

SENATE BILL No. 218

By Committee on Federal and State Affairs

2-11

1 AN ACT concerning the uniform consumer credit code; relating to
2 consumer loans; providing restrictions and requirements for certain
3 alternative small installment loans; requiring lender reporting;
4 amending K.S.A. 16a-2-308, 16a-2-401, 16a-2-404 and 16a-2-501 and
5 repealing the existing sections.
6

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

8 Section 1. K.S.A. 16a-2-308 is hereby amended to read as follows:
9 16a-2-308. (1) If consumer loans in which the finance charge exceeds
10 ~~twelve percent (12%)~~, not made pursuant to open end credit or lender
11 credit cards issued by a licensed lender, and in which the amount financed
12 is ~~one thousand dollars (\$1,000)~~ or less are payable in installments, they
13 shall be scheduled to be payable in substantially equal installments at
14 substantially equal periodic intervals except to the extent that the schedule
15 of payments is adjusted to the seasonal or irregular income of the debtor,
16 and:

17 (a) Over a period of not more than ~~thirty-seven (37)~~ calendar months
18 if the amount financed is more than ~~three hundred dollars (\$300)~~; or

19 (b) over a period of not more than ~~twenty-five (25)~~ calendar months
20 if the amount financed is ~~three hundred dollars (\$300)~~ or less. The debtor's
21 schedule of payments may be extended to a longer repayment period
22 subsequent to the execution of the loan agreement pursuant to K.S.A. 16a-
23 2-502 ~~or 16a-2-503~~, and amendments thereto. The default of the borrower
24 shall not be considered as having extended the loan beyond the prescribed
25 time limits.

26 (2) *This section shall not apply to a consumer loan transaction*
27 *governed by K.S.A. 16a-2-404, and amendments thereto.*

28 Sec. 2. K.S.A. 16a-2-401 is hereby amended to read as follows: 16a-
29 2-401. (1) For any consumer loan incurred pursuant to open end credit,
30 including, without limitation, a loan pursuant to a lender credit card, a
31 lender may charge a *periodic* finance charge ~~at any rate agreed to by the~~
32 ~~parties, calculated according to the actuarial method, not to exceed 36%~~
33 *per annum*, subject, however, to the limitations on prepaid finance charges
34 set forth in subsection (6). This subsection does not apply to a consumer
35 loan secured by a first mortgage or a second mortgage.

36 (2) For any consumer loan incurred pursuant to closed end credit, a

1 lender may charge a periodic finance charge, calculated ~~accordingly~~
2 *according* to the actuarial method, not to exceed ~~(a) 36% per annum on~~
3 ~~the portion of the unpaid balance which is \$860 or less, and (b) 21% per~~
4 ~~annum on the portion of the unpaid balance which exceeds \$860~~, subject,
5 however to the limitations on prepaid finance charges set forth in
6 subsection (6). This subsection does not apply to a consumer loan secured
7 by a first mortgage or a second mortgage.

8 (3) For any consumer loan secured by a second mortgage or a
9 consumer loan secured by an interest in a manufactured home as defined
10 by 42 U.S.C. § 5402(6), a lender may charge a periodic finance charge,
11 calculated according to the actuarial method, not to exceed 18% per
12 annum, subject, however to the limitations on prepaid finance charges set
13 forth in subsection (6). This subsection does not apply if the lender and the
14 consumer agree in writing that the finance charge for the loan is governed
15 by K.S.A. 16-207~~(b)~~(a), and amendments thereto.

16 (4) If the parties to a consumer loan secured by a first mortgage or a
17 consumer loan secured by an interest in a manufactured home as defined
18 by 42 U.S.C. § 5402(6) agree in writing to make the transaction subject to
19 the uniform consumer credit code, then the periodic finance charge for the
20 loan, calculated according to the actuarial method, may not exceed 18%
21 per annum, subject, however to the limitations on prepaid finance charges
22 set forth in subsection (6).

23 (5) This section does not limit or restrict the manner of calculating the
24 finance charge, whether by way of add-on, discount or otherwise, so long
25 as the rate and the amount of the finance charge does not exceed that
26 permitted by this section.

