

Approved: March 16, 1999
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE .

The meeting was called to order by Chairperson Senator Don Steffes at 9:00 a.m. on March 11, 1999 in Room 529 S of the Capitol.

All members were present except:

Committee staff present: Dr. Bill Wolff, Research
 Ken Wilke, Office of Revisor
 Nikki Feuerborn, Committee Secretary

Conferees appearing before the committee:

Others attending: See Attached

Report of Subcommittee and discussion and action on SB 301: Uniform consumer credit code

Dr. Wolff updated the Committee on progress of the Subcommittee by providing them with a synopsis of the balloon amendments to the proposed bill (Attachment 1). The portion of the bill which deals with pay day loans will be omitted and current statutes will stand. **SB 272 - *Deferred compensation (pay day) loans*** will be discussed at a later date. Subcommittee unanimously voted to recommend the balloon for adoption and favorable passage of the bill.

The Committee discussed the differences between a retail closed end loan which is capped at an 18-21% interest rate e.g., 60 month loan for an automobile, and a closed end retail sale which has no interest cap e.g., purchase of an auto from a dealer who provides financing. Commissioner Brant explained the need for the state to have authority over consumer credit even though it is regulated by the Federal Trade Commission. At this point the FTC is overwhelmed and unable to respond in a timely way to questions or concerns.

Senator Barone voiced concerns with the bill and agreed to be part of any conference committee in which this bill may be discussed.

Senator Biggs moved to have **SB 301** and amendments be replaced by **Substitute SB 301** and be recommended for favorable passage. Motion was seconded by Senator Corbin. Motion carried.

The meeting was adjourned at 10:00 a.m. The next meeting is scheduled for March 16.

SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE GUEST LIST

DATE: MARCH 11, 1999

NAME	REPRESENTING
Ray Godhart	KCC
Tom Coches	McGill, Coches & Associates
John C. [unclear]	[unclear] CHECK INTO CASH
Chuck Stones	KBA
Kathy Olsen	KBA
George Barber	Barber & Associates
STEVE KARRICK	ATTORNEY GENERAL
Whitney Daman	KS Payday Loan Assn.
Danielle Nee	Governor's Office
Heidi Trautle	KGC
Alan Steppat	CBA
Matt Goddard	HCBA
Uyuma Star	Federico Consulting
Aud Schmeyer	KCUA
Sonya Allen	OSBC
Jenny Hall	OSBC
Kevin Glendening	OSBC
DAVID BRANT	SECURITIES COMM.
Judi Stork	OSBC

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March 9, 1999

To: Subcommittee on Senate Bill No. 301

From: William G. Wolff, Associate Director

Re: **UNPROOFED DRAFT** Summary of **Yellow Balloon** Version of S.B. ³⁰¹ ~~31~~

Brief

S.B. 301, as amended, amends several sections of the Uniform Consumer Credit Code (Code) relating to rates, terms and conditions on consumer credit sales and consumer loans for personal, family, or household purposes; and brings or allows certain real estate transactions to be brought under the Code and specifies the rates, terms, and conditions for such loans. In addition, the bill adds new sections to the Code that impose new obligations upon persons making loans under the Code.

The bill makes the following changes to the Code.

- New Section 1, page 1—enacts a new section to the Code to require the lender, before making a first or second real estate mortgage loan on the consumer's principal residence, to obtain the appraised value of the real estate to be encumbered:
 - if the loan to value ratio exceeds 100 percent, provide a copy of the appraisal to the borrower; and give the consumer notice, not less than 5 days before the loan is made, containing names and telephone numbers of selected consumer credit counseling providers;
 - if, upon receipt of the notice, the consumer elects not to enter into the loan, the lender must promptly refund any application fees or other amounts paid by the consumer, except appraisal fees need not be refunded; and
 - also, Section 8, page 10 redefines the term "consumer loan" to include a first mortgage on real estate if the loan to value ration of the loan at the time it is made exceeds 100 percent (this provision does not apply to banks, savings and loan associations, and credit unions).
- New Section 2, page 2—enacts a new section to the Code to prohibit lenders from making false, misleading, or deceptive advertisements regarding loans, the availability of loans, and rates and conditions of loan

