

MINUTES OF THE House COMMITTEE ON Commercial & Financial InstitutionsThe meeting was called to order by Representative Harold P. Dyck at  
Chairperson3:30 ~~am~~/p.m. on February 21, 1983 in room 527-S of the Capitol.

All members were present except:

Representative Holderman

Committee staff present:

Bill Wolff, Research Department  
Bruce Kinzie, Revisor of Statutes' Office  
Martha Evans, Committee Secretary

Conferees appearing before the committee:

HB 2109 Karen Griffiths, 1st Federal Savings & Loan, Newton, Ks.  
Rep. Bob Wunsch, Kansas House of Representatives  
Stan Lind, Kansas Association of Finance Companies  
HB 2420 Rep. David Heinemann, Kansas House of Representatives

The Chairman welcomed those present and announced that in addition to the hearings scheduled for HB 2109 and HB 2420 that there were several proposals to be considered for committee bills and amendments to be considered for HB 2079. He then introduced Karen Griffiths who had served as a House member and was back representing the Savings & Loan League as a proponent of HB 2109.

HB 2109 - An act authorizing contracts for payment of fees incurred in foreclosure of certain mortgages; amending K.S.A. 58-2312 and repealing the existing section.

Ms. Griffiths, a counsel for the 1st Federal Savings & Loan Association of Newton, Kansas said that according to this bill, the court would enter judgment for an amount that was considered reasonable for the foreclosure work and the judgment would be paid by the buyer at the foreclosure sale unless the buyer is the defendant owner or unless the defendant owner redeems the property. She pointed out that at a foreclosure sale a third party buys the property for the amount that you have in it but our law specifically excludes attorney's fees which are a part of the cost. Therefore, the money to pay the attorney's must come directly out of your business expenses and cannot be assessed as a judgment against the property. She said that this law would not be retroactive and would apply only to 1st mortgages where such an agreement has been contracted for in the loan. During these difficult economic times, passage of this bill would discourage overly advantageous land deals on foreclosure sales and would simply reimburse businesses for their cost of doing business, she concluded. (Attachment 1)

Rep. Wunsch spoke briefly to the committee. He expressed concern about reimbursement of the 1st mortgage holder's attorney fees when a 2nd mortgagor takes the foreclosure action. He said that he represented Equitable Life Assurance and in such cases as this where Equitable holds a first mortgage and there is foreclosure action by the second mortgage holder, that Equitable must pay him for his services in protecting Equitable's interests.

Stan Lind, representing the Kansas Association of Finance Companies, appeared in opposition to HB 2109. He said that in reality what this bill does is to transfer liability to the 2nd mortgage holders and would show preference for one class of lenders over another. He said that it has been unlawful to contract for the payment of attorney's fees upon foreclosure since 1876.

HB 2079 - An act concerning interest rates; amending K.S.A. 1982 Supp 16-207, 16a-2-201, 16a-2-202 and 16a-2-401 and repealing the existing sections and also repealing K.S.A. 1982 Supp. 16-207e and 16a-2-401b.

The Chairman presented some amendments on HB 2079 to the committee for their consideration. He said that the amendments leave the status of interest rates just as they presently are and sets the sunset back two years from 1983 to 1985. (Attachment 2)

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Commercial & Financial Institutions,  
room 527-S, Statehouse, at 3:30 ~~xx~~ a.m./p.m. on February 21, 1983.

Representative Francisco moved that the amendments as presented to the committee be adopted. The motion was seconded by Representative Miller, and approved by the committee.

Representative Miller moved the bill be passed out of committee favorably as amended. Representative Jarchow seconded the motion and the motion carried.

Attention was directed by the Chairman to two proposals to be considered by the committee for introduction as committee bills. The first was to amend K.S.A. 1982 Supp. 16-207 and repealing the existing section and 16-207e and was referred to as a "clean up" bill. (Attachment 3)

Representative Louis moved the proposed legislation be introduced as a committee bill and referred back to the committee. Representative Ott seconded the motion and the motion carried.

The second request for a bill would amend the uniform commercial code; K.S.A. 1981 Supp. 84-9-301 and repealing the existing section. This bill would change from 10 to 20 days the time allowed the secured party to file with respect to a purchase money security interest. (Attachment 4)

Representative Sand moved this proposed legislation be introduced as a committee bill. Representative Nichols seconded the motion and the motion carried.

