

HOUSE BILL No. 2717

By Committee on Insurance and Financial Institutions

1-30

9 AN ACT amending the uniform consumer credit code; relating to payday
10 loans; amending K.S.A. 16a-2-404 and repealing the existing section.

11

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

13 Section 1. K.S.A. 16a-2-404 is hereby amended to read as follows:
14 16a-2-404. (1) On consumer loan transactions in which cash is advanced:

15 (a) With a short term,

16 (b) a single payment repayment is anticipated, and

17 (c) such cash advance is equal to or less than \$500, a licensed or
18 supervised lender may charge an amount not to exceed 15% of the
19 amount of the cash advance.

20 (2) The minimum term of any loan under this section shall be 7 days
21 and the maximum term of any loan made under this section shall be 30
22 days.

23 ~~(3) A lender and related interest shall not have more than two loans~~
24 ~~made under this section outstanding to the same borrower at any one~~
25 ~~time and shall not make more than three loans to any one borrower within~~
26 ~~a 30 calendar day period. No lender shall make a loan under this section~~
27 ~~which results in a borrower having more than two outstanding loans~~
28 ~~under this section with any lender. Each lender shall maintain a journal~~
29 ~~of loan transactions for each borrower which shall include at least the~~
30 ~~following information:~~

31 (a) Name, address and telephone number of each borrower; and

32 (b) date made and due date of each loan.

33 (4) Each loan agreement made under this section shall contain the
34 following notice in at least 10 point bold face type: **NOTICE TO BOR-**
35 **ROWER: KANSAS LAW PROHIBITS THIS LENDER AND THEIR**
36 **RELATED INTEREST FROM HAVING MORE THAN MAKING**
37 **YOU A LOAN IF YOU CURRENTLY HAVE TWO LOANS OUT-**
38 **STANDING TO YOU AT ANY ONE TIME. A LENDER CANNOT**
39 **DIVIDE THE AMOUNT YOU WANT TO BORROW INTO MULTI-**
40 **PLE LOANS IN ORDER TO INCREASE THE FEES YOU PAY WITH**
41 **ANY LENDER.**

42 Prior to consummation of the loan transaction, the lender must:

43 (a) Provide the notice set forth in this subsection in both English and

1 Spanish; and

2 (b) obtain the borrower's signature or initials next to the English ver-
3 sion of the notice or, if the borrower advises the lender that the borrower
4 is more proficient in Spanish than in English, then next to the Spanish
5 version of the notice.

6 (5) *After a borrower's fifth consecutive loan, another loan may not be*
7 *made to that borrower within seven calendar days after the fifth consec-*
8 *utive loan is paid in full. After maturity of the borrower's fifth consecutive*
9 *loan, the borrower may pay the balance in full or, the borrower and the*
10 *lender shall enter into an agreement to repay the loan in installments*
11 *subject to the requirements of subsection (6).*

12 ~~(5)~~ (6) The contract rate of any loan made under this section shall
13 not be more than 3% per month of the loan proceeds after the maturity
14 date. No insurance charges or any other charges of any nature whatsoever
15 shall be permitted, except as stated in subsection ~~(7)~~ (8), including any
16 charges for cashing the loan proceeds if they are given in check form.

17 ~~(6)~~ (7) Any loan made under this section shall not be repaid by pro-
18 ceeds of another loan made under this section by the same lender or
19 related interest. The proceeds from any loan made under this section
20 shall not be applied to any other loan from the same lender or related
21 interest.

22 ~~(7)~~ (8) On a consumer loan transaction in which cash is advanced in
23 exchange for a personal check, one return check charge may be charged
24 if the check is deemed insufficient as defined in paragraph (e) of subsec-
25 tion (1) of K.S.A. 16a-2-501, and amendments thereto. Upon receipt of
26 the check from the consumer, the lender shall immediately stamp the
27 back of the check with an endorsement that states: "Negotiated as part
28 of a loan made under K.S.A. 16a-2-404. Holder takes subject to claims
29 and defenses of maker. No criminal prosecution."

30 ~~(8)~~ (9) In determining whether a consumer loan transaction made
31 under the provisions of this section is unconscionable conduct under
32 K.S.A. 16a-5-108, and amendments thereto, consideration shall be given,
33 among other factors, to:

34 (a) The ability of the borrower to repay within the terms of the loan
35 made under this section; or

36 (b) the original request of the borrower for amount and term of the
37 loan are within the limitations under this section.

38 ~~(9)~~ (10) A consumer may rescind any consumer loan transaction made
39 under the provisions of this section without cost not later than the end
40 of the business day immediately following the day on which the loan
41 transaction was made. To rescind the loan transaction:

42 (a) A consumer shall inform the lender that the consumer wants to
43 rescind the loan transaction;

- 1 (b) the consumer shall return the cash amount of the principal of the
2 loan transaction to the lender; and
- 3 (c) the lender shall return any fees that have been collected in asso-
4 ciation with the loan.
- 5 ~~(10)~~ (11) A person shall not commit or cause to be committed any of
6 the following acts or practices in connection with a consumer loan trans-
7 action subject to the provisions of this section:
- 8 (a) Use any device or agreement that would have the effect of charg-
9 ing or collecting more fees, charges or interest, or which results in more
10 fees, charges, or interest being paid by the consumer, than allowed by
11 the provisions of this section, including but not limited to:
- 12 (i) Entering into a different type of transaction with the consumer;
13 (ii) entering into a sales/leaseback or rebate arrangement;
14 (iii) catalog sales; or
15 (iv) entering into any other transaction with the consumer or any
16 other person that is designed to evade the applicability of this section;
- 17 (b) use, or threaten to use the criminal process in any state to collect
18 on the loan;
- 19 (c) sell any other product of any kind in connection with the making
20 or collecting of the loan;
- 21 (d) include any of the following provisions in a loan document:
- 22 (i) A hold harmless clause;
23 (ii) a confession of judgment clause;
24 (iii) a provision in which the consumer agrees not to assert a claim or
25 defense arising out of the contract.
- 26 ~~(11)~~ (12) As used in this section:
- 27 (a) “Related interest” shall have the same meaning as “person related
28 to” in K.S.A. 16a-1-301, and amendments thereto; *and*
- 29 (b) “consecutive loan” means a new loan agreement that the lender
30 or such lender’s related interest enters into with the same borrower not
31 later than seven calendar days after a previous loan made to that borrower
32 is paid in full.
- 33 ~~(12)~~ (13) Any person who facilitates, enables or acts as a conduit or
34 agent for any third party who enters into a consumer loan transaction with
35 the characteristics set out in paragraphs (a) and (b) of subsection (1) shall
36 be required to obtain a supervised loan license pursuant to K.S.A. 16a-2-
37 301, and amendments thereto, regardless of whether the third party may
38 be exempt from licensure provisions of the Kansas uniform consumer
39 credit code.
- 40 ~~(13)~~ (14) Notwithstanding that a person may be exempted by virtue
41 of federal law from the interest rate, finance charge and licensure pro-
42 visions of the Kansas uniform consumer credit code, all other provisions
43 of the code shall apply to both the person and the loan transaction.

1 ~~(14)~~ (15) This section shall be supplemental to and a part of the uni-
2 form consumer credit code.
3 Sec. 2. K.S.A. 16a-2-404 is hereby repealed.
4 Sec. 3. This act shall take effect and be in force from and after its
5 publication in the statute book.