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Attachment # /

- New Section 3, page 2A—enacts a new section to the Code to prohibit balloon payments and negative amortization on consumer loans secured by a first or second mortgage on the consumers principal residence if the loan to value ratio of the loan exceeds 100 percent (the prohibition does not apply to a loan pursuant to open end credit, a purchased money loan, or a reverse mortgage transaction.
- New Section 4, page 2B—enacts a new section to the Code to require lenders to credit payments on a consumer's account on the date of receipt except when a delay in crediting does not result in a finance or other charge.
- Section 5, pages 3 & 4—amends the general usury statute for real estate transactions (K.S.A. 16-207b):
 - to clarify that it applies to first mortgages and contracts for deeds to real estate unless the parties agree to making the transaction under the Code and that the interest rate set in this statute does not apply to second real estate mortgages governed by the Code; and
 - to notify persons that high loan to value first mortgages are subject to the Code except for the usury rate (there is no ceiling on interest rates on first mortgages subject to the Code).
- Section 6, pages 4 & 5—technical.
- Section 7, page 5—clarifies that a consumer credit transaction is made in Kansas, if, among other things, the creditor induces the consumer who is a resident of this state to enter into the transaction by individualized solicitation in this state, including without limitation, by mail, telephone, or other electronic means.
- Section 8, pages 7-16—amends several definition in the Code and adds new terms, in general, to conform to the federal consumer protection act and Regulation Z, including:
 - defines the term "Appraised value" as either the value reflected in the most recent records of the country tax assessor or the fair market value reflected in a written appraisal performed by a Kansas licensed or certified appraiser within the last 12 months (the definition relates to the new requirement that high loan to value loans be subject to the Code);
 - clarifies that a "consumer credit sale" does not include a sale of an interest in land, unless the parties to the sale agree to make the transaction under the Code;
 - strikes the definition of "Origination fee" and adds a definition of "Prepaid finance charge, which

- for a consumer loan secured by a first or second mortgage may not exceed 10 percent of the amount financed, except the amount payable to the lender may not exceed 5 percent, and 2
- for any other consumer loan and for closed end consumer credit sales may not exceed the lesser of 2 percent of the amount financed or \$100; 2
- rewrites the definition of "Finance charge" and prescribes the method of calculation to be done by rules and regulations; and
- adds a definition for "Payday loans" and rewrites the current law but does not change the regulation of payday loans.
- Section 9, pages 16 & 17—establishes that the finance charge on a consumer loan or consumer credit sale must be computed using either the 365\365 or 360\360 method but not on a 365\360 method.
- Section 10, pages 17 & 18—rewrites to streamline current law on closed end consumer credit sales related to the finance charge.
- Section 11, pages 17 & 18—rewrites to streamline current law on open end consumer credit sales.
- Sections 12 & 13, pages 21-24—makes several changes regarding the issue of licenses to supervised lenders under the Code by:
 - deleting the requirement that each place of business operated under the Code have and display a license (single office or master licensing is left to the administrator to be established by rules and regulations);
 - requiring applicants for licensure to show proof acceptable to the administrator of a surety bond of at least \$100,000; and
 - allowing the administrator to deny, revoke, or suspend the license of a supervised lender or an application or a renewal for a license if the administrator finds the applicant or licensee has violated the provisions of the Code or rules and regulations adopted pursuant to the Code, failed to maintain the surety bond, become insolvent, provided false or misleading information to the administrator, been convicted of a crime involving fraud or deceit, failed to keep adequate records, been subject to disciplinary action in another jurisdiction, or engaged in deceptive business practices.

