Kansas Legislative Research Department

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

Financial Institutions and Insurance

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

The Kansas Legislature began its review of payday lending during the 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 violating the Kansas Uniform Consumer Credit Code (UCCC or Code). 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 Consumer Credit Commissioner indicated to the Senate Committee on Financial Institutions and Insurance (Senate Committee) there appeared to be both a need for this type of service and 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 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 (1991) 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 600.0 percent to 1,600.0 percent. Despite these rates, neither the Commissioner nor the Office of the Attorney General 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 the Senate 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 in the

House, 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 36.0 percent to 360.0 percent. Several 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 Office of the Attorney General 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 1992 Session.

In the Legislature's third year of consideration of payday loan legislation, 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 10.0 percent of the amount, plus a $5.00 administrative fee;
- On amounts in excess of $100 but not more than $250, the finance charge could be 7.0 percent of the amount with a $10 minimum, plus a $5.00 administrative fee; and
- For amounts in excess of $250 but less than the maximum amount, the finance charge could be 6.0 percent of the amount with a minimum of $17.50, plus a $5.00 administrative fee.

The law also provided:

- The maximum term of the loan cannot exceed 30 days;
- The contract interest rate after maturity cannot be more than 3.0 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 Consumer Credit 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 the bill "would substantially alter the rates charged by payday loan companies." In testimony on another UCCC bill (SB 301) before the Senate Committee, the Attorney General advised that while the "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 36.0 percent would have the effect of putting them out of business. The Senate Committee took no action on the measure.

SB 301, 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 (who is the 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, which 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 10.0 percent to 8.0 percent; on amounts in excess of $100 but not more than $250, the charge would have been reduced from 7.0 percent to 5.0 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 6.0 percent to 4.0 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 requested, and the Legislative Coordinating Council created, an interim Special Committee on Financial Institutions and Insurance to study, among other topics, the 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 also 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 (OSBC) 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, which included provisions for both mortgage brokers and supervised lenders. In addition to the new 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 15.0 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 U.S. 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 U.S. Armed Forces, any member of the National Guard, or any member of the Armed Forces Reserve.

The Special Committee on Financial Institutions and Insurance convened during the 2005 Interim to study topics that included a broad review of the UCCC. A proposed non-depository 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 some recent legislative sessions. SB 217 (2007) and HB 2244 (2007) 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 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 Committee; the bill died in Committee.

The 2013 Legislature introduced legislation, SB 30 and HB 2036, that would have amended the UCCC to prevent lenders from making payday loans to a consumer that already has two outstanding loans with any lender. Restrictions would have been established on the amount of consecutive loans allowable between a particular borrower and lender. Additionally, the bill would have permitted the Code Administrator 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 Committee and HB 2036 was referred to the House Committee on Financial Institutions. The bills died in their respective committees.

The 2015 Legislature introduced SB 100, which would have set a single finance charge not to exceed 36.0 percent for closed-end credit consumer loans. SB 100 was referred to the Senate Committee. A hearing was not held on the bill, and the bill died in the Committee. During the 2016 Legislative Session, HB 2695 was introduced and referred to the House Committee on Insurance and Financial Institutions. HB 2695 would have added a new section to the UCCC, to be known as the "Respectful Lending to Kansas Seniors Act." The bill would have placed a 36.0 percent interest cap on payday loans for senior citizen consumers, as well as allowed a modification for a senior citizen's federal adjusted gross income for the taxable year. A hearing was not held on the bill, and it died in committee.

Special Committee on Financial Institutions and Insurance. The 2017 Legislature introduced HB 2267, which would, among other things, amend provisions in the Code relating to consumer loans and would impose a cap of 36.0 percent annual percentage rate on all consumer loans with open-end credit, including all fees, interest, and charges. The bill would also amend the definition of "consumer loan" and rules relating to how consumer loans can be repaid by borrowers and how many consumer loans a single borrower can have outstanding from a single lender. The bill and related regulatory review was assigned by the Legislative Coordinating Council to the interim Special Committee. The Special Committee met in October 2017.

Small Dollar Lending Activity in Kansas

During the Special Committee meeting, the Deputy Commissioner addressed trends in small dollar lending, noting some lenders have moved away from the traditional payday loan model and into an installment loan product (also permitted under the UCCC) and a growing challenge in unlicensed lenders that operate primarily, or only, online.

Data provided by the Deputy Commissioner summarized small dollar loans provided by licensees: payday only (49); payday only branches (136); payday and title (10); payday and title branches (74); title only (7); and title only branches (42). The number of locations for these loans totals 318 (66 companies, 252 branches). The CY 2016 loan volume for payday loans was an estimated $325 million (in 2012, the volume was an estimated $410 million).

The OSBC—Division of Consumer and Mortgage Lending maintains an online 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, date of next renewal, and notes the status of each license. This information is accessible on the OSBC's website at *https://online.osbckansas.org/Lookup/LicenseLookup.aspx*.

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 the Consumer Financial Protection Bureau (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.

The CFPB has been evaluating what rules may be appropriate to address the "sustained use of short-term, high-cost credit products" (various types of small dollar loans). In June 2016, the CFPB proposed a rule intended to require lenders to "take steps to make sure consumers have the ability to repay their loans" and include other borrower protections to address debit fees assessed on payday loans. The comment period closed on October 7, 2016 (see *Federal Register* for the Final Rule, 12 CFR part 1041). On October 5, 2017, the CFPB issued its final rule. The implementation period will be 21 months following the formal publication of the rule. The rule covers short-term loans less than 45 days in duration that are open-end or closed-end, as well as longer-term loans more than 45 days in duration that are either open-end or closed-end and have a balloon payment feature.

For more information, please contact:

Melissa Renick, Assistant Director for Research
Melissa.Renick@klrd.ks.gov

Whitney Howard, Principal Research Analyst
Whitney.Howard@klrd.ks.gov

Katelin Neikirk, Research Analyst
Katelin.Neikirk@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