

HOUSE BILL No. 2735

AN ACT relating to real estate loans; concerning the appraised value; amending K.S.A. 2005 Supp. 16a-1-301 and repealing the existing section.

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

Section 1. K.S.A. 2005 Supp. 16a-1-301 is hereby amended to read as follows: 16a-1-301. In addition to definitions appearing in subsequent articles, in K.S.A. 16a-1-101 through 16a-9-102, and amendments thereto:

(1) “Actuarial method” means the method of allocating payments made on a debt between the principal and the finance charge pursuant to which a payment is applied, assuming no delinquency charges or other additional charges are then due, first to the accumulated finance charge and then to the unpaid principal balance. When a finance charge is calculated in accordance with the actuarial method, the contract rate is applied to the unpaid principal balance for the number of days the principal balance is unpaid. At the end of each computational period, or fractional computational period, the unpaid principal balance is increased by the amount of the finance charge earned during that period and is decreased by the total payment, if any, made during the period after the deduction of any delinquency charges or other additional charges due during the period.

(2) “Administrator” means the deputy commissioner of the consumer and mortgage lending division appointed by the bank commissioner pursuant to K.S.A. 75-3135, and amendments thereto.

(3) “Agreement” means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance.

(4) “Amount financed” means the net amount of credit provided to the consumer or on the consumer’s behalf. The amount financed shall be calculated as provided in rules and regulations adopted by the administrator pursuant to K.S.A. 16a-6-117, and amendments thereto.

(5) “Annual percentage rate” means the finance charge expressed as a yearly rate, as calculated in accordance with the actuarial method. The annual percentage rate shall be calculated as provided in rules and regulations adopted by the administrator pursuant to K.S.A. 16a-6-117, and amendments thereto.

(6) “Appraised value” means, with respect to any real estate at any time:

(a) The total appraised value of the real estate, as reflected in the most recent records of the tax assessor of the county in which the real estate is located; ~~or~~

(b) the fair market value of the real estate, as reflected in a written appraisal of the real estate performed by a Kansas licensed or certified appraiser within the past 12 months; *or*

(c) *in the case of a nonpurchase money real estate transaction, the estimated market value as determined through an automated valuation model acceptable to the administrator. As used in this paragraph (c), “automated valuation model” means an automated system that is used to derive a property value through the use of publicly available property records and various analytic methodologies such as comparable sales prices, home characteristics and historical home price appreciations. Automated valuation models must be validated by an independent credit rating agency. An automated valuation model provider shall not accept a property valuation assignment when the assignment itself is contingent upon the automated valuation model provider reporting a predetermined property valuation, or when the fee to be paid to the automated valuation model provider is contingent upon the property valuation reached or upon the consequences resulting from the property valuation assignment.*

(7) “Billing cycle” means the time interval between periodic billing statement dates.

(8) “Cash price” of goods, services, or an interest in land means the price at which they are offered for sale by the seller to cash buyers in the ordinary course of business and may include (a) the cash price of accessories or services related to the sale, such as delivery, installation, alterations, modifications, and improvements, and (b) taxes to the extent imposed on a cash sale of the goods, services, or interest in land. The cash price stated by the seller to the buyer in a disclosure statement is presumed to be the cash price.

(9) “Closed end credit” means a consumer loan or a consumer credit sale which is not incurred pursuant to open end credit.

(10) “Closing costs” with respect to a debt secured by an interest in land includes:

(a) The actual fees paid a public official or agency of the state or federal government, for filing, recording or releasing any instrument relating to the debt; and

(b) bona fide and reasonable expenses incurred by the lender in connection with the making, closing, disbursing, extending, readjusting or renewing the debt which are payable to third parties not related to the lender, except that reasonable fees for an appraisal made by the lender or related party are permissible.

(11) “Code mortgage rate” means the greater of:

(a) 12%; or

(b) the sum of:

(i) The yield on 30-year fixed rate conventional home mortgage loans committed for delivery within 61 to 90 days accepted under the federal home loan mortgage corporation’s or any successor’s daily offerings for sale on the last day on which commitments for such mortgages were received in the previous month; and

(ii) 5%.

If the reference rate referred to in subparagraph (i) of paragraph (b) is discontinued, becomes impractical to use, or is otherwise not readily ascertainable for any reason, the administrator may designate a comparable replacement reference rate and, upon publishing notice of the same, such replacement reference rate shall become the reference rate referred to in subparagraph (i) of paragraph (b). The secretary of state shall publish notice of the code mortgage rate not later than the second issue of the Kansas register published each month.

(12) “Conspicuous” means a term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. Whether a term or clause is conspicuous or not is for decision by the trier of fact.

(13) “Consumer” means the buyer, lessee, or debtor to whom credit is granted in a consumer credit transaction.