HB 2420 - An act amending the uniform consumer credit code; amending K.S.A. 16a-5-203 and repealing the existing section.

Representative Heinemann, the sponsor of the bill, spoke in favor of its passage. He explained the the UCCC is complicated and many small businessmen were not in compliance and were not even aware that they were not. He said that he felt that if they showed a "good faith attempt at compliance" that they should not be held responsible for possible errors or misunderstandings.

Rep. Dyck asked how the legal profession defines "good faith"? Rep. Heinemann said that he was unsure. Rep. Louis asked if "good faith" was to replace the "preponderance of evidence" in the preceding paragraph to which the Rep. responded that it would not. Representative Ott said that the UCCC is not understood by many and Jim Maag of the KBA volunteered that this was so and needed to be corrected. However, Mr. Maag said that he was afraid that the bill was in violation of Regulation Z.

The meeting was adjourned by the Chairman at 4:40 p.m.

The next meeting of the committee will be at 3:30 p.m. on February 22, 1983.



TO: Members of House Committee on Commercial and Financial Institutions

FROM: Karen L. Griffiths  
Counsel for First Federal Savings and Loan Association, Newton, Kansas

DATE: February 21st, 1983

SUBJECT: House Bill 2109

House Bill 2109, as introduced, allows for the inclusion of a contractual agreement in first real estate mortgages for the payment of reasonable attorney fees upon foreclosure of the mortgage. According to the bill, the court would enter judgment for an amount that was considered reasonable for the foreclosure work. The judgment would be paid by the buyer at the foreclosure sale, unless that buyer is the defendant owner or unless the defendant owner redeems the property.

In Kansas, since at least 1876 when K.S.A. 58-2312 was first enacted it has been unlawful to contract for the payment of attorneys fees upon foreclosure. Now, on the contrary, in the majority of other jurisdictions, there is the absence of statutory provisions on the subject, and they regard as valid and enforceable a stipulation in a mortgage fixing the amount of attorney's fees, provided the amount fixed is reasonable. In addition, at the federal level, attorney's fees will be allowed, according to a clause in the mortgage, where such clause and allowance are valid under the laws of the state.

Generally speaking, attorneys fees should be allowed, just as costs are in foreclosure actions, as part of the necessary expense of services incident to the foreclosure. Fees which courts would approve depend on the circumstances of each case and the amount of work involved.

Let's look at a fact situation under the Kansas law. If you were in the business of lending money for a first mortgage and the buyer did not make his loan payments, the property would be subject to foreclosure. The procedure would then be to contact your attorney to begin the necessary proceedings. The money to pay the attorney's fees comes directly out of your business expenses and cannot be assessed as a judgment against the land subject to foreclosure. At the foreclosure sale a third party buys the property for the amount that you have in it. (That is the amount of the loan, taxes, etc..., but our statute specifically excludes attorney's fees.)

House Bill 2109 would allow for the assessment of attorney's fees as a judgment against the land, only on a first mortgage foreclosure and not as against the defendant owner, if the owner buys at the foreclosure sale or redeems the property during the redemption period. This, simply, would reimburse businesses for the cost of doing business, and would discourage overly advantageous land deals on foreclosure sales, especially during these most difficult economic times.

It should also be remembered that in the proposed bill, attorney's fees will only be assessed in those cases where such an agreement has been contracted for in the loan for a first real estate mortgage.

Land deals and mortgages have changed since this law was enacted and it is time to create a more equitable public policy when dealing with first mortgage foreclosures.

K.L.G.

# HOUSE BILL No. 2079

By Committee on Commercial and Financial Institutions

1-24

0016 AN ACT concerning interest rates; amending K.S.A. 1982 Supp.  
0017 16-207, 16a-2-201, 16a-2-202 and 16a-2-401 and repealing the  
0018 existing sections and also repealing K.S.A. 1982 Supp. 16-207e  
0019 and 16a-2-401b.

amending the uniform consumer code  
concerning finance charges.

16a-3-204 and

0020 *Be it enacted by the Legislature of the State of Kansas:*

0021 Section 1. K.S.A. 1982 Supp. 16-207 is hereby amended to  
0022 read as follows: 16-207. (a) Subject to the following provision, the  
0023 parties to any bond, bill, promissory note or other instrument of  
0024 writing for the payment or forbearance of money may stipulate  
0025 therein for interest receivable upon the amount of such bond, bill,  
0026 note or other instrument of writing, at a rate not to exceed 15% per  
0027 annum unless otherwise specifically authorized by law.

