

Reports of the
Special Committee on Financial
Institutions and Insurance
to the
2006 Kansas Legislature

CHAIRPERSON: Senator Ruth Teichman

VICE-CHAIRPERSON: Representative Clark Shultz

RANKING MINORITY MEMBER: Representative Nile Dillmore

OTHER MEMBERS: Senators Nick Jordan, Vicki Schmidt, and Chris Steineger; and Representatives Eric Carter, Oletha Faust-Goudeau, Dick Kelsey, Rob Olson, and Virgil Peck

STUDY TOPICS

Review of the Kansas Uniform Consumer Credit Code

Review of the Health Care and Health Insurance in Kansas

Special Committee on Financial Institutions and Insurance

REVIEW OF THE KANSAS UNIFORM CREDIT CODE

CONCLUSIONS AND RECOMMENDATIONS

The Committee reviewed two proposed bills introduced during the 2005 Session that make amendments to the Uniform Consumer Credit Code. The Committee concluded that the interest rate ceiling legislation (HB 2143) not be recommended and the alternate finance charge for closed-end consumer installment loans legislation (HB 2278) not be recommended to the 2006 Legislature and recommended new legislation to address the requested HB 2278 amendments.

Proposed Legislation: The Committee recommends the introduction of one bill on this topic.

BACKGROUND

The charge to the Special Committee on Financial Institutions and Insurance was to study significant issues related to both the current financial environment created by the regulation provided by the Kansas Uniform Consumer Credit Code and separately, to study the current health care and health insurance environment in Kansas. The assigned topics for interim study included:

- Study of the current finance charges, rates, and terms under the Uniform Consumer Credit Code (UCCC or the Code) and the impact of the Code on financial institutions, loan companies, and Kansas consumers, and the current regulatory environment in Kansas; and
- Study of 2005 HB 2143 (and other proposed UCCC amendments) which deals with the UCCC and the limiting of finance charges.

The study topics were requested by the House Committee on Financial Institutions. The House Committee reviewed several proposals to amend the Uniform Consumer Credit Code during the 2005 Session. After

conducting a hearing on HB 2143, the Committee passed a motion to table bill discussion until a date certain (February 16, 2006) and requested an interim study to address the issues raised by HB 2143 proponents and opponents and other pending Uniform Consumer Credit Code legislation, including 2005 HB 2278.

The 2005 Legislature amended a number of provisions of the Code, including:

- Establishment of a contract rate to replace the annual rate in prior law;
- The computation of finance charges for consumer loans secured by a first or second lien real estate mortgage by creating an amortization method;
- Establishment of a minimum net worth requirement for license applicants; and
- Authorization of a statute of limitation for prosecution of crimes under the Code and allow for a restitution provision and also allow the Administrator (if deemed necessary) to require fingerprinting of applicants, licensees, agents, or others directly engaged in lending activities.

The Legislature also amended the finance charge for payday loan cash advances under the Code and enacted new law to create certain protections for military payday loan borrowers.

COMMITTEE ACTIVITY

In November, the Deputy Commissioner of Consumer and Mortgage Lending (the Code Administrator) and lenders, both current and pending, regulated under the Code, presented testimony about the current finance charges, rates and terms under the Code and its impact and the current regulatory environment in Kansas. Committee staff also provided a history of the Code and interest rates established by the Legislature and recent and proposed amendments to the Code.

Overview of the Code in Kansas. The Administrator of the Kansas Uniform Consumer Credit Code provided an overview on the Code and its history; the number and scope of entities regulated under the Code; recent changes in the Code; and its impact on businesses and consumers. The Administrator noted that the Code, adopted in nine states, remains relatively uniform in the basic intent and application of the law among the states. The UCCC intent and purpose serves to establish some basic rules of conduct between individuals who want to obtain credit for their personal needs and those companies who desire to provide that credit. The framework of the Code recognizes three essential points:

- Individuals generally need, at some point in time, access to credit for themselves and their families;
- Companies in the business of extending credit generally are more knowledgeable about credit matters than most ordinary individuals who are seeking credit; and
- It is appropriate to have some reasonable consumer protections in place to

compensate for that unequal knowledge about credit matters.

The Administrator highlighted the growth in supervised loan licensees over the past fifteen years, with 63 licensed companies and 208 licensed locations in 1990 to an October 2005 total of 393 licensed companies and 1,386 licensed locations. The Administrator also noted that refunds and consumer savings for the period of July 1999 to October 2005 totaled \$28.9 million for nearly 34,000 Kansas consumers.

An industry representative noted that the consumer lending industry is heavily regulated with the Code governance including loan origination fees; prepayment penalties; security of borrowers' personal information; late payment penalties; when a fee may or may not be charged for various administrative services; audit authority of the Bank Commissioner's Office; Commissioner's access to lenders' files; and qualifications of licensed lenders. Another representative added that with the passage of 2005 Sen. Sub. for HB 2172, the UCCC Administrator has more than sufficient powers to protect consumers. The Committee also received information from two title loan lenders and the customers each lender serves and products available. One of the lenders spoke to the application process for supervised lenders in Kansas.

Other activities. The Committee received resource information provided by staff that detailed other states' regulation of nondepository loans, including payday lending laws and title loan legislation. The Committee also received two articles on deregulation of consumer credit interest rates for its review.

Legislation. The Committee held hearings on two 2005 UCCC bills: HB 2143 and HB 2278. HB 2278 did not receive a hearing during the 2005 Session.

HB 2143 (interest rate ceiling). The bill would amend the Code to allow for a seller to charge an interest rate not to exceed 21 percent per year. The interest rate ceiling would apply to the finance charges under the Code: closed-end consumer credit sales; open-end consumer credit sales; and lender credit sales. Under current law, the finance charge rates for open-end credit 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.

The legislation was requested by the Office of the State Bank Commissioner. Opponents to the legislation indicated their support for the legislative decision in 1999 to remove interest rate caps on open-ended credit and general support for deregulation of consumer credit interest rates. One opponent noted that the deregulation of interest rates has allowed consumer finance and mortgage companies the ability to more accurately price risk, allowing consumers with outstanding credit histories to benefit from lower interest rates and also allowing consumers who previously were denied credit viable options in the marketplace.

HB 2278 (alternate finance charge, closed-end installment loans). The bill would amend 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 \$1,000. The loan term would be a minimum of four months and a maximum of eighteen months and five days. The rates and charges would not apply to payday loans.

Specifically, the bill would allow 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 legislation was requested by Security Finance Corporation. The bill requestor provided information about the company and its lending history in other states and an overview of the installment loan industry. The requestor also presented a bill draft to the Committee which made a number of changes to the language contained in HB 2278. The main revision to the legislation is allowing fees to be based on a monthly fee, rather than an interest charge. The Committee noted that additional work needed to be done on paragraph E of the new bill draft. There was no opposition testimony presented at the hearing.

CONCLUSIONS AND RECOMMENDATIONS

The Special Committee on Financial Institutions and Insurance concluded that the interest rate ceiling legislation (HB 2143) not be recommended and the alternate finance charge for closed-end consumer installment loans legislation (HB 2278) not be recommended to the 2006 Legislature and recommended the introduction of new legislation to address the requested HB 2278 amendments.