



## Financial Institutions and Insurance

### L-1 Uniform Consumer Credit Code and Interest Rates

Other Financial Institutions and Insurance reports available

### L-2 Kansas Health Insurance Mandates

### L-3 Payday Loan Regulation

### L-4 Uninsured Motorists

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# Kansas Legislator Briefing Book 2013

## Financial Institutions and Insurance

### L-1 Uniform Consumer Credit Code and Interest Rates

#### Background

Enacted in 1973, the Kansas Uniform Consumer Credit Code (UCCC) 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. A Deputy Commissioner of Consumer Mortgage and Lending was created, and the Deputy Commissioner was designated as the Administrator of the Uniform Consumer Credit Code.

#### 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 (16a-2-202); and lender rates (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 two percent of the amount or \$100, whichever is less; or
  - *Sales, manufactured homes*: maximum amount is five percent of the amount (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 which 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 eight percent of the amount financed; however, the total of all prepaid finance charges payable to the lender cannot exceed five percent of the amount financed; or
    - Other consumer credit loans: maximum amount is two 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 three 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 two 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 impose 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 eight percent of the amount financed (aggregate five percent), and for any other consumer loan and, for closed end consumer credit sales, the prepaid finance charge may not exceed the lesser of two 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 ended 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 five percent for the purpose of reducing the interest rate on the sale of a manufactured home. Another bill (HB 2691) clarified that 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 and the Uniform Consumer Credit Code (UCCC). 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;
- Amended 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 is 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. (See L-3 for an in-depth discussion on payday loan regulation.)

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.

Prior to the actions of the 2005 Legislature, the applicable finance charges were: 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 six percent of the amount with a minimum of \$17.50 plus a \$5 administrative fee.

### Other Legislative Review—2005-2006

In addition to the enacted measures discussed above, the Legislature recently 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 that are 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 four months and a maximum amount of 18 months and five days. The bill also would have addressed loan refund rates, prepayments, notification, and contract rates. The rates and charges created by the Act 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 Uniform Consumer Credit Code and the impact of the Code on financial institutions, loan companies, and Kansas consumers, and the current regulatory environment in Kansas. The Committee concluded that 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 but no further action was taken, and with HB 2143 and HB 2278, died at the end of the 2006 Session.

Further information about recent payday loan legislation and payday lending activity in the state is located in Article L-3.

### **Recent UCCC Amendments (Other than Interest Rates)**

The 2009 Legislature amended the Uniform Consumer Credit Code in **2009 SB 240**. The bill was requested by the Office of the State Bank Commissioner 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 Kansas Mortgage Business Act 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 will be 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 will include violations of the law (loan originators), as well as enforcement actions. Kansas entered the registry in 2010.

The 2010 Legislature amended the Code in **2010 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.

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