

HOUSE BILL No. 2116

By Representative Flaharty

1-23

AN ACT relating to contract for deeds; concerning interest rates; amending K.S.A. 2000 Supp. 16-207 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2000 Supp. 16-207 is hereby amended to read as follows: 16-207. (a) Subject to the following provision, the parties to any bond, bill, promissory note or other instrument of writing for the payment or forbearance of money may stipulate therein for interest receivable upon the amount of such bond, bill, note or other instrument of writing, at a rate not to exceed 15% per annum unless otherwise specifically authorized by law.

(b) The interest rate limitation set forth in this subsection applies to all first mortgage loans and contracts for deed to real estate, unless the parties agree in writing to make the transaction subject to the uniform consumer credit code, K.S.A. 16a-1-101 to 16a-9-102, and amendments thereto. The interest rate limitation set forth in this subsection does not apply to a second mortgage loan governed by the uniform consumer credit code, K.S.A. 16a-1-101 to 16a-9-102, and amendments thereto, unless the lender and the borrower agree in writing that the interest rate for the loan is to be governed by this subsection. The maximum rate of interest per annum for notes secured by real estate mortgages and contracts for deed to real estate governed by this subsection shall be at an amount equal to 1 1/2 percentage points above the yield of thirty-year fixed rate conventional home mortgages committed for delivery within 61 to 90 days accepted under the federal home loan mortgage corporation's daily offerings for sale on the last day on which commitments for such mortgages were received in the preceding month unless otherwise specifically authorized by law. Such interest rate shall be computed for each calendar month and be effective on the first day thereof. The secretary of state shall publish notice of such maximum interest rate not later than the second issue of the Kansas register published each month.

(c) No penalty shall be assessed against any party for prepayment of any home loan evidenced by a note secured by a real estate mortgage where such prepayment is made more than six months after execution of such note.

1 (d) The lender may collect from the borrower: (1) The actual fees
2 paid a public official or agency of the state, or federal government, for
3 filing, recording or releasing any instrument relating to a loan subject to
4 the provisions of this section; and

5 (2) reasonable expenses incurred by the lender in connection with
6 the making, closing, disbursing, extending, readjusting or renewing of
7 loans subject to the provisions of this section.

8 (e) Any person so contracting for a greater rate of interest than that
9 authorized by this section shall forfeit all interest so contracted for in
10 excess of the amount authorized under this section; and in addition
11 thereto shall forfeit a sum of money, to be deducted from the amount
12 due for principal and lawful interest, equal to the amount of interest
13 contracted for in excess of the amount authorized by this section and such
14 amounts may be set up as a defense or counterclaim in any action to
15 enforce the collection of such obligation and the borrower shall also re-
16 cover a reasonable attorney fee.

17 (f) The interest rates prescribed in subsections (a) and (b) of this
18 section shall not apply to a business or agricultural loan. For the purpose
19 of this section unless a loan is made primarily for personal, family or
20 household purposes, the loan shall be considered a business or agricul-
21 tural loan. For the purpose of this subsection, a business or agricultural
22 loan shall include credit sales and notes secured by contracts for deed to
23 real estate.

24 (g) Loans made by a qualified plan, as defined in section 401 of the
25 internal revenue code, to an individual participant in such plan or to a
26 member of the family of such individual participant, are not subject to
27 the interest rates prescribed in subsections (a) and (b) of this section.

28 (h) The interest rates prescribed in subsections (a) and (b) of this
29 section shall not apply to a note secured by a real estate mortgage or a
30 contract for deed to real estate where the note or contract for deed per-
31 mits adjustment of the interest rate, the term of the loan or the amorti-
32 zation schedule.

33 (i) *The interest rates prescribed in subsections (a) and (b) of this sec-*
34 *tion shall not apply to a contract for deed to real estate where the real*
35 *estate does not have a residential dwelling constructed or placed on such*
36 *real estate at the time the contract for deed is executed, except that the*
37 *interest rate on such contract for deed shall not exceed 15% per annum.*

38 (j) A first mortgage loan incurred for personal, family or household
39 purposes may be subject to certain provisions of the uniform consumer
40 credit code, K.S.A. 16a-1-101 to 16a-9-102, and amendments thereto, as
41 follows:

42 (1) Certain high loan-to-value first mortgage loans are subject to the
43 provisions of the uniform consumer credit code, other than its usury pro-

1 visions. Examples of provisions of the uniform consumer credit code ap-
2 plicable to high loan-to-value first mortgage loans include, but are not
3 limited to: Limitations on prepaid finance charges; mandatory appraisals;
4 required disclosures; restrictions on balloon payments and negative am-
5 ortization; limitations on late fees and collection costs; and mandatory
6 default notices and cure rights.

7 (2) Certain high interest rate first mortgage loans are subject to cer-
8 tain provisions of the uniform consumer credit code, including, without
9 limitation, provisions which impose restrictions on balloon payments and
10 negative amortization.

11 (3) If the parties to a first mortgage loan agree in writing to make the
12 transaction subject to the uniform consumer credit code, than all appli-
13 cable provisions of the uniform consumer credit code, including its usury
14 provisions, apply to the loan.

15 This subsection is for informational purposes only and does not limit
16 or expand the scope of the uniform consumer credit code.

17 ~~(j)~~ (k) Subsections (c), (d) and (e) of this section do not apply to a
18 first mortgage loan if (1) the parties agree in writing to make the trans-
19 action subject to the uniform consumer credit code, K.S.A. 16a-1-101 to
20 16a-9-102, and amendments thereto, or (2) the loan is a high loan-to-
21 value first mortgage loan subject to any provision of the uniform con-
22 sumer credit code. In the case of a loan described in subparts (1) or (2)
23 of the preceding sentence, the applicable provisions of the uniform con-
24 sumer credit code shall govern the loan in lieu of subsections (c), (d) and
25 (e) of this section.

26 Sec. 2. K.S.A. 2000 Supp. 16-207 is hereby repealed.

27 Sec. 3. This act shall take effect and be in force from and after its
28 publication in the statute book.

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