

SENATE BILL No. 402

By Committee on Federal and State Affairs

2-7

1 AN ACT concerning veterans; relating to the uniform consumer credit
2 code; enacting the Kansas veterans loan act; establishing the Kansas
3 veterans loan act fee fund.

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

6 Section 1. (a) This section shall be known and may be cited as the
7 Kansas veterans loan act. As used in this act:

8 (1) "Act" means the Kansas veterans loan act;

9 (2) "instrument" means any check, draft, nonpurchase vehicle
10 security or other instrument or authorization to transfer or withdraw funds
11 from an account that is signed by the veteran and made payable to a
12 person subject to this section;

13 (3) "related interest" has the same meaning as "person related to" in
14 K.S.A. 16a-1-301, and amendments thereto; and

15 (4) "veteran" means any person who served in the United States army,
16 navy, air force, marine corps or coast guard for more than 90 days of
17 active duty, not simply for training purposes, and was discharged or
18 released under conditions other than dishonorable.

19 (b) On consumer loan transactions with a veteran whereby a lender,
20 for a fee, finance charge or other consideration, does the following:

21 (1) Accepts an instrument from the veteran as security for a loan;

22 (2) agrees to hold the instrument for a period of time prior to deposit
23 or negotiation of the instrument;

24 (3) pays to the veteran, credits to the veteran's account or pays to
25 another person on the veteran's behalf the amount of the instrument, less
26 charges permitted under this section; and

27 (4) issues a loan equal to or less than \$500, shall subject such
28 consumer loan transaction to the requirements of this act.

29 (c) The minimum term of any loan under this act shall be the number
30 of months equal to the sum of the loan principal and all applicable charges,
31 divided by the maximum allowable monthly payment.

32 (d) A lender and related interest shall not have more than one loan
33 made under this section outstanding to the same veteran at any time. Each
34 lender shall maintain a journal of loan transactions for each veteran that
35 shall include at least the following information:

36 (1) Name, address and telephone number of each veteran; and

1 (2) date made and due date of the loan.

2 (e) Each loan agreement made under this act shall contain the
3 following notice in at least 10-point boldface type: NOTICE TO
4 VETERAN: KANSAS LAW PROHIBITS THIS LENDER AND THEIR
5 RELATED INTEREST FROM HAVING MORE THAN ONE LOAN
6 OUSTANDING TO YOU AT ANY TIME. A LENDER CANNOT
7 DIVIDE THE AMOUNT YOU WANT TO BORROW INTO MULTIPLE
8 LOANS IN ORDER TO INCREASE THE FEES YOU PAY.

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

10 (1) Provide the notice set forth in this subsection in both English and
11 Spanish; and

12 (2) obtain the veteran's signature or initials next to the English
13 version of the notice or, if the veteran advises the lender that the veteran is
14 more proficient in Spanish than in English, then next to the Spanish
15 version of the notice; and

16 (3) provide disclosure of periodic payments, total repayment, total
17 loan costs, annual percentage rate inclusive of monthly fees, loan duration,
18 notice of the veteran's right to revoke automated clearing house payment
19 authorization and right to rescind.

20 (f) The maximum rate of any loan made under this act shall be no
21 more than 36% per annum. The maximum monthly fee or charge for any
22 loan made under this act shall be 5% of the original loan principal or \$20,
23 whichever is less. These fees shall not be added to the original contracted
24 loan for purposes of calculating interest. Loans made under this act may be
25 refinanced, however, any refinanced loan shall have a maximum rate of
26 36% per annum and shall not be subject to any monthly fee or charges. No
27 insurance charges or any other charges of any nature whatsoever shall be
28 permitted, except as stated in subsection (h), including any charges for
29 cashing the loan proceeds if they are given in check form. Notwithstanding
30 any provision of law to the contrary, the total loan charges for any loan
31 made under this act shall not exceed 50% of the loan principal. For
32 purposes of this calculation, all charges made in accordance with the loan
33 shall be considered, except: (1) An allowable returned check charge or late
34 charge in accordance with subsection (h); and (2) interest charges on loans
35 that are refinanced according to this subsection.