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

28 (a) For a consumer loan secured by a first mortgage or a second
29 mortgage, or a consumer loan secured by an interest in a manufactured
30 home as defined by 42 U.S.C. § 5402(6), prepaid finance charges in an
31 amount not to exceed 8% of the amount financed may be charged,
32 provided that the aggregate amount of prepaid finance charges payable to
33 the lender or any person related to the lender do not exceed 5% of the
34 amount financed; and

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

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

43 (7) The finance charge limitations in subsections (3) and (4) do not

1 apply to a consumer loan the finance charge for which is governed by
2 ~~subsection (h)~~ of K.S.A. 16-207(g), and amendments thereto.

3 (8) If a loan secured by a first mortgage constitutes a "consumer loan"
4 under ~~subsection (17)~~ of K.S.A. 16a-1-301(17), and amendments thereto,
5 by virtue of the loan-to-value ratio exceeding 100% at the time the loan is
6 made, then the periodic finance charge for the loan shall not exceed that
7 authorized by ~~subsection (b)~~ of K.S.A. 16-207(a), and amendments
8 thereto, but the loan is subject to the limitations on prepaid finance charges
9 set forth in ~~paragraph (a)~~ of subsection (6)(a), which prepaid finance
10 charges may be charged in addition to the finance charges permitted under
11 ~~subsection (b)~~ of K.S.A. 16-207(a), and amendments thereto.

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

16 (a) If a prepaid finance charge with respect to the original loan was
17 payable to the lender pursuant to ~~paragraph (a)~~ of subsection (6)(a), then
18 the aggregate amount of prepaid finance charges payable to the lender or
19 any person related to the lender with respect to the new loan may not
20 exceed 5% of the additional amount financed.

21 (b) If a prepaid finance charge with respect to the original loan was
22 payable to the lender pursuant to ~~paragraph (b)~~ of subsection (6)(b), then
23 the aggregate amount of prepaid finance charges payable to the lender or
24 any person related to the lender with respect to the new loan may not
25 exceed the lesser of 2% of the additional amount financed or \$100.

26 (c) For purposes of this subsection, "additional amount financed"
27 means the difference between: (i) The amount financed for the new loan,
28 less the amount of all closing costs incurred in connection with the new
29 loan which are not included in the prepaid finance charges for the new
30 loan; and (ii) the unpaid principal balance of the original loan.

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

34 (11) If the parties to a contract for deed to real estate agree in writing
35 to make the transaction subject to the uniform consumer credit code, then
36 the transaction is subject to the same limitations as set forth in subsections
37 (4) and (6) for a consumer loan secured by a first mortgage.

38 (12) This section does not apply to a ~~payday~~ consumer loan
39 transaction governed by K.S.A. 16a-2-404, and amendments thereto.

40 Sec. 3. K.S.A. 16a-2-404 is hereby amended to read as follows: 16a-
41 2-404. (1) On ~~consumer loan transactions in which cash is advanced:~~

42 ~~(a) With a short term,~~

43 ~~(b) a single payment repayment is anticipated, and~~

1 ~~(e) such cash advance is equal to or less than \$500 a closed end loan~~
 2 ~~that meets all of the requirements of this section, a licensed or supervised~~
 3 ~~lender may charge an amount not to exceed 15% of the amount of the cash~~
 4 ~~advance:~~

5 (a) Interest, calculated according to the actuarial method, not to
 6 exceed 36% per annum;

7 (b) subject to subsection (21), a monthly maintenance fee that does
 8 not exceed the lesser of 8% percent of the originally contracted loan
 9 amount or \$30, provided that the fee is not added to the loan balance on
 10 which interest is charged;

11 (c) if the loan is subject to a security interest in a motor vehicle in
 12 accordance with the provisions of subsection (16), charges for reasonable
 13 expenses arising from realizing on a security interest authorized under
 14 K.S.A. 84-9-615, and amendments thereto, except that the total amount of
 15 such charges shall not exceed an amount equal to 5% of the originally
 16 contracted loan amount;

17 (d) delinquency charges permitted under K.S.A. 16a-2-502, and
 18 amendments thereto;

19 (e) service charges for insufficient checks permitted under K.S.A 16a-
 20 2-501(1)(e), and amendments thereto;

21 (f) if the originally contracted loan amount is \$400 or more and the
 22 originally contracted loan term is four months or more, an underwriting
 23 fee not to exceed \$25; and

24 (g) except as provided in subsection (16), charges for collection costs
 25 and attorney fees permitted under K.S.A. 16a-2-507, and amendments
 26 thereto. No insurance charges or any other charges shall be permitted in
 27 connection with the loan, including any other charges described in K.S.A
 28 16a-2-501, and amendments thereto, and charges for cashing the loan
 29 proceeds if they are given in check form. Permissible charges under this
 30 subsection are subject to the limitations described in subsection (9).

