

MINUTES  
SAVINGS AND LOAN COMMITTEE  
Thursday, February 25, 1965

Meeting was at 9 a.m. in Room 528, with the Chairman, C. A. Strowig, presiding.

All members were present.

Mr. Walter, Commissioner of Consumer Credit, and a Mr. Brown, were present to discuss proposal of changes they wish in Kansas finance acts. (Copy attached)

Mr. Trachsel said there are both licensed and unlicensed lenders, with only the licensed living up to the law. He cited that in the "consolidation of loans" advertising idea, the borrower signs away about everything and the cost is greater than he at first thought. Mr. Trachsel said that our present general statutes require very limited disclosure of terms and rates so that changes are needed. He further stated that "more and more borrowers are using the installment type of loan" and suggested several changes there.

Mr. Trachsel commented that our HB 758, dealing with 16-410, is the same as in their recommendation for 16-202. The present law provides for refunds on a daily basis. They think it better to have all three statutes with the same wording.

It was further stated that the average cost per month for service on small consumer type loans was \$7.80 in 1963. Mr. Trachsel said he does not recommend that the rate be raised, but that it can not be lowered and have legitimate small lenders survive.

Meeting adjourned.

*Augusta M. Laing*  
Secretary

16-202. (a) Contract rate. 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 ten percent (10%) per annum unless otherwise specifically authorized by law; Provided, the lender may collect from the borrower the actual fees paid a public official or agency of the state, or federal government, for filing, recording or releasing any instrument relating to a loan made under subsections (a) and (b) hereof.

(b) Installment loans of two thousand dollars (\$2,000) or less. In addition to loans authorized under subsection (a) hereof, any person may loan to any borrower a principal amount of two thousand dollars (\$2,000) or less for a period not exceeding thirty (30) months and add to such loan or deduct therefrom in advance, interest or discount charges at a rate not exceeding eight percent (8%) dollars per annum one hundred dollars per year of the gross (face) amount of the loan on any principal amount of three thousand dollars (\$3,000) or less; and six dollars (\$6.00) per one hundred dollars (\$100) per year on any principal amount of more than three thousand dollars (\$3,000), from the date thereof until the maturity of the final installment, notwithstanding that the principal amount of such loan is required to be paid in installments. No person shall divide into separate parts any contract made under this subsection for the purpose of or with the effect of obtaining charges in excess of those authorized by this subsection.

(1) Minimum charge; who may make. Whenever the legal interest on a loan permitted under subsections (a) and (b) hereof does not total the amount of three dollars (\$3.00) then the lender may charge, contract for, receive and collect a fee for making such loan in the sum of three dollars (\$3.00) as payment of interest thereon and costs of handling; Provided, any part of such fee in excess of legal interest shall not be charged or assessed the same borrower more than once in each three (3) months; Provided, however, the authority granted in this subsection (1) shall apply only to those persons specifically exempted from the licensing requirements of K.S.A. Section 16-404 (a) of the General Statutes Supplement of 1955 and any amendments thereto. Provided further however, The borrower may prepay the loan at any time and if the loan is prepaid in full (by cash, renewal, or refinancing) one month or more before the final payment is due, any unearned interest charge shall be refunded on the following basis. The amount refunded shall be the proportion of the interest charge which the sum of the monthly balances scheduled to follow the date of prepayment in full bears to the sum of the scheduled monthly balances of the contract.

(2) Refunds. Notwithstanding the provisions of any contract to the contrary, any borrower may prepay in full, whether by payment in cash, extension, renewal, or otherwise, at any time before maturity the debt of any contract and in so paying such debt shall receive a refund credit thereon for such anticipation of payments. The amount of such refund shall represent at least as great a proportion of the interest charges as the sum of the periodic balances scheduled to follow the first scheduled payment after the date of prepayment, bears to the sum of all the periodic balances under the schedule of payment in the contract. Where the amount of credit is less than one dollar (\$1) no refund need be made.

(3) Insurance. Any insurance written in connection with any loan made under this subsection shall be subject to the limitations, prohibitions and regulations contained in K.S.A. section 16-413 of the General Statutes Supplement of 1955 and any amendment thereto. The premium or other identifiable charge for insurance permitted to be written in connection with such loan may be collected from the borrower or included in the principal of the loan at the time the loan is made.

(4) Delinquency fee. The lender may, if the interest charges are precomputed and the loan contract so provides, collect a delinquency and collection charge on each installment in default for a period of not less than ten (10) days in an amount not in excess of five percent (5%) of each installment or two dollars fifty cents (\$2.50), whichever is less: Provided, Only one such delinquency or collection charge may be collected on any such installment, regardless of the period during which it remains in default.

(5) Deferment fee. Upon request by the borrower, the lender may defer, as of the date of any installment due date, the scheduled due date of all wholly unpaid installments upon which no delinquency fee has been collected, and extended the maturity date of the contract for a corresponding period; before computing the deferment fee, the lender may add to the unpaid balance the cost of insurance incidental to the deferment plus any accrued delinquency charges, and shall deduct therefrom any refund that may be due; the lender may charge for such deferment an amount equal to the difference between the refund required for prepayment in full as of the scheduled due date of the first of the deferred installments and the amount which would be required for prepayment in full as of one month prior to said date multiplied by the number of months in the deferment period. The deferment charge shall be excluded in computing any required refund.