- Section 14, pages 24-27 and 24A, B, & C—makes several changes in the law regarding consumer loans:
 - removes interest rate limitation on open end consumer loans, including on lender credit cards;
 - increases the maximum allowable interest rate on closed end consumer loans from 18 percent to 21 percent (not applicable to loans secured by a first or second mortgage);
 - establishes 18 percent as the maximum rate of interest that may be charged on a loan secured by a second mortgage; and
 - establishes 18 percent as the maximum rate of interest that may be charged on a loan secured by a first mortgage if the parties make the loan subject to the Code.

- Section 15, page 27 & 28—makes changes necessary to reflect the removal of interest rate limitations on open end consumer loans and lender credit card transactions.

- Section 16, page 28—makes technical changes.

- Section 17, page 28 & 29—rewrites the current law on Payday loans.

- Section 18, pages 30 & 31—makes several changes concerning additional charges permitted on consumer credit sales and consumer loans, including:
 - deleting the cap on annual fees that may be charge for the privilege of using an open end credit account;
 - allowing a service charge for giving an insufficient check to a creditor under a lender credit card in an amount agreed upon by the drawer maker (consumer and lender); and
 - allowing a creditor to charge fees on an annual or monthly basis, over limit fees, and cash advance fees on open end credit in an amount agreed to by the consumer.

- Section 19, page s 31 & 32—allowing the parties to a lender credit card agreement to contract for a delinquency charge in an amount agreed to by the consumer and may impose the charge on any installment not paid in full on the next business day following the payment due date.

- Section 20, pages 32 & 33—allows the consumer or consumer's estate the same rebate for prepayment of a loan with credit insurance proceeds as though the consumer had prepaid the agreement and the rebate is to be made not later than 10 business days after the proof of loss is furnished to the creditor.

*Applies to
Interest*

- Section 21, page 33—technical.
- Section 22, page 33—technical.
- Section 23, pages 33 & 34—technical.
- Section 24, pages 34 & 35—makes it unlawful for any person to violate the law or rules and regulations adopted under the Code and makes a conviction for an intentional violation a class A nonperson misdemeanor (second and subsequent convictions would be a severity level 7 nonperson felony).
- Section 25, pages 35-38—adds to the administrators authority to enforce the Code by providing that the administrator may periodically examine the loans, business and records of every licensee and refer evidence of violations to the Attorney General or the proper county or district attorney, and also deletes the requirement that the administrator report annually to the Governor and the Legislature on the operation of the office.
- Section 26, page 38 & 39—technical.
- Section 27, pages 39-41—
 - authorizes the administrator to conduct public or private examinations or investigations within or outside this state to determine whether a license should be granted, denied, or revoked or whether any violation of the Code has been committed;
 - provides that the administrator may administer oaths and affirmations, subpoena witnesses, compel witness attendance, adduce evidence and require the production of relevant matter to an examination or investigation; and
 - permits the administrator to charge the cost of examinations and investigations to the party or parties under investigation and maintain an action in any court to recover those costs.
- Section 28, pages 41 & 42—
 - authorizes the administrator, after notice and an opportunity for hearing, to issue cease and desist order to person who have engaged, are engaging, or are about to engage in any act or practice that would constitute a violation of the Code (the administrator may issue emergency cease and desist order if the public interest will be irreparably harmed by a delay in issuing a regular order); and
 - grants to the administrator, in addition to any other power under the Code, to censure a violator, impose a civil penalty up to a maximum of \$5,000 for each violation, or revoke or suspend the

person's license or bar the person from subsequently applying for a license under the Code.

- Section 29, pages 42 & 43—directs the administrator to adopt rules and regulations to carry out the Code that are consistent with or no less restrictive than federal law and regulations.
- Section 30, page 43—deleted from the bill (Repealed??).
- Section 31, page 43—continues the requirement that persons subject to the Code give notice to the administrator but specifies the information required will be provided in accordance with rules and regulations (corrections to the information filed also must be made as prescribed by rules and regulations).
- Section 32, page 43 & 44—repeals the amended statutes.
- Section 33, page 44, makes the bill effective upon publication in the statute book.