0028 (b) The maximum rate of interest per annum for notes secured  
0029 by all real estate mortgages and contracts for deed to real estate  
0030 executed on or after the effective date of this act shall be at an  
0031 amount equal to 1 1/2 percentage points above the average  
0032 weighted yield of mortgages accepted under the federal home  
0033 loan mortgage corporation's weekly purchase program effective  
0034 on the first day of each month unless otherwise specifically  
0035 authorized by law. Such interest rate shall be computed for each  
0036 calendar month and be effective on the first day thereof. The  
0037 secretary of state shall publish notice of such maximum interest  
0038 rate in the first not later than the second issue of the Kansas  
0039 register published each month. The initial rate of interest upon  
0040 any conventional loan evidenced by a note secured by a real  
0041 estate mortgage shall not exceed the rate quoted in the application  
0042 executed by the borrower on the day on which application for  
0043 such conventional loan is made.

0044 (c) No penalty shall be assessed against any party for prepay

0045 ment of any home loan evidenced by a note secured by a real  
0046 estate mortgage where such prepayment is made more than six  
0047 months after execution of such note.

0048 (d) The lender may collect from the borrower: (1) The actual  
0049 fees paid a public official or agency of the state, or federal  
0050 government, for filing, recording or releasing any instrument  
0051 relating to a loan subject to the provisions of this section; and

0052 (2) reasonable expenses incurred by the lender in connection  
0053 with the making, closing, disbursing, extending, readjusting or  
0054 renewing of loans subject to the provisions of this section.

0055 (e) Any person so contracting for a greater rate of interest than  
0056 that authorized by this section shall forfeit all interest so con-  
0057 tracted for in excess of the amount authorized under this section;  
0058 and in addition thereto shall forfeit a sum of money, to be  
0059 deducted from the amount due for principal and lawful interest,  
0060 equal to the amount of interest contracted for in excess of the  
0061 amount authorized by this section and such amounts may be set  
0062 up as a defense or counterclaim in any action to enforce the  
0063 collection of such obligation and the borrower shall also recover a  
0064 reasonable attorney's attorney fee.

0065 (f) The interest rates prescribed in subsections (a) and (b) of  
0066 this section shall not apply to a business or agricultural loan. For  
0067 the purpose of this section unless a loan is made primarily for  
0068 personal, family or household purposes, the loan shall be con-  
0069 sidered a business or agricultural loan. For the purpose of this  
0070 subsection, a business or agricultural loan shall include credit  
0071 sales and notes secured by contracts for deed to real estate.

0072 (g) Loans made by a qualified plan, as defined in section 401  
0073 of the internal revenue code, to an individual participant in such  
0074 plan or to a member of the family of such individual participant,  
0075 are not subject to the interest rates prescribed in subsections (a)  
0076 and (b) of this section.

0077 (h) The interest rates prescribed in subsections (a) and (b) of  
0078 this section shall not apply to a note secured by a real estate  
0079 mortgage or a contract for deed to real estate where the note or  
0080 contract for deed permits adjustment of the interest rate, the term  
0081 of the loan or the amortization schedule.

0082 ~~(i) The interest rates prescribed in subsections (a) and (b) of~~  
 0083 ~~this section shall not apply to a consumer credit transaction as~~  
 0084 ~~defined in subsection (11) of K.S.A. 16a-1-301, and amendments~~  
 0085 ~~thereto, in which the amount financed is in excess of \$5,000,~~  
 0086 ~~except that all other provisions of K.S.A. 16a-1-101 through 16a-~~  
 0087 ~~9-102, and amendments thereto, shall be applicable to consumer~~  
 0088 ~~credit transactions in which the amount financed is in excess of~~  
 0089 ~~\$5,000 but less than \$25,000.~~

Section 1.

0090 ~~Sec. 2-~~ K.S.A. 1982 Supp. 16a-2-201 is hereby amended to  
 0091 read as follows: 16a-2-201. (1) With respect to a consumer credit  
 0092 sale, ~~in which the amount financed is \$5,000 or less and is~~ other  
 0093 than a sale pursuant to open end credit, a seller may contract for  
 0094 and receive a finance charge not exceeding that permitted by this  
 0095 section.