31 (2) Subject to subsection (21), the amount financed on any loan
 32 under this section shall be \$2,500 or less.

33 ~~(2)(3)~~ (a) The minimum term of any loan under this section shall be ~~7~~
 34 ~~days~~ three calendar months, except as provided in subsection (3)(b), and
 35 the maximum term of any loan made under this section shall be ~~30 days~~ 24
 36 calendar months.

37 (b) The minimum duration of the loan may be less than three
 38 calendar months if the total monthly payment on the loan does not exceed
 39 an amount that is 5% of the borrower's verified gross monthly income or
 40 6% of verified funds the borrower actually receives monthly net of taxes or
 41 other deductions. If the duration of the loan is less than three calendar
 42 months, the lender shall make a reasonable attempt to verify the
 43 borrower's income or funds received, which shall include, at a minimum,

1 *obtaining from the borrower one or more recent pay stubs or other written*
2 *evidence of such borrower's recurring income or funds received, such as a*
3 *bank statement. For purposes of this subsection, written evidence shall*
4 *include at least one document that, when presented to the lender, is dated*
5 *not earlier than 45 days prior to the borrower's initiation of the loan*
6 *transaction and not later than the time the loan is made.*

7 ~~(3)(4)~~ A lender and related interest shall not have more than ~~two loans~~
8 *one loan* made under this section outstanding to the same borrower at any
9 ~~one time and shall not make more than three loans to any one borrower~~
10 ~~within a 30 calendar day period.~~ Each lender shall maintain a journal of
11 loan transactions for each borrower which shall include at least the
12 following information:

13 (a) Name, address and telephone number of each borrower; and

14 (b) date made and due date of each loan.

15 ~~(4)(5)~~ Each loan agreement made under this section shall ~~contain~~ be
16 *made pursuant to a written loan contract that sets forth the terms and*
17 *conditions of the loan. A copy of the loan contract shall be provided to the*
18 *borrower. The loan contract shall disclose in a clear and concise manner*
19 *all of the following:*

20 (a) *The total amount of fees and charges the borrower will be*
21 *required to pay in connection with the loan pursuant to the loan contract;*

22 (b) *the total amount of each payment, when each payment is due, and*
23 *the total number of payments that the borrower will be required to make*
24 *under the loan contract;*

25 (c) *the annual percentage rate, inclusive of monthly fees;*

26 (d) *all disclosures required under the truth in lending act, 15 U.S.C.*
27 *1601, et seq.; and*

28 (e) *the following notice notices in at least 10-point bold face type:*

29 (i) *"NOTICE TO BORROWER: This is an alternative small*
30 *installment loan made under K.S.A. 16a-2-404, which allows lenders to*
31 *charge higher-than-average rates if they follow special consumer*
32 *protection rules. KANSAS LAW PROHIBITS THIS LENDER AND*
33 *THEIR RELATED-INTEREST INTERESTS FROM HAVING MORE*
34 *THAN-TWO-LOANS ONE SUCH LOAN OUTSTANDING TO YOU AT*
35 *ANY-ONE TIME. A LENDER CANNOT DIVIDE THE AMOUNT YOU*
36 *WANT TO BORROW INTO MULTIPLE LOANS IN ORDER TO*
37 *INCREASE THE FEES YOU PAY."*

38 (ii) *"You have the right to rescind this loan by returning the originally*
39 *contracted loan amount by 5:00 p.m. of the third business day immediately*
40 *following the day you enter into this contract.";* and

41 (iii) *"Electronic payment is optional. You have the right to revoke or*
42 *remove your authorization for electronic payment at any time."*