Miscellaneous Amendments

- Amends K.S.A. 16a-2-37 to increase from \$1,000 to \$3,000 the size of a loan or consumer credit sale before a lender or seller may contract for an interest in land.
- Amends K.S.A. 16a-3-301 to increase from \$300 to \$900 the size of a sale before a seller may take an interest in the goods financed.
- Amends K.S.A. 16a-4-301 to raise from \$300 to \$900 the amount financed before a creditor may contract for a separate charge for insurance against the loss of or damage to property.
- Amends K.S.A. 16a-5-203 to increase the civil penalty upon any person who fails to disclose information as required under the Code from not less than \$100 or more than \$1,000 to not less than \$200 or more than \$2,000.

Page 2A

MARKED TO SHOW CHANGES

PROPOSED INSERTS TO S.B. 301

Insert 2A -- new U3C section re balloon payments & negative amortization; disbursement

(1) A loan subject to this section may not provide for the negative amortization of principal or a balloon payment. A loan payment is not a balloon payment if the amount of the payment is less than twice the amount of any other payment.

(2) Subsection (1) applies to a consumer loan which is secured by a first mortgage or a second mortgage on the consumer's principal residence and with respect to which (a) the loan-to-value ratio exceeds 100% at the time the loan is made, or (b) the annual percentage rate exceeds the code mortgage rate. Notwithstanding the foregoing, subsection (1) does not apply to a loan pursuant to open end credit; a purchase-money loan incurred to acquire or construct the consumer's principal residence; or a reverse mortgage transaction.

(3) The creditor must disburse the proceeds of a consumer loan secured by a first mortgage or a second mortgage upon the satisfaction of all conditions to the disbursement and the expiration of all applicable rescission, cooling-off or other waiting periods required by law, unless the parties otherwise agree in writing.

(4) This section shall be supplemental to and a part of the uniform consumer credit code.

Insert 2B -- new U3C section re prompt crediting of payments

(1) A creditor shall credit a payment to the consumer's account on the date of receipt, except when a delay in crediting does not result in a finance charge or other charge.

(2) Notwithstanding subsection (1), if a creditor specifies in a writing delivered to the consumer reasonable requirements for the consumer to follow in making payments, but accepts a payment that does not conform to those requirements, then the creditor shall credit the payment within 5 days after receipt.

(3) This section shall be supplemental to and a part of the uniform consumer credit code.

Page 3

Insert 3 -- KSA 16-207(b)

(b) The interest rate limitation set forth in this subsection applies to all first mortgage loans and contracts for deed to real estate, unless the parties agree in writing to make the transaction subject to the uniform consumer credit code, K.S.A. 16a-1-101 to 16a-9-102, and amendments thereto. The interest rate limitation set forth in this subsection does not apply to a second mortgage loan governed by the uniform consumer credit code, K.S.A. 16a-1-101 to 16a-9-102, and amendments thereto, unless the lender and the borrower agree in writing that the interest rate for the loan is to be governed by this subsection. The maximum rate of interest per annum for notes secured by real estate mortgages and contracts for deed to real estate governed by this subsection shall be at an amount equal to 1½ percentage points above the yield of thirty-year fixed rate conventional home mortgages committed for delivery within 61 to 90 days accepted under the federal home loan mortgage corporation's daily offerings for sale on the last day on which commitments for such mortgages were received in the preceding 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 not later than the second issue of the Kansas register published each month.