(14) “Consumer credit sale”:

(a) Except as provided in paragraph (b), a “consumer credit sale” is a sale of goods, services, or an interest in land in which:

(i) Credit is granted either by a seller who regularly engages as a seller in credit transactions of the same kind or pursuant to a credit card other than a lender credit card,

(ii) the buyer is a person other than an organization,

(iii) the goods, services, or interest in land are purchased primarily for a personal, family or household purpose,

(iv) either the debt is by written agreement payable in more than four installments or a finance charge is made, and

(v) with respect to a sale of goods or services, the amount financed does not exceed \$25,000.

(b) A “consumer credit sale” does not include:

(i) A sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card; or

(ii) a sale of an interest in land, unless the parties agree in writing to make the transaction subject to the uniform consumer credit code.

(15) “Consumer credit transaction” means a consumer credit sale, consumer lease, or consumer loan or a modification thereof including a refinancing, consolidation, or deferral.

(16) “Consumer lease” means a lease of goods:

(a) Which a lessor regularly engaged in the business of leasing makes to a person, other than an organization, who takes under the lease primarily for a personal, family or household purpose;

(b) in which the amount payable under the lease does not exceed \$25,000;

(c) which is for a term exceeding four months; and

(d) which is not made pursuant to a lender credit card.

(17) “Consumer loan”:

(a) Except as provided in paragraph (b), a “consumer loan” is a loan made by a person regularly engaged in the business of making loans in which:

(i) The debtor is a person other than an organization;

(ii) the debt is incurred primarily for a personal, family or household purpose;

(iii) either the debt is payable by written agreement in more than four installments or a finance charge is made; and

(iv) either the amount financed does not exceed \$25,000 or the debt is secured by an interest in land.

(b) Unless the loan is made subject to the uniform consumer credit code by written agreement, a “consumer loan” does not include:

(i) A loan secured by a first mortgage unless:

(A) The loan-to-value ratio of the loan at the time when made exceeds 100%; or

(B) in the case of subsection (1) of K.S.A. 2005 Supp. 16a-3-308a and amendments thereto, the annual percentage rate of the loan exceeds the code mortgage rate; or

(ii) a loan made by a qualified plan, as defined in section 401 of the internal revenue code, to an individual participant in such plan or to a member of the family of such individual participant.

(18) “Credit” means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(19) “Credit card” means any card, plate or other single credit device that may be used from time to time to obtain credit. Since this involves the possibility of repeated use of a single device, checks and similar instruments that can be used only once to obtain a single credit extension are not credit cards.

(20) “Creditor” means a person who regularly extends credit in a consumer credit transaction which is payable by a written agreement in more than four installments or for which the payment of a finance charge is or may be required and is the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by written agreement. In the case of credit extended pursuant to a credit card, the creditor is the card issuer and not another person honoring the credit card.

(21) “Earnings” means compensation paid or payable to an individual or for such individual’s account for personal services rendered or to be rendered by such individual, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension, retirement, or disability program.

(22) “Finance charge” means all charges payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit. The finance charge shall be calculated as provided in rules and regulations adopted by the administrator pursuant to K.S.A. 16a-6-117, and amendments thereto.

(23) “First mortgage” means a first priority mortgage lien or similar real property security interest.

(24) “Goods” includes goods not in existence at the time the transaction is entered into and merchandise certificates, but excludes money, chattel paper, documents of title, and instruments.

(25) Except as otherwise provided, “lender” includes an assignee of the lender’s right to payment but use of the term does not in itself impose on an assignee any obligation of the lender with respect to events occurring before the assignment.

(26) “Lender credit card” means a credit card issued by a supervised lender.

(27) “Loan”:

(a) Except as provided in paragraph (b), a “loan” includes:

(i) The creation of debt by the lender’s payment of or agreement to pay money to the debtor or to a third party for the account of the debtor;

(ii) the creation of debt either pursuant to a lender credit card or by a cash advance to a debtor pursuant to a credit card other than a lender credit card;

(iii) the creation of debt by a credit to an account with the lender upon which the debtor is entitled to draw immediately; and

(iv) the forbearance of debt arising from a loan.

(b) A “loan” does not include the payment or agreement to pay money to a third party for the account of a debtor if the debt of the debtor arises from a sale or lease and results from use of either a credit card issued by a person primarily in the business of selling or leasing

goods or services or any other credit card which may be used for the purchase of goods or services and which is not a lender credit card.

(28) “Loan-to-value ratio”, at any time for any loan secured by an interest in real estate, means a fraction expressed as a percentage:

(a) The numerator of which is the aggregate unpaid principal balance of all loans secured by a first mortgage or a second mortgage encumbering the real estate at such time; and

(b) the denominator of which is the appraised value of the real estate.

(29) “Merchandise certificate” means a writing issued by a seller not redeemable in cash and usable in its face amount in lieu of cash in exchange for goods or services.