0096 ~~(2) The finance charge, calculated according to the actuarial~~  
 0097 ~~method, may not exceed the equivalent of the following:~~

- 0098 ~~The total of:~~  
 0099 ~~(a) Twenty-one percent per year on that part of the unpaid~~  
 0100 ~~balance of the amount financed which is \$300 or less;~~  
 0101 ~~(b) eighteen percent per year on that part of the unpaid~~  
 0102 ~~balance of the amount financed which is more than \$300 but does~~  
 0103 ~~not exceed \$1,000; and~~  
 0104 ~~(c) fourteen and forty-five hundredths percent per year on~~  
 0105 ~~that part of the unpaid balance of the amount financed which is~~  
 0106 ~~more than \$1,000 the maximum annual rates of finance charge~~  
 0107 ~~permitted by subsections (2) and (9) of K.S.A. 16a-2-401, and~~  
 0108 ~~amendments thereto, and as modified pursuant to K.S.A. 16a-2-~~  
 0109 ~~401a, and amendments thereto.~~

(2) The finance charge, calculated according to the actuarial method, may not exceed the equivalent of the following:  
 The total of:  
 (a) Twenty-one percent per year on that part of the unpaid balance of the amount financed which is \$300 or less;  
 (b) eighteen percent per year on that part of the unpaid balance of the amount financed which is more than \$300 but does not exceed \$1,000; and  
 (c) fourteen and forty-five hundredths percent per year on that part of the unpaid balance of the amount financed which is more than \$1,000.

0110 (3) This section does not limit or restrict the manner of calculating the finance charge whether by way of add-on, discount, or otherwise, so long as the rate of the finance charge does not exceed that permitted by this section. If the sale is precomputed:

- 0114 (a) The finance charge may be calculated on the assumption that all scheduled payments will be made when due; and  
 0116 (b) the effect of prepayment is governed by the provisions on rebate upon prepayment (16a-2-510).

0118 (4) For the purposes of this section, the term of a sale agree-



0119 ment commences with the date the credit is granted or, if goods  
 0120 are delivered or services performed 10 days or more after that  
 0121 date, with the date of commencement of delivery or performance.  
 0122 Differences in the lengths of months are disregarded and a day  
 0123 may be counted as 1/30th of a month. Subject to classifications and  
 0124 differentiations the seller may reasonably establish, a part of a  
 0125 month in excess of 15 days may be treated as a full month if  
 0126 periods of 15 days or less are disregarded and that procedure is  
 0127 not consistently used to obtain a greater yield than would other-  
 0128 wise be permitted.

0129 (5) Subject to classifications and differentiations the seller  
 0130 may reasonably establish, the seller may make the same finance  
 0131 charge on all amounts financed within a specified range. A  
 0132 finance charge so made does not violate subsection (2) if:

0133 (a) When applied to the median amount within each range, it  
 0134 does not exceed the maximum permitted by subsection (2); and

0135 (b) when applied to the lowest amount within each range, it  
 0136 does not produce a rate of finance charge exceeding the rate  
 0137 calculated according to paragraph (a) by more than 8% of the rate  
 0138 calculated according to paragraph (a).

0139 (6) Notwithstanding subsection (2), the seller may contract for  
 0140 and receive a minimum finance charge of not more than \$5 when  
 0141 the amount financed does not exceed \$75, or not more than \$7.50  
 0142 when the amount financed exceeds \$75.

0143 (7) ~~As an alternative to the rates set forth in subsection (2),~~  
 0144 ~~during the period beginning on the effective date of this act and~~  
 0145 ~~ending July 1, 1983, the seller may contract for and receive a~~  
 0146 ~~finance charge not exceeding 21% per year on the unpaid bal-~~  
 0147 ~~ances of the amount financed.~~

0148 Sec. 3. K.S.A. 1982 Supp. 16a-2-202 is hereby amended to  
 0149 read as follows: 16a-2-202. (1) With respect to a consumer credit  
 0150 sale, ~~in which the amount financed is \$5,000 or less and is~~ made  
 0151 pursuant to open end credit, the parties to the sale may contract  
 0152 for the payment by the buyer of a finance charge not exceeding  
 0153 that permitted in this section.

