

MINUTES OF THE HOUSE COMMITTEE ON COMMERCIAL & FINANCIAL INSTITUTIONS

The meeting was called to order by Representative Harold P. Dyck at  
Chairperson

3:30 ~~xxx~~/p.m. on March 7, 1985 in room 527-S of the Capitol.

All members were present except: Representatives J. C. Long and Susan Roenbaugh, each excused

Committee staff present: Bill Wolff, Legislative Research Department  
Bruce Kinzie, Revisor of Statutes Office  
Virginia Conard, Committee Secretary

Conferees appearing before the committee:

Chairman Harold Dyck called the meeting to order and asked Staff Member Bruce Kinzie to brief the committee on HB2136 as amended.

Rep. Kenneth Francisco moved, and Rep. David Miller seconded, that HB2136 as amended be recommended favorably for passage. Motion carried.

The chairman then directed the committee's attention to HB2354 and to Rep. David Heinemann's proposed amendment. (See Attachment I for the proposed amendment).

Rep. Ivan Sand moved that the proposed amendment to HB2354 be approved. Rep. Dorothy Nichols seconded. Motion carried.

Rep. David Louis moved that the words "or their assigns" be added to line 0047 of HB2354 between the words "lender" and "upon" and that this amendment to HB2354 be approved. Rep. Bob Ott seconded. Motion carried.

Rep. Miller moved that HB2354 as amended be recommended favorably for passage. Rep. Lawrence Wilbert seconded. Motion carried.

Rep. Richard Schmidt gave the report of the subcommittee's study on HB2181. He said that the members of the subcommittee have a proposed amendment to the bill. (See Attachment II). Discussion by committee members indicated many reservations about various aspects of the bill.

Rep. Louis moved that HB2527 be recommended favorably for passage. Rep. Ott seconded the motion. Motion carried.

The chairman directed the committee's attention to HB2509 and stated that the committee had been asked to add the words "located in the State of Kansas," and that they be added on line 0026 between the words "bank," and "a".

Rep. Louis moved that the conceptual amendment to HB2509 be approved. Rep. Miller seconded. Motion carried.

Rep. Wilbert moved that HB2509 as amended be recommended favorably for passage. Rep. Sand seconded. Motion carried.

Regarding HB2428, Chairman Dyck passed out an Addendum from the Kansas Banking Department to their correspondence of March 4, 1985. (See Attachment III)

Rep. Judith Runnels moved that HB2428 be recommended favorably for passage. Rep. Nichols seconded. Motion carried.

Mr. Kinzie briefed the committee on the proposed amendments to HB2137. (See Attachment IV for the proposed amendments.)

Rep. Miller moved that the proposed amendments to HB2137 be approved. Rep. Homer Jarchow seconded. Motion carried.

Rep. Runnels moved that HB2137 as amended be recommended favorably for passage. Rep. Miller seconded. Motion carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON COMMERCIAL & FINANCIAL INSTITUTIONS,  
room 527-S, Statehouse, at 3:30 ~~xxx~~ p.m. on March 7, 1985

Mr. Kinzie briefed the committee on a proposed amendment to HB2323. (See Attachment V)

Rep. Nichols moved that this amendment to HB2323 be approved. Rep. Louis seconded. Motion carried.

Rep. Miller moved that HB2323 be amended by eliminating Lines 124 and 125 and renumbering Section 3 to Section 2 and this be approved. Rep. Louis seconded. Motion carried.

Rep. Louis moved that the word "or" be added to line 123 following the semicolon and this be approved. Rep. Ott seconded. Motion carried.

Rep. Nichols moved that HB2323 as amended be recommended favorably for passage. Rep. Dorothy Flottman seconded. Motion carried.

Rep. Nichols moved that HB2360 be recommended favorably for passage. Rep. Louis seconded. Motion carried.

Chairman Dyck stated that Secretary of Social Rehabilitation Services Robert Harder proposed that HB2510 be amended to read "may" on line 0037 in place of "shall"; the word "may" replace "shall" on line 0041; strike the words "other than the state of Kansas" from lines 0048 and 0049; and that all of section (f) be eliminated.