Page 4

Insert 4 -- new subsections (i) and (j) to KSA 16-207

(i) ~~Certain high loan-to-value first mortgage loans are subject to the~~ A first mortgage loan incurred for personal, family or household purposes may be subject to certain provisions of the uniform consumer credit code, K.S.A. 16a-1-101 to 16a-9-102, and amendments thereto, other than the usury as follows:

(1) Certain high loan-to-value first mortgage loans are subject to the provisions of the uniform consumer credit code. However, the usury, other than its usury provisions, Examples of provisions of the uniform consumer credit code apply to a first mortgage loan, including a high loan-to-value first mortgage loan, if the lender and the borrower agree in writing to make the transaction subject to the uniform consumer credit code. Examples of provisions of the uniform consumer credit applicable to high loan-to-value first mortgage loans include, but are not limited to: limitations on prepaid finance charges; mandatory appraisals; required disclosures; restrictions on balloon payments and negative amortization; limitations on late fees and collection costs; and mandatory default notices and cure rights.

~~This subsection (i) is for reference purposes only and does not limit or expand the scope.~~ (2) Certain high interest rate first mortgage loans are subject to certain provisions of the uniform consumer credit code, including, without limitation, provisions which impose restrictions on balloon payments and negative amortization.

~~(j) If any aspect of~~ (3) If the parties to a first mortgage loan is governed by agree in writing to make the transaction subject to the uniform consumer credit code, then all

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applicable provisions of the uniform consumer credit code, including its usury provisions, apply to the loan.

This subsection is for informational purposes only and does not limit or expand the scope of the uniform consumer credit code.

(1) Subsections (c), (d) and (e) of this section do not apply to a first mortgage loan if (1) the parties agree in writing to make the transaction subject to the uniform consumer credit code, K.S.A. 16a-1-101 to 16a-9-102, and amendments thereto, then the applicable provisions or (2) the loan is a high loan-to-value first mortgage loan subject to any provision of the uniform consumer credit code shall apply to. In the case of a loan described in subparts (1) or (2) of the preceding sentence, the applicable provisions of the uniform consumer credit code shall govern the loan in lieu of subsections (c), (d) and (e) of this section.

Insert ~~10~~ 8 -- KSA 16a-1-301(new subpart ~~(10))~~(9))

(~~10~~)9) "Closed end credit" means a consumer loan or a consumer credit sale which is not incurred pursuant to open end credit.

Page 9

Insert 9 -- definition of "code mortgage rate" in KSA 16a-1-301

() "Code mortgage rate" means the greater of:

(a) 12%; or

(b) the sum of:

(i) The yield on 30-year fixed rate conventional home mortgage loans committed for delivery within 31 to 90 days accepted under the federal home loan mortgage corporations's or any successor's daily offerings for sale on the last day on which commitments for such mortgages were received in the previous month; and

(ii) 5%.

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

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*Page 10
line 21*

Insert 10 -- revised subpart (b) of definition of "consumer loan" in KSA 16a-1-301

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

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

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

(B) in the case of subsection (1) of [new section restricting balloon payments and negative amortization; see Insert 2A], the annual percentage rate of the loan exceeds the code mortgage rate; or

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

Insert 20 -- KSA 16a-2-201 (new subsection (5))

(5) This section does not apply to a sale of an interest in land. K.S.A. 16a-2-401(10), and amendments thereto, governs the limitations on finance charges for a contract for deed to real estate where the parties agree in writing to make the transaction subject to the uniform consumer credit code.

Insert 21 -- KSA 16a-2-202 (new subsection (5))

(5) This section does not apply to a sale of an interest in land. K.S.A. 16a-2-401(10), and amendments thereto, governs the limitations on finance charges for a contract for deed to real estate where the parties agree in writing to make the transaction subject to the uniform consumer credit code.

Insert 24 -- KSA 16a-2-401

(1) With respect to a consumer loan incurred pursuant to open end credit, including, without limitation, a loan pursuant to a lender credit card, a lender may charge a finance charge at any rate agreed to by the parties, subject, however, to the limitations on prepaid finance charges set forth in subsection (6). This subsection does not apply to a consumer loan secured by a first mortgage or a second mortgage.

