

## HOUSE BILL No. 2036

By Committee on Federal and State Affairs

1-22

1 AN ACT concerning the uniform consumer credit code; relating to payday  
2 loans; amending K.S.A. 16a-2-404 and repealing the existing section.

3  
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. K.S.A. 16a-2-404 is hereby amended to read as follows:  
6 16a-2-404. (1) On consumer loan transactions in which cash is advanced:

- 7 (a) With a short term,  
8 (b) a single payment repayment is anticipated, and  
9 (c) such cash advance is equal to or less than \$500, a licensed or  
10 supervised lender may charge an amount not to exceed 15% of the amount  
11 of the cash advance.

12 (2) The minimum term of any loan under this section shall be 7 days  
13 and the maximum term of any loan made under this section shall be 30  
14 days.

15 (3) ~~A lender and related interest shall not have more than two loans~~  
16 ~~made under this section outstanding to the same borrower at any one time~~  
17 ~~and shall not make more than three loans to any one borrower within a 30~~  
18 ~~calendar day period. No lender or related interest under this section shall~~  
19 ~~make a loan which results in a borrower having more than two~~  
20 ~~outstanding loans with any lender. Each lender shall maintain a journal of~~  
21 ~~loan transactions for each borrower which shall include at least the~~  
22 ~~following information:~~

- 23 (a) Name, address and telephone number of each borrower; and  
24 (b) date made and due date of each loan.

25 (4) Each loan agreement made under this section shall contain the  
26 following notice in at least 10 point bold face type: NOTICE TO  
27 BORROWER: KANSAS LAW PROHIBITS THIS LENDER AND  
28 THEIR RELATED INTEREST FROM ~~HAVING MORE THAN~~ MAKING  
29 YOU A LOAN IF YOU CURRENTLY HAVE TWO LOANS  
30 OUTSTANDING TO YOU AT ANY ONE TIME WITH ANY LENDER. A  
31 LENDER CANNOT DIVIDE THE AMOUNT YOU WANT TO  
32 BORROW INTO MULTIPLE LOANS IN ORDER TO INCREASE THE  
33 FEES YOU PAY.

34 Prior to consummation of the loan transaction, the lender must:

- 35 (a) Provide the notice set forth in this subsection in both English and  
36 Spanish; and

1 (b) obtain the borrower's signature or initials next to the English  
2 version of the notice or, if the borrower advises the lender that the  
3 borrower is more proficient in Spanish than in English, then next to the  
4 Spanish version of the notice.

5 (5) *After a borrower's third consecutive loan, another loan may not*  
6 *be made to that borrower within seven calendar months after the third*  
7 *consecutive loan is paid in full. After maturity of the borrower's third*  
8 *consecutive loan, the borrower may pay the balance in full, or the*  
9 *borrower and the lender shall enter into an agreement to repay the loan in*  
10 *installments subject to the requirements of subsection (6).*

11 ~~(5)~~ (6) The contract rate of any loan made under this section shall not  
12 be more than 3% per month of the loan proceeds after the maturity date.  
13 No insurance charges or any other charges of any nature whatsoever shall  
14 be permitted, except as stated in subsection ~~(7)~~ (8), including any charges  
15 for cashing the loan proceeds if they are given in check form.

16 ~~(6)~~ (7) Any loan made under this section shall not be repaid by  
17 proceeds of another loan made under this section by the same lender or  
18 related interest. The proceeds from any loan made under this section shall  
19 not be applied to any other loan from the same lender or related interest.

20 ~~(7)~~ (8) On a consumer loan transaction in which cash is advanced in  
21 exchange for a personal check, one return check charge may be charged if  
22 the check is deemed insufficient as defined in paragraph (e) of subsection  
23 (1) of K.S.A. 16a-2-501, and amendments thereto. Upon receipt of the  
24 check from the consumer, the lender shall immediately stamp the back of  
25 the check with an endorsement that states: "Negotiated as part of a loan  
26 made under K.S.A. 16a-2-404. Holder takes subject to claims and defenses  
27 of maker. No criminal prosecution."

28 ~~(8)~~ (9) In determining whether a consumer loan transaction made  
29 under the provisions of this section is unconscionable conduct under  
30 K.S.A. 16a-5-108, and amendments thereto, consideration shall be given,  
31 among other factors, to:

32 (a) The ability of the borrower to repay within the terms of the loan  
33 made under this section; or

34 (b) the original request of the borrower for amount and term of the  
35 loan are within the limitations under this section.

36 ~~(9)~~ (10) A consumer may rescind any consumer loan transaction  
37 made under the provisions of this section without cost not later than the  
38 end of the business day immediately following the day on which the loan  
39 transaction was made. To rescind the loan transaction:

40 (a) A consumer shall inform the lender that the consumer wants to  
41 rescind the loan transaction;

42 (b) the consumer shall return the cash amount of the principal of the  
43 loan transaction to the lender; and

1 (c) the lender shall return any fees that have been collected in  
2 association with the loan.