Rep. Miller moved that this amendment to HB2510 be approved. Rep. Louis seconded. Motion carried.

Rep. Louis moved that HB2510 be amended to eliminate lines 0054 through 0063 (which is all of subsection (d)) and this be approved. Rep. Miller seconded. Motion carried.

Rep. Sand moved that HB2510 be sunsetted to July 1, 1987. Rep. Louis seconded. Motion carried.

Rep. Ott moved that HB2510 as amended be recommended favorably for passage. Rep. Nichols seconded. Motion carried.

Rep. Louis moved that the minutes of March 6, 1985, be approved. Rep. Ott seconded. Motion carried.

Chairman Dyck reminded the committee there would be no committee meetings next week.

The meeting adjourned at 4:40 p.m.



## PROPOSED AMENDMENT

I move to amend HOUSE BILL NO. 2354, On page 2, in line 61, by striking all after "mortgage"; in line 62, by striking all preceding the semicolon and inserting the following: "in which a certified development corporation certified by the United States small business administration participates pursuant to its community economic development program"

SUSAN ROENBAUGH  
REPRESENTATIVE, ONE HUNDRED FOURTEENTH DISTRICT  
RR 1  
LEWIS, KANSAS 67552



TOPEKA

HOUSE OF  
REPRESENTATIVES

March 6, 1985

COMMITTEE ASSIGNMENTS  
MEMBER AGRICULTURE AND SMALL BUSINESS  
COMMERCIAL AND FINANCIAL  
INSTITUTIONS  
FEDERAL AND STATE AFFAIRS

yo

Re: Amendments to HB 2181

On line 0029: ~~below the consecutive number of each check~~  
following the name of the account.

On line 0031 after "checks" , except new account kits  
consisting of no more than eight checks.

Insert new sub-section (c) after line 0036: (c) Whenever a  
customer opens a new checking account at any bank, credit  
union, savings and loan association, or other financial insti-  
tution offering check writing services, if any date other than  
the current date is printed on the face of the check, it shall  
be the responsibility of the institution ordering the new  
checks to verify any other date used, and be liable for that  
information. The institution and check printer shall not be  
liable for any unintentional error in printing the date or  
sequential numbering.

- Susan Roenbaugh
- Richard Schmidt
- Mary Jane Johnson
- Harold Guldner - ex officio member

ATTACHMENT 2 3/7/85

Eugene T. Barrett, Jr.  
Bank Commissioner

Michael D. Heitman  
Deputy Commissioner



OFFICE OF

**BANKING DEPARTMENT**  
TOPEKA

March 7, 1985

Honorable Harold P. Dyck  
115 South - State Capitol Building  
Topeka, Kansas

Re: Addendum to correspondence dated March 4, 1985.

Dear Representative Dyck:

In response to your request, I respectfully submit information regarding this department's existing fee schedule. Effective March 1, 1985 the State Banking Board adopted the following:

A. State banks and trust companies

\* \$200.00 per million in total resources.  
Minimum fee: \$400.00

\* Began the 1984-85 fiscal year at \$135.00 per million, raised to \$150.00 per million effective November 1, 1984, subsequently raised to \$200.00 per million effective March 1, 1985.

B. Trust departments

\$175.00 per day for one examiner.  
\$80.00 per day for an assistant examiner.  
\$60.00 per three hours or less.

C. All other examinations

\$175.00 per day for one examiner.  
\$80.00 per day for an assistant examiner.  
Minimum fee: \$100.00

HB 2428 would change the method by which the fee identified in item "A" (State Banks and Trust Companies) is established and assessed.

(See page #2)

ATTACHMENT 3

3/7/85



OFFICE OF

BANKING DEPARTMENT  
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The following illustration compares the present method of fee collection with that embodied within HB 2428:

Present Method

Bank "A" - \$100,000,000 in total resources  
(examined as of March 31, 1985)

$\$100,000,000 \times .0200\% = \underline{\$20,000 \text{ fee assessed}}$

Bank "B" - \$1,500,000 in total resources  
(examined as of March 31, 1985.)