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(2) With respect to a consumer loan incurred pursuant to closed end credit, a lender may charge a periodic finance charge, calculated accordingly to the actuarial method, not to exceed 21% per annum, subject, however to the limitations on prepaid finance charges set forth in subsection (6). This subsection does not apply to a consumer loan secured by a first mortgage or a second mortgage.

(3) With respect to a consumer loan secured by a second mortgage, a lender may charge a periodic finance charge, calculated according to the actuarial method, not to exceed 18% per annum, subject, however to the limitations on prepaid finance charges set forth in subsection (6). This subsection does not apply if the lender and the consumer agree in writing that the finance charge for the loan is governed by K.S.A. 16-207(b), and amendments thereto.

(4) If the parties to a consumer loan secured by a first mortgage agree in writing to make the transaction subject to the uniform consumer credit code, then the periodic finance charge for the loan, calculated according to the actuarial method, may not exceed 18% per annum, subject, however to the limitations on prepaid finance charges set forth in subsection (6).

(5) 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 and the amount of the finance charge does not exceed that permitted by this section.

(6) Prepaid finance charges on consumer loans are limited as follows:

(a) For a consumer loan secured by a first mortgage or a second mortgage, prepaid finance charges in an amount not to exceed 10% of the amount financed may be charged, provided that the aggregate amount of prepaid finance charges payable to the lender or any person related to the lender do not exceed 5% of the amount financed; and

(b) for any other consumer loan, prepaid finance charges in an amount not to exceed the lesser of 2% of the amount financed or \$100 may be charged.

Prepaid finance charge permitted under this subsection are in addition to finance charges permitted under subsections (1), (2), (3) and (4), as applicable. Prepaid finance charges permitted under this subsection are fully earned when paid and are non-refundable, unless the parties agree otherwise in writing.

(7) The finance charge limitations in subsections (3) and (4) do not apply to a consumer loan the finance charge for which is governed by K.S.A. 16-207(h), and amendments thereto.

(8) If a loan secured by a first mortgage constitutes a "consumer loan" under K.S.A. 16a-1-301(), and amendments thereto, by virtue of the loan-to-value ratio exceeding 100% at the time the loan is made, then the periodic finance charge for the loan shall not exceed that authorized by K.S.A. 16-207(b), and amendments thereto, but the loan is subject to the limitations on prepaid

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finance charges set forth in subparagraph (a) of section 6, which prepaid finance charges may be charged in addition to the finance charges permitted under K.S.A. 16-207(b), and amendments thereto.

(9) If, within 12 months after the date of the original loan, a lender or a person related to the lender refinances a loan with respect to which a prepaid finance charge was payable to the same lender pursuant to subsection (6), then the following apply:

- (a) If a prepaid finance charge with respect to the original loan was payable to the lender pursuant to subparagraph (a) of subsection (6), then the aggregate amount of prepaid finance charges payable to the lender or any person related to the lender with respect to the new loan may not exceed 5% of the additional amount financed.
- (b) If a prepaid finance charge with respect to the original loan was payable to the lender pursuant to subparagraph (b) of subsection (6), then the aggregate amount of prepaid finance charges payable to the lender or any person related to the lender with respect to the new loan may not exceed the lesser of 2% of the additional amount financed or \$100.
- (c) For purposes of this subsection, "additional amount financed" means the difference between: (i) The amount financed for the new loan, less the amount of all closing costs incurred in connection with the new loan which are not included in the prepaid finance charges for the new loan; and (ii) the unpaid principal balance of the original loan.

~~(9)~~(10) For any period in which a finance charge is due on a consumer loan pursuant to open end credit, the parties may agree on a minimum amount.

~~(10)~~(11) If the parties to a contract for deed to real estate agree in writing to make the transaction subject to the uniform consumer credit code, then the transaction is subject to the same limitations as set forth in subsections (4) and (5) for a consumer loan secured by a first mortgage.

~~(11)~~(12) This section does not apply to a payday loan.

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