

CHAPTER 32

Substitute for HOUSE BILL No. 2635

AN ACT amending the uniform consumer credit code; relating to additional charges; amending K.S.A. 2003 Supp. 16a-2-501 and repealing the existing section.

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

Section 1. K.S.A. 2003 Supp. 16a-2-501 is hereby amended to read as follows: 16a-2-501. (1) In addition to the finance charge permitted by the parts of this article on maximum finance charges for consumer credit sales and consumer loans (parts 2 and 4), a creditor may contract for and receive the following additional charges in connection with a consumer credit transaction:

(a) Official fees and taxes;

(b) charges for insurance as described in subsection (2);

(c) delinquency charges permitted under K.S.A. 16a-2-502, and amendments thereto, and service charges for insufficient checks permitted under paragraph (e);

(d) charges for other benefits, including insurance, conferred on the consumer, if the benefits are of value to the consumer and if the charges are reasonable in relation to the benefits, are of a type which is not for credit, and are excluded as permissible additional charges from the finance charge by rules and regulations adopted by the administrator;

(e) a service charge for an insufficient check as defined and authorized by this subsection:

(i) For the purposes of this subsection, "insufficient check" means any check, order or draft drawn on any bank, credit union, savings and loan association, or other financial institution for the payment of money and delivered in payment, in whole or in part, of preexisting indebtedness of the drawer or maker, which is refused payment by the drawee because the drawer or maker does not have sufficient funds in or credits with the drawee to pay the amount of the check, order or draft upon presentation, provided that any check, order or draft which is postdated or delivered to a payee who has knowledge at the time of delivery that the drawer or maker did not have sufficient funds in or credits with the drawee to pay the amount of the check, draft or order upon presentation shall not be deemed an insufficient check.

(ii) "Written notice" shall be presumed to have been given a drawer or maker of an insufficient check when notice is sent by ~~restricted first class mail as defined by K.S.A. 60-103, and amendments thereto,~~ addressed to the person to be given notice of such person's address as it appears on the insufficient check or to such person's last known address *or notice provided on a regular monthly statement provides clear notice of the insufficient check charge being assessed.*

(iii) When an insufficient check has been given to a payee, the payee may charge and collect a \$10 insufficient check service charge from the drawer or maker, subject to limitations contained in this subsection or, if a larger amount is provided within the contract, the larger amount, if the payee has given the drawer or maker oral or written notice of demand that the amount of the insufficient check plus the insufficient check service charge be paid to the payee within 14 days from the giving of notice. In no event shall the amount of such insufficient check service charge exceed \$30.

(iv) If the drawer or maker of an insufficient check does not pay the amount of the insufficient check plus the insufficient check service charge provided for in subsection (iii) to the payee within 14 days from the giving of notice as provided in subsection (iii), the payee may add the insufficient check service charge to the outstanding balance of the preexisting indebtedness of the drawer or maker to draw interest at the contract rate applicable to the preexisting indebtedness.

(v) Notwithstanding the provisions of subparagraph (iii), if an insufficient check has been given to a creditor under a lender credit card, the creditor may charge a service charge for the insufficient check in an amount not to exceed the amount agreed to by the drawer or maker.

(2) An additional charge may be made for insurance written in connection with the transaction, including vendor's single interest insurance with respect to which the insurer has no right of subrogation against the consumer but excluding other insurance protecting the creditor against

the consumer's default or other credit loss:

(a) With respect to insurance against loss of or damage to property, or against liability, if the creditor furnishes a clear and specific statement in writing to the consumer setting forth the cost of the insurance if obtained from or through the creditor and stating that the consumer may choose the person through whom the insurance is to be obtained; and

(b) with respect to consumer credit insurance providing life, accident and health, or loss of employment coverage, if the insurance coverage is not a factor in the approval by the creditor of the extension of credit, and this fact is clearly disclosed in writing to the consumer, and if, in order to obtain the insurance in connection with the extension of credit, the consumer gives specific affirmative written indication of the consumer's desire to do so after written disclosure to the consumer of the cost thereof.

(3) With respect to a consumer loan or a consumer credit sale in either case pursuant to open end credit, a creditor may charge the following fees in an amount not to exceed that agreed to by the consumer:

(a) Fees on a monthly or annual basis;

(b) over-limit fees; and

(c) cash advance fees. The fees permitted under this subsection are in addition to any finance charges, additional charges or other charges permitted by the uniform consumer credit code.

(4) *A charge not exceeding \$5 per payment, if the borrower makes a single installment payment by authorizing a creditor, verbally or in writing, to write a check or process a payment through use of the automated clearing house procedures on the borrower's checking account, subject to the following limitations:*

(A) *No charge shall be assessed if the creditor also collects a delinquency fee on the same installment; and*

(B) *no charge shall be assessed where the consumer has agreed in writing with the creditor to make all scheduled payments through the use of the automated clearing house procedures.*

Sec. 2. K.S.A. 2003 Supp. 16a-2-501 is hereby repealed.

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

Approved April 8, 2004.