$\$1,500,000 \times .0200\% = \$300.00$   
(This figure is less than the present \$400.00 minimum; thus, the \$400.00 fee assessed.)

Proposed Method

To establish the fee level, this office would divide our approved budget ceiling by the total resources of all state banks and trust companies as of March 31st. Using this department's proposed 1985-86 budget of \$2,377,000 and dividing by the total resources of \$12,620,272,000 as of December 31, 1984 (using December data as March, 1985 totals not yet available) a fee factor of .01885% is established.

Bank "A" -  $\$100,000,000 \times .01885 = \underline{\$18,850 \text{ fee assessed}}$

Bank "B" -  $\$1,500,000 \times .01885 = \$283.00$  (less than the minimum, hence; the minimum fee of \$1,000 would be assessed - one-half payable by July 15th with the second payment due by January 15th.) Using the above estimated budget and resource totals, forty-one (41) banks would pay the minimum \$1,000.

(See page #3)

Eugene T. Barrett, Jr.  
Bank Commissioner



Michael D. Heitman  
Deputy Commissioner

OFFICE OF

**BANKING DEPARTMENT**

TOPEKA

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Any additional information needed or desired would be most willingly provided.

Sincerely,

*Michael D. Heitman*  
Michael D. Heitman  
Deputy Commissioner

MDH:jas

cc: File



Attachment IV

**HOUSE BILL No. 2137**

By Committee on Commercial and Financial Institutions

1-31

0017 AN ACT relating to interest rates; concerning applicability ~~of~~  
0018 ~~contract rate~~ to certain loans; amending K.S.A. 1984 Supp.  
0019 16-207 and repealing the existing ~~section~~

thereof

and 16 a-1-301

sections

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

0021 Section 1. K.S.A. 1984 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,  
0026 bill, note or other instrument of writing, at a rate not to exceed  
0027 15% per annum unless otherwise specifically authorized by law.

0028 (b) The maximum rate of interest per annum for notes se-  
0029 cured by all real estate mortgages and contracts for deed to real  
0030 estate executed on or after the effective date of this act shall be at  
0031 an amount equal to 1½ percentage points above the yield of  
0032 thirty-year fixed rate conventional home mortgages committed  
0033 for delivery within 61 to 90 days accepted under the federal  
0034 home loan mortgage corporation's daily offerings for sale on the  
0035 last day on which commitments for such mortgages were re-  
0036 ceived in the preceding month unless otherwise specifically  
0037 authorized by law. Such interest rate shall be computed for each  
0038 calendar month and be effective on the first day thereof. The  
0039 secretary of state shall publish notice of such maximum interest  
0040 rate not later than the second issue of the Kansas register pub-  
0041 lished each month. The initial rate of interest upon any conven-  
0042 tional loan evidenced by a note secured by a real estate mortgage  
0043 shall not exceed the rate quoted in the application executed by  
0044 the borrower on the day on which application for such conven-  
0045 tional loan is made.

3/7/85

0046 (c) No penalty shall be assessed against any party for pre-  
0047 payment of any home loan evidenced by a note secured by a real  
0048 estate mortgage where such prepayment is made more than six  
0049 months after execution of such note.

0050 (d) The lender may collect from the borrower: (1) The actual  
0051 fees paid a public official or agency of the state, or federal  
0052 government, for filing, recording or releasing any instrument  
0053 relating to a loan subject to the provisions of this section; and  
0054 (2) reasonable expenses incurred by the lender in connection  
0055 with the making, closing, disbursing, extending, readjusting or  
0056 renewing of loans subject to the provisions of this section.

0057 (e) Any person so contracting for a greater rate of interest  
0058 than that authorized by this section shall forfeit all interest so  
0059 contracted for in excess of the amount authorized under this  
0060 section; and in addition thereto shall forfeit a sum of money, to  
0061 be deducted from the amount due for principal and lawful  
0062 interest, equal to the amount of interest contracted for in excess  
0063 of the amount authorized by this section and such amounts may  
0064 be set up as a defense or counterclaim in any action to enforce  
0065 the collection of such obligation and the borrower shall also  
0066 recover a reasonable attorney fee.