0154 (2) A charge may be made in each billing cycle which is a  
 0155 percentage of an amount no greater than:

(7) As an alternative to the rates set forth in subsection (2), during the period beginning on the effective date of this act and ending July 1, 1985, the seller may contract for and receive a finance charge not exceeding 21% per year on the unpaid balances of the amount financed.

2.

0156 (a) The average daily balance of the account, which is the sum  
0157 of the actual amounts outstanding each day during the billing  
0158 cycle divided by the number of days in the cycle;

0159 (b) the unpaid balance of the account on the last day of the  
0160 billing cycle; or

0161 (c) the median amount within a specified range within which  
0162 the average daily balance of the account or the unpaid balance of  
0163 the account on the last day of the billing cycle is included. A  
0164 charge may be made pursuant to this paragraph only if the seller,  
0165 subject to classifications and differentiations the seller may rea-  
0166 sonably establish, makes the same charge on all balances within  
0167 the specified range and if the percentage when applied to the  
0168 median amount within the range does not produce a charge  
0169 exceeding the charge resulting from applying that percentage to  
0170 the lowest amount within the range by more than 8% of the  
0171 charge on the median amount.

0172 (3) If the billing cycle is monthly, the charge may not exceed  
0173 1.75% of that part of the amount pursuant to subsection (2) which  
0174 is \$300 or less and 1.50% on that part of this amount which is  
0175 more than \$300 but not more than \$1,000 and 1.20% on that part  
0176 of this amount which is more than \$1,000 ~~1/12 of the maximum~~  
0177 ~~annual rates permitted by subsections (2) and (9) of K.S.A. 16a-2-~~  
0178 ~~401, and amendments thereto, and as modified by K.S.A. 16a-2-~~  
0179 ~~401a, and amendments thereto.~~ If the billing cycle is not monthly,  
0180 the maximum charge is that percentage which bears the same  
0181 relation to the applicable monthly percentage as the number of  
0182 days in the billing cycle bears to 30. For the purposes of this  
0183 section, a variation of not more than four days from month to  
0184 month is "the last day of the billing cycle."

0185 (4) Notwithstanding subsection (3), if there is an unpaid bal-  
0186 ance on the date as of which the credit service charge is applied,  
0187 the seller may contract for and receive a charge not exceeding \$.50  
0188 if the billing cycle is monthly or longer, or the pro rata part of \$.50  
0189 which bears the same relation to \$.50 as the number of days in the  
0190 billing cycle bears to 30 if the billing cycle is shorter than  
0191 monthly.

0192 (5) As an alternative to the rates set forth in subsection (3);

1.75% of that part of the amount pursuant to subsection (2) which is \$300 or less and 1.5% on that part of this amount which is more than \$300 but not more than \$1,000 and 1.2% on that part of this amount which is more than \$1,000

0103 during the period beginning on the effective date of this act and  
0104 ending July 1, 1983, the parties to the sale may contract for and  
0105 the seller may receive a finance charge not exceeding 21% per  
0106 year on the amount determined pursuant to subsection (2).

0197 Sec. ~~4~~ K.S.A. 1982 Supp. 16a-2-401 is hereby amended to  
0198 read as follows: 16a-2-401. (1) With respect to a consumer loan, ~~in~~  
0199 ~~which the amount financed is \$5,000 or less and~~ including a loan  
0200 pursuant to open end credit, a lender may contract for and receive  
0201 a finance charge, calculated according to the actuarial method,  
0202 not exceeding 18% per year on the unpaid balance of the amount  
0203 financed not exceeding \$1,000 and ~~14.45% 15%~~ per year on that  
0204 portion of the unpaid balance in excess of \$1,000.

0205 (2) As an alternative to the rates set forth in subsection (1),  
0206 with respect to a supervised loan made under a license issued by  
0207 the administrator, including a loan pursuant to open end credit, a  
0208 supervised lender may contract for and receive a finance charge,  
0209 calculated according to the actuarial method, not exceeding the  
0210 equivalent of the greater of either of the following:

0211 The total of: (a) Thirty-six percent per year on that part of the  
0212 unpaid balance of the amount financed which is \$300 or less; and

0213 (b) twenty-one percent per year on that part of the unpaid  
0214 balance of the amount financed which is more than \$300, but  
0215 does not exceed \$1,000; and

0216 (c) ~~fourteen and forty-five hundredths fifteen~~ percent per year  
0217 on that portion of the unpaid balance of the amount financed  
0218 which is more than \$1,000; or

0219 (d) eighteen percent per year on the unpaid balance of the  
0220 amount financed.