43 (6) Prior to consummation of the loan transaction, the lender must:

1 (a) Provide the ~~notice notices~~ set forth in ~~this~~ subsection (5)(e) in
2 both English and Spanish; and

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

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

12 ~~(6) Any loan made under this section shall not be repaid by proceeds~~
13 ~~of another loan made under this section by the same lender or related~~
14 ~~interest.~~

15 (7) The proceeds from any loan made under this section shall not be
16 applied to any other loan from the same lender or related interest, *except*
17 *that a lender may refinance a loan made under this section if the*
18 *refinanced loan is also a loan made under this section.*

19 ~~(7)(8) On a consumer loan transaction in which cash is advanced in~~
20 ~~exchange for a personal check, one return check charge may be charged if~~
21 ~~the check is deemed insufficient as defined in paragraph (c) of subsection~~
22 ~~(1) of K.S.A. 16a-2-501, and amendments thereto. Upon the lender shall~~
23 ~~not accept a check dated earlier than the date of the first required loan~~
24 ~~payment shown in the loan agreement, and upon receipt of the check from~~
25 ~~the consumer, the lender shall immediately stamp the back of the check~~
26 ~~with an endorsement that states: "Negotiated as part of a loan made under~~
27 ~~K.S.A. 16a-2-404. Holder takes subject to claims and defenses of maker.~~
28 ~~No criminal prosecution."~~

29 ~~(8)(9) Notwithstanding any provision of law to the contrary, a lender~~
30 ~~may not contract for, charge or collect or receive in connection with a~~
31 ~~loan made under this section a total amount of fees and charges that~~
32 ~~exceeds either:~~

33 (a) 60% of the originally contracted loan amount, if the originally
34 contracted loan amount was \$1,500 or less; or

35 (b) 75% of the originally contracted loan amount, if the originally
36 contracted loan amount was greater than \$1,500. For purposes of this
37 subsection, all charges made in connection with the loan shall be included
38 when calculating the total loan charges except for the delinquency charges
39 and service charges for insufficient checks described in subsection (1).

40 (10) In determining whether a consumer loan transaction made under
41 the provisions of this section is unconscionable conduct under K.S.A. 16a-
42 5-108, and amendments thereto, consideration shall be given, among other
43 factors, to:

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

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

5 ~~(9)(11)~~ A consumer may rescind any consumer loan transaction made
6 under the provisions of this section without cost not later than ~~the end of~~
7 ~~the 5:00 p.m. of the third~~ business day immediately following the day on
8 which the loan transaction was made. To rescind the loan transaction:

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

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

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

15 ~~(10)(12)~~ *A loan made under this section shall be a precomputed loan*
16 *payable in substantially equal installments consisting of principal, fees*
17 *and interest combined.*

18 (13) (a) *Subject to subsection (11), if a loan made under this section*
19 *is prepaid in full or refinanced prior to the loan's maturity date, the lender*
20 *shall refund to the borrower the following fees and charges if such fees*
21 *and charges apply to the loan transaction:*

22 (i) *A portion of the interest charges described in subsection (1)(a),*
23 *determined by applying, according to the actuarial method, the rate of*
24 *interest that was required to be disclosed in the transaction to the unpaid*
25 *balance for the actual time remaining for the period following prepayment*
26 *as originally scheduled;*

27 (ii) *a portion of the monthly maintenance fees described in subsection*
28 *(1)(b), calculated such that each monthly maintenance fee shall be fully*
29 *earned by the lender and nonrefundable as of the first day of each month;*
30 *and*

31 (iii) *a portion of the underwriting fee described in subsection (1)(f),*
32 *calculated such that ¼ of the fee shall be nonrefundable on the transaction*
33 *date and an additional ¼ of the fee shall be nonrefundable on the first day*
34 *of each month thereafter, such that the fee is fully earned by the lender and*
35 *nonrefundable as of the first day of the fourth month following the*
36 *transaction date.*

37 (b) *For purposes of this subsection, the term "time remaining for the*
38 *period following prepayment" means the same as provided in K.S.A. 16a-*
39 *2-201(5), and amendments thereto.*

40 (c) *If the maturity is accelerated by any reason and judgment is*
41 *obtained, the consumer is entitled to the same rebate as if payment had*
42 *been made on the date that the maturity is accelerated.*