0067 (f) The interest rates prescribed in subsections (a) and (b) of  
0068 this section shall not apply to a business or agricultural loan. For  
0069 the purpose of this section unless a loan is made primarily for  
0070 personal, family or household purposes, the loan shall be con-  
0071 sidered a business or agricultural loan. For the purpose of this  
0072 subsection, a business or agricultural loan shall include credit  
0073 sales and notes secured by contracts for deed to real estate.

0074 (g) Loans made by a qualified plan, as defined in section 401  
0075 of the internal revenue code, to an individual participant in such  
0076 plan or to a member of the family of such individual participant,  
0077 are not subject to the interest rates prescribed in subsections (a)  
0078 and (b) of this section.

0079 (h) The interest rates prescribed in subsections (a) and (b) of  
0080 this section shall not apply to a note secured by a real estate  
0081 mortgage or a contract for deed to real estate where the note or  
0082 contract for deed permits adjustment of the interest rate, the term

0083 of the loan or the amortization schedule.

0084 (i) The interest rate prescribed in subsection (a) shall not  
0085 apply to a ~~loan or a credit sale made primarily for personal,~~  
0086 ~~family or household purposes~~ where the amount financed ex-  
0087 ceeds \$25,000.

subsections (a) and (b)

consumer transaction, as defined in K.S.A. 16a-1-301, and amendments thereto,

3. 0088 Sec. ~~2.~~ K.S.A. 1984 Supp. 16-207 ~~is~~ hereby repealed.

are

Sec. 2. - attached

4. 0089 Sec. ~~3.~~ This act shall take effect and be in force from and  
0090 after its publication in the statute book.

and 16a-1-301

Sec. 2. K.S.A. 1984 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, defined by rules adopted by the administrator, of allocating payments made on a debt between the amount financed and the finance charge pursuant to which a payment is applied first to the accumulated finance charge and the balance is applied to the unpaid amount financed.

(2) "Administrator" means the administrator designated in the article (article 6) on administration (section 16a-6-103).

(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 total of the following items:

(a) In the case of a sale, the cash price of the goods, services, or interest in land, less the amount of any down payment whether made in cash or in property traded in, and the amount actually paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest in, a lien on, or a debt with respect to property traded in;

(b) in the case of a loan, the net amount paid to, receivable by, or paid or payable for the account of the debtor, plus the amount of any discount excluded from the finance charge (paragraph (b) of subsection (18) of section 16a-1-301); and

(c) in the case of a sale or loan, to the extent that payment is deferred and the amount is not otherwise included and is authorized and disclosed to the customer:

(i) Amounts actually paid or to be paid by the creditor for registration, certificate of title, or license fees, and

(ii) permitted additional charges (section 16a-2-501).

(5) "Billing cycle" means the time interval between periodic billing statement dates.

(6) "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.

(7) "Closing costs" with respect to a debt secured by an interest in land includes:

(a) Fees or premiums for title examination, title insurance, or similar purposes including surveys;

(b) fees for preparation of a deed, settlement statement, or other documents;

(c) escrows for future payments of taxes and insurance;

(d) fees for notarizing deeds and other documents;

(e) appraisal fees; and

(f) credit reports.

(8) "Conspicuous": 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.

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

(10) "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

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) unless the sale is made subject to K.S.A. 16a-1-101 through 16a-9-102, and amendments thereto, by agreement (section 16a-1-109), a sale of an interest in land, other than sales governed by subsection (10)(b)(iii) of this section, if the finance charge does not exceed 12% per year calculated according to the actuarial method on the unpaid balances of the amount financed on the assumption that the debt will be paid according to the agreed terms and will not be paid before the end of the agreed term; or

(iii) a sale by contract for deed of real estate the interest rate of which is governed by subsection (b) or (h) of K.S.A. 16-207, and any amendments thereto.

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

(12) "Consumer lease": A "consumer lease" is 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.

(13) "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 in 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 K.S.A. 16a-1-101 through 16a-9-102, and amendments thereto, by agreement (section 16a-1-109), a "consumer loan" does not include:

(i) A loan secured by a first real estate mortgage; or

(ii) a loan secured by a second or other subordinate mortgage if the second or other subordinate mortgage is granted to the same lender as the first mortgage; or

(iii) 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.