0221 (3) This section does not limit or restrict the manner of cal-  
0222 culating the finance charge, whether by way of add-on, discount,  
0223 or otherwise, so long as the rate of the finance charge does not  
0224 exceed that permitted by this section. The finance charge may be  
0225 contracted for and earned at the single annual percentage rate that  
0226 would earn the same finance charge as the graduated rates when  
0227 the debt is paid according to the agreed terms and the calculations  
0228 are made according to the actuarial method. If the loan is pre-  
0229 computed:

(5) As an alternative to the rates set forth in subsection (3), during the period beginning on the effective date of this act and ending July 1, 1985, the parties to the sale may contract for and the seller may receive a finance charge not exceeding 21% per year on the amount determined pursuant to subsection (2).

3.

14.45%

fourteen and forty-five hundredths

0230 (a) The finance charge may be calculated on the assumption  
0231 that all scheduled payments will be made when due; and

0232 (b) the effect of prepayment is governed by the provisions on  
0233 rebate upon prepayment (section 16a-2-510).

0234 (4) The term of a loan for the purposes of this section com-  
0235 mences on the date the loan is made. Differences in the lengths of  
0236 months are disregarded and a day may be counted as  $\frac{1}{30}$ th of a  
0237 month. Subject to classifications and differentiations the lender  
0238 may reasonably establish, a part of a month in excess of 15 days  
0239 may be treated as a full month if periods of 15 days or less are  
0240 disregarded and that procedure is not consistently used to obtain  
0241 a greater yield than would otherwise be permitted.

0242 (5) Subject to classifications and differentiations the lender  
0243 may reasonably establish, the lender may make the same finance  
0244 charge on all amounts financed within a specified range. A

0245 finance charge so made does not violate subsections (1) and (2) if:

0246 (a) When applied to the median amount within each range, it  
0247 does not exceed the maximum amount permitted in subsections  
0248 (1) and (2); and

0249 (b) when applied to the lowest amount within each range, it  
0250 does not produce a rate of finance charge exceeding the rate  
0251 calculated according to paragraph (a) by more than 8% of the rate  
0252 calculated according to paragraph (a).

0253 (6) Notwithstanding subsections (1) and (2), a lender may  
0254 contract for and receive a minimum finance charge of not more  
0255 than \$5 when the amount financed does not exceed \$75, or not  
0256 more than \$7.50 when the amount financed exceeds \$75.

0257 (7) This section shall not apply to a loan secured by an  
0258 interest in land the interest rate of which is governed by subsec-  
0259 tion (b) of K.S.A. 16-207, *and amendments thereto*, unless made  
0260 subject hereto by agreement.

0261 (8) This section shall not apply to a loan secured by an  
0262 interest in land subordinate to a prior mortgage and held by a  
0263 lender other than the lender of the first mortgage, the interest rate  
0264 of which is governed by subsection (b) or (h) of K.S.A. 16-207,  
0265 and any amendments thereto, unless made subject hereto by  
0266 agreement.

0267 (9) As an alternative to the rates set forth in subsection (1) and  
 0268 subsection (2)(d), during the period beginning on the effective  
 0269 date of this act and ending July 1, 1982, a supervised financial  
 0270 organization lender may contract for and receive a finance charge  
 0271 not exceeding 18% 21% per year on the unpaid balance of the  
 0272 amount financed.

0273 Sec. 5. K.S.A. 1982 Supp. ~~16-207, 16-207e, 16a-2-201, 16a-2-~~  
 0274 ~~202, 16a-2-401 and 16a-2-401b,~~ are hereby repealed.

0275 Sec. 6. This act shall take effect and be in force from and after  
 0276 its publication in the statute book.

during the period beginning on the effective  
 date of this act and ending July 1, 1985,

and 16a-3-204

Sec. 4. K.S.A. 1982 Supp. 16a-3-204 is hereby amended to read as follows: 16a-3-204. (1) If a creditor makes a change in the terms of an open end credit account without complying with this section any additional cost or charge to the consumer resulting from the change is an excess charge and subject to the remedies available to consumers (section 16a-5-201) and to the administrator (section 16a-6-113).