(6) Borrower to receive a copy of contract; or statement of contents. At the time the loan is made under the provisions of this subsection (b), there will be delivered to the borrower, or if there be two (2) or more borrowers, to one (1) of them a copy of the loan contract, or a written statement in the English language showing in clear and distinct terms:

- (a) The name and address of the lender and of one of the borrowers or a maker of the loan;
- (b) The date of the loan contract;
- (c) The schedule of installments or description thereof;
- (d) The principal amount of the loan excluding charges;
- (e) The rate of charges expressed in dollars per one hundred dollars per year and the amount of charges as the contract may provide;
- (f) The amount collected or paid out for each kind of insurance, if any;
- (g) The amount collected or paid out for filing and any other fees or charges made or assessed, and added to the indebtedness to be paid by the borrower, regardless whether they shall be retained by the lender or paid to another, if said fees or charges arise out of and in connection with the loan;
- (h) A general description of the collateral or security for the loan including all other accommodation or other joint makers (co-makers);
- (i) That the borrower may prepay the loan in whole or in part at any time during the lender's regular business hours, and in case the charges have been added to the principal of the loan that such charges are subject to the refund requirements in subsection (b) (2) herein, if such loan is prepaid in full.

(c) Any person so contracting for a greater rate of interest or charges than authorized by law shall forfeit all interest and charges so contracted for in excess of the amount authorized by law; and in addition thereto shall forfeit a sum of money, to be deducted from the amount due for principal and lawful interest or charges, equal to the amount of interest or charges contracted for in excess of the amount authorized by law and such amounts may be set up as a defense or counter-claim in any action to enforce the collection of such obligation and the borrower shall also recover a reasonable attorney's fee. (G.S. 1949, § 16-202; L. 1955, ch. 135, § 25; L. 1957, ch. 143, § 1; June 29.)

16-405. (a) Nothing in this act shall be construed as a limitation upon lending more than two thousand one hundred dollars (\$2,100) by a licensee. Where any licensee shall make a loan of more than two thousand one hundred dollars (\$2,100) such licensee shall not, directly or indirectly, charge, contract for, or receive any interest, discount or consideration on such loan greater than the amount a lender could legally charge under subsection (a) of section K.S.A. 16-202 of the ~~General Statutes of 1949~~, as amended; and none of the provisions of K.S.A. section 16-410 of this act shall apply to any such loan.

(b) If any licensee shall permit any person, as borrower, or as an endorser, guarantor or surety for any borrower, or otherwise, or any husband and wife, jointly or severally to owe directly or contingently, or both, to the licensee at any time a sum of more than two thousand one hundred dollars (\$2,100) for principal, and even if such sum owing aggregating more than two thousand one hundred dollars (\$2,100) shall be considered and construed to be one loan for the purpose of this act.

(c) If a licensee shall acquire, directly or indirectly, by purchase or discount, bona fide obligations for goods or services owed by the person who received such goods or services, then the amount of such purchased or discounted indebtedness to the licensee shall not be included in computing the aggregate indebtedness of such borrower to the licensee for the purpose of the foregoing prohibitions.

(d) If the proceeds of any loan of two thousand one hundred dollars (\$2,100) or less are used to discharge a pre-existing debt of the borrower for goods or services owed directly to the person who provided such goods or services, the licensee may accept from such person a guaranty of payment of the principal of such loan, with interest at a rate not exceeding that which the licensee could lawfully charge if he were not licensed hereunder, and the acceptance of one or more of such guarantees in any aggregate amount shall not affect the rights of such licensee to make the charges against the primary borrower authorized by section 16-410 of this act. (L. 1955, ch. 135, § 5; July 1.)

16-410. (a) Maximum rate of charge. Every licensee hereunder may contract for and receive, on any loan of money not exceeding two thousand one hundred dollars (\$2,100) in amount, charges at a rate not exceeding three percent (3%) per month on that part of the unpaid principal balance of any loan not in excess of three hundred dollars (\$300), and five-sixths of one percent ( $5/6\%$ ) per month (or ten percent (10%) per annum) on any remainder of such unpaid principal balance; Provided, that every loan contract shall provide for periodic payments to be made at approximately equal intervals of time and substantially equal in amount.

(b) Charges may be precomputed. The charges authorized by subsection (a) above may be precomputed on scheduled unpaid principal balances according to the terms of the contract for the entire life of the loan, added to the principal amount of the loan, and the resulting sum shall be divided by the number of monthly or other regular periodic payment periods to determine the approximate amount of each substantially equal payment to be made under this subsection.