36 (g) (1) The total required monthly payment of a loan made under this
37 act shall not exceed the greater of 5% of the veteran's verified gross
38 monthly income or 6% of the veteran's verified net monthly income.
39 Income shall be verified according to rules and regulations promulgated by
40 the administrator. Such rules and regulations shall include guidance for
41 reasonably relying on evidence of recurring deposits to a depository
42 account or one or more recent paychecks.

43 (2) The lender shall accept prepayment from a veteran prior to the

1 loan due date and shall not charge the veteran a fee or penalty if the
2 consumer prepays the loan. Upon prepayment of the loan, all finance
3 charges, inclusive of interest and all fees, are pro rata refundable. Prorated
4 monthly fees shall be based on a ratio of the number of days the loan was
5 outstanding to the number of days for which the loan was originally
6 contracted.

7 (3) All loans made under this act shall be precomputed and require
8 full amortization of balance to zero with all payments reducing principal.

9 (4) If any payment is more than 10 days delinquent, the lender may
10 accelerate the loan balance, but shall only collect prorated interest and fees
11 earned to date.

12 (h) On a consumer loan transaction in which cash is advanced in
13 exchange for a personal check, one return check charge or late charge may
14 be charged if the check is deemed insufficient as defined in K.S.A. 16a-2-
15 501(1)(e), and amendments thereto. The maximum return check charge or
16 late charge is the lesser of 5% of the original loan principal or \$20, plus
17 any amount passed from another financial institution. Upon receipt of the
18 check from the veteran, the lender shall immediately stamp the back of the
19 check with an endorsement that states: "Negotiated as part of a loan made
20 under the Kansas veterans loan act. Holder takes subject to claims and
21 defenses of maker. No criminal prosecution."

22 (i) In determining whether a consumer loan transaction made under
23 the provisions of this act is unconscionable conduct under K.S.A. 16a-5-
24 108, and amendments thereto, consideration shall be given, among other
25 factors, to:

26 (1) The ability of the veteran to repay within the terms of the loan
27 made under this act; or

28 (2) the original request of the veteran for an amount and the term of
29 the loan are within the limitations under this act.

30 (j) A veteran may rescind any consumer loan transaction made under
31 the provisions of this act without cost not later than the end of the business
32 day immediately following the day on which the loan transaction was
33 made. To rescind the loan transaction:

34 (1) A veteran shall inform the lender that the veteran wants to rescind
35 the loan transaction;

36 (2) the veteran shall return the cash amount of the principal of the
37 loan transaction to the lender; and

38 (3) the lender shall return any fees that have been collected in
39 association with the loan.

40 (k) A person shall not commit or cause to be committed any of the
41 following acts or practices in connection with a consumer loan transaction
42 subject to the provisions of this act:

43 (1) Use any device or agreement that would have the effect of

1 charging or collecting more fees, charges or interest, or that results in more
2 fees, charges or interest being paid by the veteran than allowed by the
3 provisions of this act, including, but not limited to:

4 (A) Entering into a different type of transaction with the veteran;
5 (B) entering into a sales/leaseback or rebate arrangement;
6 (C) catalog sales; or
7 (D) entering into any other transaction with the veteran or any other
8 person that is designed to evade the applicability of this act;

9 (2) use, or threaten to use the criminal process in any state to collect
10 on the loan;

11 (3) sell any other product of any kind in connection with the making
12 or collecting of the loan; or

13 (4) include any of the following provisions in a loan document:

14 (A) A hold harmless clause;

15 (B) a confession of judgment clause; or

16 (C) a provision in which the veteran agrees not to assert a claim or
17 defense arising out of a contract.

18 (l) Any person who facilitates, enables or acts as a conduit or agent
19 for any third party who enters into a consumer loan transaction with the
20 characteristics set out in subsection (b), shall be required to obtain a
21 supervised loan license pursuant to K.S.A. 16a-2-301, and amendments
22 thereto, regardless of whether the third party may be exempt from
23 licensure provisions of the Kansas uniform consumer credit code.

