consumer credit transactions allow a seller to set a finance charge at “any rate agreed to by the parties,” subject to the statutory limits of prepaid finance charges. The limitations and computations for the finance charges are as follows:

- **Closed-end consumer credit sales**
  - *Sales, other than manufactured homes:* maximum amount is 2 percent of the amount financed or \$100, whichever is less; or
  - *Sales, manufactured homes:* maximum amount is 5 percent of the amount financed (fee must be used to reduce or “buy-down” the interest rate of the sale).
- **Open-end consumer credit sales**
  - *Average daily balance:* finance charge is calculated on the sum of the amount of actual daily balances each day during the billing cycle divided by the number of days in the billing cycle; or
  - *Ending balance:* finance charge is calculated on the unpaid balance of the account at the end of the billing cycle.
- **Lender credit sales**
  - *Periodic rate ceilings (loans other than first or second mortgage):* 36 percent per year on the portion of the unpaid balance that is \$860 or less, and 21 percent per year on the portion of the unpaid balance that exceeds \$860 (subject to limitations on prepaid finance charges);
  - *Periodic rate ceilings (loans secured by second mortgage, manufactured homes):* 18 percent per year. The rate would apply to any first mortgage loans made subject to the UCCC; or
  - *Prepaid finance charges on consumer loans:*

- First or second mortgage loan or certain manufactured home loans, not to exceed 8 percent of the amount financed; however, the total of all prepaid finance charges payable to the lender cannot exceed 5 percent of the amount financed; or
- Other consumer credit loans: maximum amount is 2 percent of the amount or \$100, whichever is less.
- *Payday loan transactions are subject to special limitations for finance charges:*
  - The loans and the cash advance must be \$500 or less with a finance charge not to exceed 15 percent of the amount of the advance. In addition, the Code includes a provision that the contract interest rate after maturity cannot be more than 3 percent per month.

### History of Interest Rates Charges

In 1980, the Kansas Legislature amended KSA 16a-2-201 to allow a seller in a closed-end credit sale or in an open-end sale to charge 18 percent interest as an alternative to other specified rates, including 21 percent on \$300 or less, 18 percent on amounts between \$300 and \$1,000, and 14.45 percent on amounts in excess of \$1,000. KSA 16a-2-401 was amended to allow a supervised financial institution to charge 18 percent interest without being a lender licensed by the Consumer Credit Commissioner. The rate charges were sunset at periods of one (1980-1982) and two years (1983-1987). In 1988, the Legislature (SB 507) amended the rates on closed-end credit sales by reducing, from three to two, the applicable interest rates, establishing:

- 21 percent on the first \$1,000; and
- 14.45 percent on amounts over \$1,000; or 18 percent on the outstanding balance.

Interest rates on open-end credit sales also were amended to allow for an alternate rate. SB 507

also authorized a nonrefundable origination fee not to exceed 2 percent or \$100 on closed-end credit sales. The 1993 Legislature amended the Code to allow that on and after January 1, 1994, all finance charges on consumer loans and consumer credit sales be computed on the unpaid principal balances by the actuarial method. Precomputed contracts created on and after January 1, 1994, were prohibited.

## Legislative Review

### **1999 Legislature—Sub. for SB 301**

The 1999 Legislature amended several sections of the UCCC relating to rates, terms, and conditions on consumer credit sales and consumer loans for personal, family, or household purposes, and allowed certain real estate transactions to be brought under the Code, specifying the rates, terms, and conditions for such loans. The legislation also added new sections to the Code that imposed new obligations on persons making loans under the Code.

Changes to the law included:

- Striking the definition of “origination fee” and adding a definition of “prepaid finance charge,” which for a consumer loan secured by a first or second mortgage may not exceed 8 percent of the amount financed (aggregate 5 percent), and for any other consumer loan and, for closed-end consumer credit sales, the prepaid finance charge may not exceed the lesser of 2 percent of the amount financed or \$100.
- Establishing that the finance charge on a consumer loan or consumer credit sale must be computed by using either the 365/365 or 360/360 method, but not on a 365/360 method (lender may assume that a month has 30 days, regardless of the actual numbers of days in a month).

In regard to consumer loan rate ceilings, the legislation:

- Removed the interest rate limitation on open-end consumer loans, including lender credit cards;
- Maintained a maximum interest rate of 36 percent on the first \$860 of a closed-end consumer loan;
- Increased the maximum allowable interest rate on amounts of a closed-end consumer loan in excess of \$860, from 18 percent to 21 percent (not applicable to loans secured by a first or second mortgage); and
- Established 18 percent as the maximum rate of interest that may be charged on a loan secured by a first or second mortgage, if the parties to the loan agree in writing to make the loan under the Code.

In addition, finance charges under the Code were amended to:

- Delete the cap on annual fees that may be charged for the privilege of using an open-end credit account; and
- Allow a creditor to charge fees on an annual or monthly basis, over limit fees, and cash advance fees on open-end credit in an amount agreed to by the consumer.

### **2000 Legislature**

The 2000 Legislature amended the Code to allow a seller to impose a prepaid finance charge in an amount not to exceed 5 percent for the purpose of reducing the interest rate on the sale of a manufactured home. Another bill (HB 2691) clarified the interest rate on a closed-end loan may be 36 percent on the first \$860 financed and 21 percent on the balance of the loan that exceeds \$860.