(30) “Official fees” means:

(a) Fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest related to a consumer credit sale, consumer lease, or consumer loan; or

(b) premiums payable for insurance in lieu of perfecting a security interest otherwise required by the creditor in connection with the sale, lease, or loan, if the premium does not exceed the fees and charges described in paragraph (a) which would otherwise be payable.

(31) “Open end credit” means an arrangement pursuant to which:

(a) A creditor may permit a consumer, from time to time, to purchase goods or services on credit from the creditor or pursuant to a credit card, or to obtain loans from the creditor or pursuant to a credit card;

(b) the unpaid balance of amounts financed and the finance and other appropriate charges are debited to an account;

(c) the finance charge, if made, is computed on the outstanding unpaid balances of the consumer’s account from time to time; and

(d) the consumer has the privilege of paying the balances in installments.

(32) “Organization” means a corporation, limited liability company, government or governmental subdivision or agency, trust, estate, partnership, cooperative or association.

(33) “Person” includes a natural person or an individual, and an organization.

(34) (a) “Person related to” with respect to an individual means (i) the spouse of the individual, (ii) a brother, brother-in-law, sister, sister-in-law of the individual, (iii) an ancestor or lineal descendant of the individual or the individual’s spouse, and (iv) any other relative, by blood, adoption or marriage, of the individual or such individual’s spouse who shares the same home with the individual.

(b) “Person related to” with respect to an organization means (i) a person directly or indirectly controlling, controlled by or under common control with the organization, (ii) an officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization, (iii) the spouse of a person related to the organization, and (iv) a relative by blood, adoption or marriage of a person related to the organization who shares the same home with such person.

(35) “Prepaid finance charge” means any finance charge paid separately in cash or by check before or at consummation of a transaction, or withheld from the proceeds of the credit at any time. Prepaid finance charges shall be calculated as provided in rules and regulations adopted by the administrator pursuant to K.S.A. 16a-6-117, and amendments thereto.

(36) “Presumed” or “presumption” means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(37) “Principal” means the total of the amount financed and the prepaid finance charges, except that prepaid finance charges are not added to the amount financed to the extent such prepaid finance charges are paid separately in cash or by check by the consumer. The administrator may adopt rules and regulations regarding the determination or calculation of the principal or the principal balance pursuant to K.S.A. 16a-6-117, and amendments thereto.

(38) “Sale of goods” includes any agreement in the form of a bailment or lease of goods if the bailee or lessee agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value

of the goods involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the goods upon full compliance with such bailee's or lessee's obligations under the agreements.

(39) "Sale of an interest in land" includes a lease in which the lessee has an option to purchase the interest and all or a substantial part of the rental or other payments previously made by the lessee are applied to the purchase price.

(40) "Sale of services" means furnishing or agreeing to furnish services and includes making arrangements to have services furnished by another.

(41) "Second mortgage" means a second or other subordinate priority mortgage lien or similar real property security interest.

(42) "Seller": Except as otherwise provided, "seller" includes an assignee of the seller's right to payment but use of the term does not in itself impose on an assignee any obligation of the seller with respect to events occurring before the assignment.

(43) "Services" includes (a) work, labor, and other personal services, (b) privileges with respect to transportation, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations, and the like, and (c) insurance.

(44) "Supervised financial organization" means a person, other than an insurance company or other organization primarily engaged in an insurance business:

(a) Organized, chartered, or holding an authorization certificate under the laws of any state or of the United States which authorize the person to make loans and to receive deposits, including a savings, share, certificate or deposit account; and

(b) subject to supervision by an official or agency of such state or of the United States.

(45) "Supervised lender" means a person authorized to make or take assignments of supervised loans, either under a license issued by the administrator (K.S.A. 16a-2-301 and amendments thereto) or as a supervised financial organization (subsection (44) of K.S.A. 16a-1-301 and amendments thereto).

(46) "Supervised loan" means a consumer loan, including a loan made pursuant to open end credit, with respect to which the annual percentage rate exceeds 12%.

(47) "Written agreement" means an agreement such as a promissory note, contract or lease that is evidence of or relates to the indebtedness. A letter that merely confirms an oral agreement does not constitute a written agreement for purposes of this subsection unless signed by the person against whom enforcement is sought.

(48) "Written administrative interpretation" means any written communication from the consumer credit commissioner which is the official interpretation as so stated in said written communication by the consumer credit commissioner of the Kansas uniform consumer credit code and rules and regulations pertaining thereto.

New Sec. 2. No lender, as defined in K.S.A. 58-2237, and amendments thereto, or any person acting on behalf of a lender shall disclose to an appraiser or other person engaged to determine the appraised value of real estate, the amount of a proposed real estate loan or the preferred or required value of any real estate intended to secure such loan.

Sec. 3. K.S.A. 2005 Supp. 16a-1-301 is hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.