24 (m) Notwithstanding that a person may be exempted by virtue of
25 federal law from the interest rate, finance charge and licensure provisions
26 of the Kansas uniform consumer credit code, all other provisions of the
27 code shall apply to both the person and the loan transaction.

28 (n) Lenders who enter into veterans loan transactions under this act
29 shall, on an annual basis, provide the following information to the
30 administrator, in a uniform manner prescribed by the administrator:

31 (1) Total number of veteran borrowers;

32 (2) total number of loans;

33 (3) average loan size;

34 (4) total contracted loan charges;

35 (5) total loan actual charges paid;

36 (6) number of defaulted loans;

37 (7) number of charged-off loans;

38 (8) dollar value of charged-off loans;

39 (9) number of returned check/late charges and dollar value of such
40 charges;

41 (10) average contracted annual percentage rate;

42 (11) average experienced annual percentage rate;

43 (12) total number of locations;

- 1 (13) average number of veteran borrowers per location; and
2 (14) any other nonprivate information the administrator may deem
3 necessary.

4 The administrator shall publish, at least annually, an aggregate report to
5 the public, the legislature and the governor that contains all the
6 information provided by lenders under this subsection. The administrator,
7 or administrator's designee, shall appear before the house standing
8 committee on veterans and military, or the successor of such standing
9 committee, during each regular session of the legislature to present such
10 report.

11 (o) Only consumer loans made pursuant to the provisions of this act
12 shall be extended to veterans. Before a consumer loan is extended to a
13 veteran, the veteran shall be informed that the veteran may only be loaned
14 money according to this act. A pamphlet entitled "Protecting Our Kansas
15 Veterans," published by the administrator, shall be provided by the lender
16 to the veteran before any consumer loan transaction occurs. Such pamphlet
17 shall contain easy-to-read and understandable explanations of the loan
18 terms and the fact that the loan under the Kansas veterans loan act is the
19 only loan that may be offered to a veteran.

20 (p) A veteran may not opt out or waive any provision of this act. All
21 veterans must present proper identification of their veteran status at the
22 time the loan is contracted.

23 (q) The administrator shall cause to be published and distributed
24 widely, within 30 days after the effective date of this act, and shall update
25 on an annual basis, the following easily comprehensible informational
26 materials:

27 (1) Geographically indexed printed materials designed to inform
28 veterans of locations where loans under the Kansas veterans loan act are
29 available. The materials shall include a comprehensive list of participating
30 lenders, their telephone numbers and addresses;

31 (2) a toll-free 24-hour telephone number that may be called to obtain,
32 orally, such a list and a description of lenders who offer loans under the
33 Kansas veterans loan act; and

34 (3) a statement that it is unlawful for any lender to coerce a veteran to
35 agree to any other loan terms, regardless of whether or not they appear to
36 present better terms, and that any lender extending credit to a veteran
37 without informing the veteran of such veteran's eligibility for loans under
38 the Kansas veterans loan act may be liable for damages.

39 (r) (1) Any location that provides consumer loan transactions under
40 this act shall conspicuously post a sign in a location so as to be clearly
41 visible to veterans. The sign required pursuant to this subsection shall be
42 printed with lettering that is legible and shall be at least $\frac{3}{4}$ of an inch
43 boldfaced type, and shall include the following text:

1 "If you are a United States military veteran, you are protected by the
2 Kansas veterans loan act. Lenders must offer you the pamphlet "Protecting
3 Our Kansas Veterans," published by the Kansas office of the state bank
4 commissioner. You are eligible only for a loan under the Kansas veterans
5 loan act. No other loan may be offered to you. If the branch you have
6 visited does not offer a Kansas veterans loan, please visit
7 <http://www.osbckansas.org/> for the location of nearby Kansas veterans
8 loan providers."