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

(15) "Credit card" means an arrangement pursuant to which a card issuer gives a cardholder the privilege of purchasing or leasing goods or services, obtaining loans, or otherwise obtaining credit from the card issuer or other persons.

(16) "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.

(17) "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.

(18) "Finance charge":

(a) "Finance charge" means the sum of:

(i) 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, including any of the following types of charges which are applicable; interest or any amount payable under a point, discount or other system of charges, however denominated; time price differential, service, carrying or other charge, however denominated; premium or other charge for any guarantee or insurance protecting the creditor against the consumer's default or other credit loss; and

(ii) charges incurred for investigating the collateral or credit-worthiness of the consumer or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable, unless the creditor had no notice of the charges when the credit was granted.

(b) The term does not include:

(i) Charges as a result of default, additional charges (section 16a-2-501), delinquency charges (section 16a-2-502), or deferral charges (section 16a-2-503), or

(ii) if a lender makes a loan to a debtor by purchasing or satisfying obligations of the debtor pursuant to a lender credit card and the purchase or satisfaction is made at less than the face amount of the obligation, the discount, or

(iii) closing costs as defined in section 16a-1-301(7).

(19) "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.

(20) 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.

(21) "Lender credit card" means a credit card issued by a supervised lender.

(22) "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.

(23) "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.

(24) "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.

(25) "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 not precomputed but 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.

(26) "Organization" means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(27) "Payable in installments" means that payment is required or permitted by agreement to be made in (a) two or more periodic payments, excluding a down payment, with respect to a debt arising from a consumer credit sale pursuant to which a finance charge is made, (b) four or more periodic payments, excluding a down payment, with respect to a debt arising from a consumer credit sale pursuant to which no finance charge is made, or (c) two or more periodic payments with respect to a debt arising from a consumer loan. If any periodic payment other than the down payment under an agreement requiring or permitting two or more periodic payments is more than twice the amount of any other periodic payment, excluding the down payment, the consumer credit transaction is "payable in installments."

(28) "Person" includes a natural person or an individual,

and an organization.

(29) "Person related to" with respect to an individual means (a) the spouse of the individual, (b) a brother, brother-in-law, sister, sister-in-law of the individual, (c) an ancestor or lineal descendant of the individual or the individual's spouse, and (d) any other relative, by blood, adoption or marriage, of the individual or such individual's spouse who shares the same home with the individual. "Person related to" with respect to an organization means (a) a person directly or indirectly controlling, controlled by or under common control with the organization, (b) 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, (c) the spouse of a person related to the organization, and (d) a relative by blood, adoption or marriage of a person related to the organization who shares the same home with such person.

(30) "Precomputed": A finance charge or consumer credit transaction is "precomputed" if the debt is expressed as a sum comprising the amount financed and the amount of the finance charge computed in advance.

(31) "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.

(32) "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.

(33) "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.

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

(35) "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.

(36) "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.

(37) "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 this 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 this state or of the United States.

(38) "Supervised lender" means a person authorized to make or take assignments of supervised loans, either under a license issued by the administrator (section 16a-2-301); or as a supervised financial organization (section 16a-1-301(37)) or as an agricultural credit corporation (section 16a-2-301).

(39) "Supervised loan" means a consumer loan, including a loan made pursuant to open end credit, in which the rate of the finance charge, calculated according to the actuarial method, exceeds 12% per year.

(40) "Written agreement" means an agreement such as a promissory note, contract or lease that is evidence of the

indebtedness. A letter that merely confirms an oral agreement does not constitute a written agreement for purposes of this subsection.

0083 50-627. (a) No supplier shall engage in any unconscionable act or  
0084 practice in connection with a consumer transaction. An uncon-  
0085 scionable act or practice violates this act whether it occurs  
0086 before, during or after the transaction.