### **2005 Legislature—Senate Sub. for HB 2172**

The 2005 Legislature amended several provisions of the Kansas Mortgage Business Act (KMBA) and the Code. The UCCC provisions:

- Established a contract rate to replace the annual rate in prior law. Calculations

- utilizing the 365/365 method and the 360/360 method for the rate of the finance charge remain unchanged;
- Amended provisions for the computation of finance charges for consumer loans secured by a first or second lien real estate mortgage by creating an amortization method: contract rate divided by 360 and the resulting rate is multiplied by the outstanding principal amount and 30 assumed days between scheduled due dates. The provision allows a creditor to assume there are 30 days in the computational period, regardless of the actual number of days between the scheduled dates;
  - Amended the license requirements for individuals making supervised loans by requiring an applicant to provide evidence in the form and manner prescribed by the Administrator of the UCCC that establishes the applicant will maintain a satisfactory minimum net worth to engage in the credit transactions for which the applicant has proposed;
  - Replaced the references in the bill to “supervised loans” with “loans for personal, family, or household purposes”;
  - Clarified references to applicants and licensees to include persons the applicant or licensee contracts with or employs who is directly engaged in lending activities;
  - Amended annual reporting requirements to include a provision to prevent alteration or any other destruction of records with the intent to impede, obstruct, or influence any investigation by the Administrator;
  - Amended the requirement for first and second loan consumer mortgages to allow that a mortgage not be recorded if moneys are not available for disbursement to the mortgagor upon expiration of all applicable waiting periods as required by law, unless the individual informs the mortgagor in writing of a definite date by which payment is to be made and obtains written permission for the delay;

- Authorized a statute of limitations for prosecution of crimes under the Code, no more than five years after the alleged violation. A restitution provision was added and includes that an order may include an interest rate not to exceed 8 percent; and
- If deemed necessary by the Administrator, required fingerprinting of applicants, licensees, copartnerships or associations, any agents, or others directly engaged in lending activities.

### **UCCC—Payday Loan Regulation**

The 2005 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 Spanish in payday loan agreements and included protections for military borrowers. (See [E-3 Payday Loan Regulation and Update on Small Dollar Lending in Kansas](#) for an in-depth discussion on payday loan laws and regulatory activities.)

### **Other Legislative Review—2005-2006**

In addition to the enacted measures discussed previously, the Legislature reviewed the following proposed amendments to the UCCC.

HB 2143 would have amended the Code to allow a seller to charge an interest rate not to exceed 21 percent per year. The interest rate ceiling applies to the finance charges under the UCCC: closed-end consumer credit sales; open-end credit sales; and lender credit sales. The bill also would have removed the authority to impose deferral charges on closed-end consumer credit sales. Under current law, the finance charge rates are not capped and instead are subject to the rate agreed to by the parties to the transaction with established limitations on any prepaid finance charges.

HB 2278 would have amended the Code by creating an alternate finance charge to the

finance charges currently specified in KSA 16a-2-401, providing for a sliding-scale rate structure for closed-end consumer installment loans financed between \$100 and \$1,500. Specifically, the bill would have allowed a licensee to charge in lieu of the charges specified in current law:

- A loan acquisition charge, not exceeding the lesser of 10 percent of the financed amount or \$75; and
- A monthly installment account handling charge, based on a sliding-scale rate. For example, an account handling charge for a loan financed in the amount of \$550 would be up to \$17.50, while the charge for a \$1,100 loan would be an amount up to \$22.50.

The bill would have defined the terms of the loan with a minimum of 4 months and a maximum amount of 18 months and 5 days. The bill also would have addressed loan refund rates, prepayments, notification, and contract rates. The rates and charges created by the bill would not apply to payday loans.

During the 2005 Interim, the Special Committee on Financial Institutions and Insurance was charged, among other things, to review HB 2143 and to study the current finance charges, rates, and terms under the UCCC and the impact of the Code on financial institutions, loan companies, and Kansas consumers, and the current regulatory environment in Kansas. The Committee concluded the interest rate ceiling legislation (HB 2143) should not be recommended and the alternate finance charge for closed-end consumer installment loans legislation (HB 2278) should not be recommended to the 2006 Legislature and recommended new legislation to address the requested HB 2278 amendments. SB 376 was introduced during the 2006 Session. The bill received a hearing in the Senate Committee on Financial Institutions and Insurance, but no further action was taken, and with HB 2143 and HB 2278, died at the end of the 2006 Session.

### Recent UCCC Amendments

The 2009 Legislature amended the UCCC in 2009 SB 240. The bill was requested by the

OSBC in response to the requirements of Title V (the Secure and Fair Enforcement [S.A.F.E.] for Mortgage Licensing Act) of the Federal Housing and Economic Recovery Act of 2008. The bill made amendments to both the KMBA and the UCCC to include prohibited acts and define the practices and registration requirements of residential mortgage loan originators. Among the requirements, mortgage loan originators are required to submit certain application and related information to a nationwide mortgage loan originator registry (established by the S.A.F.E. Act). Information reported to the registry includes violations of the law (loan originators), as well as enforcement actions. Kansas entered the registry in 2010.

The 2010 Legislature amended the Code in SB 410. The bill prohibits retailers from imposing a surcharge on a cardholder who uses a debit card in lieu of a cash payment. Under prior law, the prohibition applied only to credit card holders.

The 2011 Legislature modified Code licensee fee provisions to change the percentage remitted to the State General Fund from 20 to 10 percent.

**2017 legislative study.** The Legislative Coordinating Council directed a study of legislation relating to the Code and regulation of small dollar lending in Kansas. The Special Committee on Financial Institutions and Insurance was convened in October 2017 to study the impact of 2017 HB 2267. This review included a study of current finance charges, rates, and terms under the UCCC; the impact of the proposed legislation and potential modifications related to the Consumer Financial Protection Bureau's anticipated Final Rule on small dollar lending on financial institutions, loan companies, and Kansas consumers; and the current regulatory environment in Kansas.

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