

SENATE BILL No. 52

By Committee on Financial Institutions and Insurance

1-18

1 AN ACT concerning mortgage interest rates; amending K.S.A. 16-207 and
2 repealing the existing section.

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

5 Section 1. K.S.A. 16-207 is hereby amended to read as follows: 16-
6 207. (a) Subject to the following provision, the parties to any bond, bill,
7 promissory note or other instrument of writing for the payment or
8 forbearance of money may stipulate therein for interest receivable upon
9 the amount of such bond, bill, note or other instrument of writing, at a rate
10 not to exceed 15% per annum unless otherwise specifically authorized by
11 law.

12 (b) The interest rate limitation set forth in this subsection applies to
13 all first mortgage loans and contracts for deed to real estate, unless the
14 parties agree in writing to make the transaction subject to the uniform
15 consumer credit code, K.S.A. 16a-1-101 to 16a-9-102, and amendments
16 thereto. The interest rate limitation set forth in this subsection does not
17 apply to a second mortgage loan governed by the uniform consumer credit
18 code, K.S.A. 16a-1-101 to 16a-9-102, and amendments thereto, unless the
19 lender and the borrower agree in writing that the interest rate for the loan
20 is to be governed by this subsection. The maximum rate of interest per
21 annum for notes secured by real estate mortgages and contracts for deed to
22 real estate governed by this subsection shall be at an amount equal to ~~1~~¹/₂
23 ~~3~~¹/₂ percentage points above the yield of thirty-year fixed rate
24 conventional home mortgages committed for delivery within 61 to 90 days
25 accepted under the federal home loan mortgage corporation's daily
26 offerings for sale on the last day on which commitments for such
27 mortgages were received in the preceding month unless otherwise
28 specifically authorized by law. Such interest rate shall be computed for
29 each calendar month and be effective on the first day thereof. The
30 secretary of state shall publish notice of such maximum interest rate not
31 later than the second issue of the Kansas register published each month.

32 (c) No penalty shall be assessed against any party for prepayment of
33 any home loan evidenced by a note secured by a real estate mortgage
34 where such prepayment is made more than six months after execution of
35 such note.

36 (d) The lender may collect from the borrower: (1) The actual fees

1 paid a public official or agency of the state, or federal government, for
2 filing, recording or releasing any instrument relating to a loan subject to
3 the provisions of this section; and

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

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

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

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

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

32 (i) A first mortgage loan incurred for personal, family or household
33 purposes may be subject to certain provisions of the uniform consumer
34 credit code, K.S.A. 16a-1-101 to 16a-9-102, and amendments thereto, as
35 follows:

36 (1) Certain high loan-to-value first mortgage loans are subject to the
37 provisions of the uniform consumer credit code, other than its usury
38 provisions. Examples of provisions of the uniform consumer credit code
39 applicable to high loan-to-value first mortgage loans include, but are not
40 limited to: Limitations on prepaid finance charges; mandatory appraisals;
41 required disclosures; restrictions on balloon payments and negative
42 amortization; limitations on late fees and collection costs; and mandatory
43 default notices and cure rights.

1 (2) Certain high interest rate first mortgage loans are subject to
2 certain provisions of the uniform consumer credit code, including, without
3 limitation, provisions which impose restrictions on balloon payments and
4 negative amortization.

5 (3) If the parties to a first mortgage loan agree in writing to make the
6 transaction subject to the uniform consumer credit code, than all applicable
7 provisions of the uniform consumer credit code, including its usury
8 provisions, apply to the loan.

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

11 (j) Subsections (c), (d) and (e) of this section do not apply to a first
12 mortgage loan if:

13 (1) The parties agree in writing to make the transaction subject to the
14 uniform consumer credit code, K.S.A. 16a-1-101 to 16a-9-102, and
15 amendments thereto; or

16 (2) the loan is a high loan-to-value first mortgage loan subject to any
17 provision of the uniform consumer credit code. In the case of a loan
18 described in subparts (1) or (2) of the preceding sentence, the applicable
19 provisions of the uniform consumer credit code shall govern the loan in
20 lieu of subsections (c), (d) and (e) of this section.

21 Sec. 2. K.S.A. 16-207 is hereby repealed.

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

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