0087 (b) The unconscionability of an act or practice is a question  
0088 for the court. In determining whether an act or practice is  
0089 unconscionable, the court shall consider circumstances of which  
0090 the supplier knew or had reason to know, such as, but not limited  
0091 to the following:

0092 (1) That the supplier took advantage of the inability of the  
0093 consumer reasonably to protect the consumer's interests because  
0094 of the consumer's physical infirmity, ignorance, illiteracy, in-  
0095 ability to understand the language of an agreement or similar  
0096 factor;

0097 (2) that, when the consumer transaction was entered into, the  
0098 price grossly exceeded the price at which similar property or  
0099 services were readily obtainable in similar transactions by simi-  
0100 lar consumers;

0101 (3) that, when the consumer transaction was entered into, the  
0102 consumer was unable to receive a material benefit from the  
0103 subject of the transaction;

0104 (4) that, when the consumer transaction was entered into,  
0105 there was no reasonable probability of payment of the obligation  
0106 in full by the consumer;

0107 (5) that the transaction the supplier induced the consumer to  
0108 enter into was excessively onesided in favor of the supplier;

0109 (6) that the supplier made a misleading statement of opinion  
0110 on which the consumer was likely to rely to the consumer's  
0111 detriment; and

0112 (7) that the supplier excluded, modified or otherwise at-  
0113 tempted to limit either the implied warranties of merchantability  
0114 and fitness for a particular purpose or any remedy provided by  
0115 law for a breach of those warranties.

0116 (c) *No creditor shall engage in any unconscionable act or*  
0117 *practice in connection with a credit transaction. It shall be an*  
0118 *unconscionable act or practice for any creditor to discriminate*  
0119 *against any applicant, with respect to any aspect of a credit*

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0120 *transaction:*

0121 (1) *On the basis of race, color, religion, national origin, sex,*  
0122 *marital status or age, provided the applicant has the capacity to*  
0123 *contract;*

0124 (2) *because all or part of the applicant's income derives from*  
0125 *any public assistance program; or*

0126 (3) *because the applicant has in good faith exercised any*  
0127 *right under this subsection.*

0128 Sec. 3. K.S.A. 50-634 is hereby amended to read as follows:  
0129 50-634. (a) Whether a consumer *or applicant* seeks or is entitled  
0130 to damages or otherwise has an adequate remedy at law or in  
0131 equity, a consumer *or applicant* aggrieved by an alleged viola-  
0132 tion of this act may bring an action to:

0133 (1) Obtain a declaratory judgment that an act or practice  
0134 violates this act; or

0135 (2) enjoin or obtain a restraining order against a supplier *or*  
0136 *creditor* who has violated, is violating or is likely to violate this  
0137 act.

0138 (b) A consumer *or applicant* who is aggrieved by a violation  
0139 of this act may recover, but not in a class action, actual damages  
0140 or a civil penalty as provided in ~~K.S.A. 50-636(a)~~ *subsection (a) of*  
0141 *K.S.A. 50-636*, and amendments thereto, whichever is greater.

0142 (c) Whether a consumer *or applicant* seeks or is entitled to  
0143 recover damages or has an adequate remedy at law, a consumer  
0144 *or applicant* may bring a class action for declaratory judgment,  
0145 an injunction and appropriate ancillary relief, except damages,  
0146 against an act or practice that violates this act.

0147 (d) A consumer *or applicant* who suffers loss as a result of a  
0148 violation of this act may bring a class action for the actual  
0149 damages caused by an act or practice:

0150 (1) Violating any of the acts or practices specifically pro-  
0151 scribed in K.S.A. 50-626, 50-627 and 50-640, and amendments  
0152 thereto, or

0153 (2) declared to violate K.S.A. 50-626 or 50-627, and amend-  
0154 ments thereto, by a final judgment of any district court or the  
0155 supreme court of this state that was either officially reported or  
0156 made available for public dissemination under ~~K.S.A. 50-~~

(4) Nothing in this subsection shall be construed to require any person making a real estate loan or granting other financial assistance to modify the usual terms or conditions of the real estate loan or other financial assistance, nor shall it be construed to relieve consumers or applicants of any obligation generally imposed on all persons in the making of a real estate loan or the granting of other financial assistance or to forbid distinctions based on the inability to fulfill the terms and conditions, including financial obligations, of the real estate loan or other financial assistance.