3 ~~(10)~~ (11) A person shall not commit or cause to be committed any of  
4 the following acts or practices in connection with a consumer loan  
5 transaction subject to the provisions of this section:

6 (a) Use any device or agreement that would have the effect of  
7 charging or collecting more fees, charges or interest, or which results in  
8 more fees, charges, or interest being paid by the consumer, than allowed  
9 by the provisions of this section, including, but not limited to:

10 (i) Entering into a different type of transaction with the consumer;

11 (ii) entering into a sales/leaseback or rebate arrangement;

12 (iii) catalog sales; or

13 (iv) entering into any other transaction with the consumer or any  
14 other person that is designed to evade the applicability of this section;

15 (b) use, or threaten to use the criminal process in any state to collect  
16 on the loan;

17 (c) sell any other product of any kind in connection with the making  
18 or collecting of the loan;

19 (d) include any of the following provisions in a loan document:

20 (i) A hold harmless clause;

21 (ii) a confession of judgment clause;

22 (iii) a provision in which the consumer agrees not to assert a claim or  
23 defense arising out of the contract.

24 ~~(11)~~ (12) As used in this section; :

25 (a) "Related interest" shall have the same meaning as "person related  
26 to" in K.S.A. 16a-1-301, and amendments thereto; *and*

27 (b) "*consecutive loan*" means a new loan agreement that the lender  
28 or such lender's

29 *related interest enters into with the same borrower not later than seven*  
30 *calendar days after a previous loan made to that borrower is paid in full.*

31 ~~(12)~~ (13) Any person who facilitates, enables or acts as a conduit or  
32 agent for any third party who enters into a consumer loan transaction with  
33 the characteristics set out in paragraphs (a) and (b) of subsection (1) shall  
34 be required to obtain a supervised loan license pursuant to K.S.A. 16a-2-  
35 301, and amendments thereto, regardless of whether the third party may be  
36 exempt from licensure provisions of the Kansas uniform consumer credit  
37 code.

38 ~~(13)~~ (14) Notwithstanding that a person may be exempted by virtue  
39 of federal law from the interest rate, finance charge and licensure  
40 provisions of the Kansas uniform consumer credit code, all other  
41 provisions of the code shall apply to both the person and the loan  
42 transaction.

43 (15) (a) *The administrator, or a single third-party provider selected*

1 by the administrator; may develop, implement and maintain a statewide  
2 common database for the purpose of verifying compliance with the  
3 requirements of this section and such database shall:

4 (i) Provide access through an internet connection or, if real time  
5 access through an internet connection becomes unavailable due to the  
6 database provider's technical problems, through an alternative  
7 verification mechanism, including verification by telephone;

8 (ii) require lenders to input whatever information is required by this  
9 section or rules and regulations adopted by the administrator;

10 (iii) provide that an inquiry to the database by a lender shall state  
11 only that a person is eligible or ineligible for a new loan made subject to  
12 this section and a description of the reason for the determination;

13 (iv) provide that only the person seeking the transaction may make a  
14 direct inquiry to the database provider to request a more detailed  
15 explanation of a particular transaction that was the basis for the  
16 ineligibility determination. Any information regarding any person's  
17 transactional history is confidential, is not subject to public inspection, is  
18 not a public record and shall not be disclosed to any person other than the  
19 administrator. The provisions of subsection (b) of K.S.A. 45-229, and  
20 amendments thereto, shall not apply to the provisions of this paragraph;

21 (v) provide adequate safeguards to ensure that consumer information  
22 contained in the database is kept strictly confidential;

23 (vi) not allow the lender to enter loan information into the database  
24 that would be in violation of this section;

25 (vii) provide the administrator access to the database, or other  
26 reports or records as deemed necessary by the administrator for  
27 examination or investigation to ensure compliance with this act; and

28 (viii) conform with other requirements deemed necessary by the  
29 administrator adopted pursuant to rules and regulations.

30 (b) No person shall enter into any payday loan agreement with a  
31 borrower prior to verifying by means of a statewide common database  
32 approved by the administrator that the proposed loan agreement is  
33 permissible under the provisions of this section. A loan made in violation  
34 of this subsection shall be void and the borrower shall not be obligated to  
35 pay any principal, interest or other fees in connection with the loan.

36 (c) A lender shall update the statewide common database by  
37 inputting all information required pursuant to this section at the time that:

38 (i) Any loan is made that is subject to this section;

39 (ii) a borrower's loan is paid in full; or

40 (iii) a lender determines a loan is in default.

41 (d) A verification fee, not to exceed \$1 per transaction, may be  
42 charged lenders for access to the database.

43 (~~14~~) (16) This section shall be supplemental to and a part of the

1 uniform consumer credit code.

2 Sec. 2. K.S.A. 16a-2-404 is hereby repealed.

3 Sec. 3. This act shall take effect and be in force from and after its

4 publication in the statute book.