(2) A creditor may change the terms of an open end credit account whether or not the change is authorized by prior agreement. Except as provided in subsection (3), the lender shall give to the consumer written notice of any change at least three times, with the first notice at least six months before the effective date of the change.

(3) The notice specified in subsection (2) is not required if:

(a) The consumer after receiving notice of the change agrees in writing to the change;

(b) the consumer elects to pay an amount designated on a billing statement as including a new charge for a benefit offered to the consumer when the benefit and charge constitute the change in terms and when the billing statement also states the amount payable if the new charge is excluded;

(c) the change involves no significant cost to the consumer;

(d) the consumer has previously consented in writing to the kind of change made and notice of the change is given to the consumer in two billing cycles prior to the effective date of the change; or

(e) the change applies only to debts incurred after a date specified in a notice of the change given in two billing cycles prior to the effective date of the change.

(4) The notice provided for in this section is given to the consumer when mailed to the consumer at the address used by the creditor for sending periodic billing statements.

(5) Notwithstanding subsection (2), from and after the effective date of this act and until July 1, 1983 1985, a creditor may change the finance charge in an open end credit account after 30 days written notice is given to the consumer.

## HOUSE BILL NO. \_\_\_\_\_

By Committee on Commercial and Financial Institutions

AN ACT concerning interest rates; relating to the Kansas register; amending K.S.A. 1982 Supp. 16-207 and repealing the existing section; also repealing K.S.A. 1982 Supp. 16-207e.

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

Section 1. K.S.A. 1982 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 maximum rate of interest per annum for notes secured by all real estate mortgages and contracts for deed to real estate executed on or after the effective date of this act shall be at an amount equal to 1 1/2 percentage points above the average weighted yield of mortgages accepted under the federal home loan mortgage corporation's weekly purchase program effective on the first day of each 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 ~~in the first~~ not later than the second issue of the Kansas register published each month. The initial rate of interest upon any conventional loan evidenced by a note secured by a real estate mortgage shall not exceed the rate quoted in the application executed by the borrower on the day on which application for such conventional loan is made.

(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.

(d) The lender may collect from the borrower: (1) 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 subject to the provisions of this section; and

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

(e) Any person so contracting for a greater rate of interest than that authorized by this section shall forfeit all interest so contracted for in excess of the amount authorized under this section; and in addition thereto shall forfeit a sum of money, to be deducted from the amount due for principal and lawful interest, equal to the amount of interest contracted for in excess of the amount authorized by this section and such amounts may be set up as a defense or counterclaim in any action to enforce the collection of such obligation and the borrower shall also recover a reasonable ~~attorney's~~ attorney fee.

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

(g) Loans 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, are not subject to the interest rates prescribed in subsections (a) and (b) of this section.

(h) The interest rates prescribed in subsections (a) and (b) of this section shall not apply to a note secured by a real estate mortgage or a contract for deed to real estate where the note or contract for deed permits adjustment of the interest rate, the term of the loan or the amortization schedule.

Sec. 2. K.S.A. 1982 Supp. 16-207 and 16-207e are hereby repealed.

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



## HOUSE BILL NO. \_\_\_\_\_

By Committee on Commercial and Financial Institutions

AN ACT amending the uniform commercial code; relating to priority over unperfected security interests; amending K.S.A. 1981 Supp. 84-9-301 and repealing the existing section.

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

Section 1. K.S.A. 1981 Supp. 84-9-301 is hereby amended to read as follows: 84-9-301. (1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of:

(a) Persons entitled to priority under section K.S.A. 84-9-312, and amendments thereto;

(b) a person who becomes a lien creditor before the security interest is perfected;

(c) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business, or is a buyer of farm products in ordinary course of business, to the extent that ~~he~~ such buyer gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;

(d) in the case of accounts and general intangibles, a person who is not a secured party and who is a transferee to the extent that ~~he~~ such person gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within ~~ten (10)~~ 20 days after the debtor receives possession of the collateral, ~~he~~ the secured party takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

(4) A person who becomes a lien creditor while a security interest is perfected takes subject to the security interest only to the extent that it secures advances made before ~~he~~ such person becomes a lien creditor or within ~~forty-five--(45)~~ 45 days thereafter or made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien.

Sec. 2. K.S.A. 1981 Supp. 84-9-301 is hereby repealed.

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