(c) Refund. A borrower may prepay his loan in full or in part to a licensee at any time, but if a loan made pursuant to subsection (b) above is paid in full, whether by payment in cash, a new loan, renewal, or otherwise, one month or more before the final installment date, the licensee shall refund to the borrower the portion of the precomputed charge by the rule commonly known as the rule of the 78ths, which is computed as follows:

~~The amount of the refund shall be as great a proportion of such charge as the sum of the full periodic installment balances of the loan scheduled to follow the installment date immediately preceding the date of prepayment in full bears to the sum of all periodic installment balances of the loan, both sums to be determined according to payment schedules which had been agreed upon in the loan contract. For any additional fractional period when the time elapsed is less than one payment period, the portion of the charges earned for such period shall be computed by counting each day in such period as one thirtieth of a month.~~

The amount of such refund shall represent at least as great a proportion of the interest charges as the sum of the periodic balances scheduled to follow the first scheduled payment after the date of prepayment, bears to the sum of all the periodic balances under the schedule of payment in the contract. Where the amount of credit is less than one dollar (\$1) no refund need be made.

(d) Notwithstanding any of the provisions of this section, a licensee shall accept partial prepayments on any loan contract but shall be required to recompute the charges of said loan contract only when such partial prepayment is made in an amount of one periodic payment or more and is made one month or more before the amount so paid is due under the loan contract. Adjustments required by this subsection may be made at the termination of the contract.

(e) No consumer type loan made under the provisions of this shall bear interest after six (6) months from the date of maturity of the final installment of any said loan in excess of ten percent (10%) per annum as provided by ~~section K, S.A. 16-202 of the General Statutes of 1949~~, as amended, upon the unpaid principal balance of said loan, but this provision shall not be construed as preventing the making of renewal loans insofar as renewal loans are concerned.

(f) Recording fees. The licensee may collect from the borrower the actual fees paid a public official, or agency of the state, for filing, recording or releasing any instrument securing the loan or for noting a lien on the certificates of title of any vehicle as provided by law.

(g) No further charges, no splitting contracts; certain contracts void. No further or other charges shall be directly or indirectly contracted for or received by any licensee except those specifically authorized by this act. No licensee shall divide into separate parts any contract made for the purpose of or with the effect of obtaining charges in excess of those authorized by this act. All balances due to a licensee from any person, as a borrower, or as an endorser, guarantor or surety for any borrower, or otherwise, or due from any husband or wife, jointly or severally, shall be considered a part of any loan being made by a licensee to such person for the purpose of computing interest or charges; Provided, however, Any bona fide obligation for goods or services owned or due by the person who received such goods or services acquired directly or indirectly by purchase or discount by the licensee need not be so considered. If any amount in excess of the charges permitted by this act is charged, contracted for, or received, except as the result of an accidental and bona fide error of computation, the contract of loan shall be void, and the licensee shall have no right to collect or receive any principal, charges, or recompense whatsoever. (L. 1955, ch. 135, § 10; July 1.)

(h) Delinquency fee. The licensee may, if the interest charges are precomputed and the loan contract so provides, collect a delinquency and collection charge on each installment in default for a period of not less than ten (10) days in an amount not in excess of five percent (5%) of each installment or two dollars fifty cents (\$2.50), whichever is less: Provided, Only one such delinquency or collection charge may be collected on any such installment, regardless of the period during which it remains in default.

(i) Deferment fee. Upon request by the borrower, a licensee holding a note upon which the charges have been precomputed may agree, as of an installment due date, to defer the payment dates of all wholly unpaid installments upon which no delinquency fee has been collected, and the maturity of the contract shall be extended for a corresponding period and such extension shall not be deemed a violation KSA 16-411. In such event, the licensee may charge an amount which shall be equal to the difference between the refund that would be required for prepayment in full as of the scheduled due date of the first of the deferred installments and the amount which would be required for prepayment in full as of one month prior to said date multiplied by the number of months in the deferment period. The deferment charge shall be excluded in computing any required refund.

## KANSAS SALES FINANCE ACT

16-509. Refunds on prepayment. Notwithstanding the provisions of any retail installment contract to the contrary, any buyer may prepay in full, whether by payment in cash, extension, renewal, or otherwise, at any time before maturity the debt of any retail installment contract and in so paying such debt shall receive a refund credit thereon for such anticipation of payments. The amount of such refund shall represent at least as great a proportion of the finance charges as the sum of the monthly balances scheduled to follow the first scheduled payment after the date of prepayment, bears to the sum of all the monthly time balances under the schedule of payment in the contract. Where the amount of credit is less than one dollar (\$1) no refund need be made.

### Section 16-506

(b) The commissioner shall have power to issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records and other evidence before him in any matter over which he has jurisdiction, control or supervision pertaining to this act. The commissioner shall have the power to administer oaths and affirmations to any person whose testimony is required. If an investigation or examination by the Commissioner shall disclose that any person not licensed under this act has violated any of the provisions of this Act by reason of other than as the result of a bona fide error of computation, the cost of such investigation or examination shall be borne by the person investigated or examined and the commissioner may maintain an action in any court of competent jurisdiction to recover such cost.