9 (2) If a supervised lender does not provide consumer loan
10 transactions to veterans under this section, such lender shall conspicuously
11 post a sign in a location so as to be clearly visible to veterans. The sign
12 required pursuant to this subsection shall be printed with lettering that is
13 legible and shall be at least $\frac{3}{4}$ of an inch boldfaced type, and shall include
14 the following text:

15 "We do not lend money to Kansas veterans. Please visit
16 <http://www.osbckansas.org/> for nearby lenders who offer Kansas veterans
17 loans."

18 (s) The administrator shall charge a fee to all supervised loan
19 licensees to cover the costs of administering and enforcing this act,
20 including the production of all signs, printed materials and websites
21 required by this act. The amount of such fee shall be determined through
22 rules and regulations promulgated by the administrator. The administrator
23 shall remit all moneys received from such fee to the state treasurer in
24 accordance with the provisions of K.S.A. 75-4215, and amendments
25 thereto. Upon receipt of each such remittance, the state treasurer shall
26 deposit the entire amount in the state treasury to the credit of the Kansas
27 veterans loan act fee fund.

28 (t) The remedies and rights provided under this act are in addition to
29 and do not preclude any remedy otherwise available under state or federal
30 law or rules and regulations to the veteran claiming relief under this act,
31 including any award for consequential damages or punitive damages. Any
32 loan transaction or other contract with a veteran that fails to comply with
33 this act is void from the inception of the transaction or contract.
34 Notwithstanding any provision of law to the contrary, no agreement to
35 arbitrate any dispute involving the extension of consumer credit to a
36 veteran pursuant to this act shall be enforceable against any veteran.

37 (u) (1) Any lender who violates any provision of this act with respect
38 to any veteran shall be civilly liable to such veteran for:

39 (A) Any actual damage sustained as a result, but not less than \$500
40 for each violation;

41 (B) appropriate punitive damages;

42 (C) appropriate equitable or declaratory relief; and

43 (D) any other relief provided by law.

1 (2) In any successful action to enforce the civil liability described in
2 paragraph (1), the person who violated this act shall be liable also for the
3 costs of the action, together with reasonable attorney fees, as determined
4 by the court.

5 (3) In any successful action by a defendant under this act, if the court
6 finds the action was brought in bad faith and for the purpose of
7 harassment, the plaintiff shall be liable for the attorney fees of the
8 defendant as determined by the court to be reasonable in relation to the
9 work expended and costs incurred.

10 (4) A person may not be held liable for civil liability under this act if
11 the person shows by a preponderance of the evidence that the violation
12 was not intentional and resulted from a bona fide error, notwithstanding
13 the maintenance of procedures reasonably adapted to avoid any such error.
14 Examples of bona fide errors include, but are not limited to, clerical,
15 calculation, computer malfunction and programming and printing errors,
16 except that an error of legal judgment with respect to a person's obligations
17 under this act is not a bona fide error.

18 (5) An action for civil liability under this act may be brought in the
19 district court of any county in which there occurred an act or practice
20 declared to be a violation of the Kansas veterans loan act, not later than the
21 earlier of: (A) Two years after the date of discovery by the plaintiff of the
22 violation that is the basis for such liability; or (B) five years after the date
23 on which the violation that is the basis for such liability occurs.

24 (v) The provisions of this act shall be enforced by the administrator in
25 the manner set for in this act or under any other applicable authorities
26 available to the administrator by the uniform consumer credit code.

27 (w) There is hereby established in the state treasury the Kansas
28 veterans loan act fee fund. The moneys in the Kansas veterans loan act fee
29 fund shall be used only for the administration and enforcement of the
30 Kansas veterans loan act by the office of the state bank commissioner,
31 including the production of all signs, printed materials and websites
32 required by the Kansas veterans loan act. All expenditures from such fund
33 shall be made in accordance with appropriation acts upon warrants of the
34 director of accounts and reports issued pursuant to vouchers approved by
35 the administrator or by a person or persons designated by the
36 administrator.

37 (x) This act shall be part of and supplemental to the uniform
38 consumer credit code.

39 Sec. 2. This act shall take effect and be in force from and after its
40 publication in the statute book.