43 (14) *A lender shall not fail to accept cash or other good funds from*

1 *the borrower, or a third party when submitted on behalf of the borrower,*
2 *for full or partial repayment of a loan made under this section. For*
3 *purposes of this subsection, good funds includes a certified check,*
4 *cashier's check, official bank check or other negotiable instrument on*
5 *which payment cannot be stopped by the paying party.*

6 (15) A person shall not commit or cause to be committed any of the
7 following acts or practices in connection with a consumer loan transaction
8 subject to the provisions of this section:

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

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

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

15 (iii) catalog sales; or

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

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

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

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

23 (i) A hold harmless clause;

24 (ii) a confession of judgment clause;

25 (iii) a provision in which the consumer agrees not to assert a claim or
26 defense arising out of the contract; *or*

27 (iv) *a provision by which a person acting on behalf of the lender is*
28 *treated as an agent of the borrower in connection with the loan*
29 *transaction other than for purposes of filing or releasing a lien on a motor*
30 *vehicle title permitted under subsection (16);*

31 (e) *accept real or personal property or any interest in any property in*
32 *connection with a loan other than a check as described in subsection (8)*
33 *or a motor vehicle title as described in subsection (16);*

34 (f) *create or accept any remotely created check, as defined in 12*
35 *C.F.R. § 229.2(fff), in connection with a loan;*

36 (g) *draft funds electronically from a borrower's account without*
37 *express written authorization from the borrower;*

38 (h) *fail to stop attempts to draft funds electronically from a*
39 *borrower's account upon request from the borrower or the borrower's*
40 *agent;*

41 (i) *attempt to draft funds electronically from a borrower's account*
42 *after two consecutive attempts have failed, unless the lender obtains new*
43 *written authorization from the borrower to transfer or withdraw funds*

1 *electronically from the borrower's account; or*

2 *(j) require or accept from a borrower a set of keys to a motor vehicle*
3 *that secures a loan. Nothing in this subsection shall prohibit the*
4 *conversion of a negotiable instrument into an electronic form for*
5 *processing through the automated clearing house system.*

6 *(16) With respect to a consumer loan transaction under this section,*
7 *a licensed lender may take a security interest in the title of one motor*
8 *vehicle that the borrower owns prior to the transaction, except that:*

9 *(a) The lender shall not accept a check in exchange for making the*
10 *loan;*

11 *(b) the lender shall not take the security interest if, on the date the*
12 *loan agreement is signed by the borrower, the motor vehicle's certificate of*
13 *title evidences that the motor vehicle is security for another loan or*
14 *otherwise is encumbered by a lien;*

15 *(c) the lender shall promptly release the security interest when the*
16 *borrower's obligations under the loan agreement are satisfied in full,*
17 *which shall include providing the borrower with written confirmation that*
18 *the loan contract was "paid" or "canceled" and taking any action*
19 *necessary to reflect termination of the lender's lien on the motor vehicle's*
20 *certificate of title;*

21 *(d) borrowers shall be permitted to recover promptly and at no cost*
22 *personal items from a repossessed motor vehicle;*

23 *(e) the lender shall not charge collection costs, attorney fees or any*
24 *other fees otherwise permitted under K.S.A 16a-2-507, and amendments*
25 *thereto, except when the lender becomes entitled to seek a personal money*
26 *judgment against the borrower as provided in subsection (16)(f);*

27 *(f) the lender shall not seek or obtain a personal money judgment*
28 *against the borrower for any amount owed under the loan agreement or*
29 *any deficiency resulting after the sale of a motor vehicle, except that, upon*
30 *default by the borrower, the lender may seek a personal money judgment*
31 *against the borrower for any amounts owed under the loan agreement if*
32 *the borrower impairs the lender's security interest by:*

33 *(i) Intentionally damaging or destroying the motor vehicle;*

34 *(ii) intentionally concealing the motor vehicle;*

35 *(iii) giving the lender a lien in a motor vehicle that is already*
36 *encumbered by an undisclosed prior lien; or*

37 *(iv) subsequently giving a security interest in, or selling, a motor*
38 *vehicle that secures a title loan to a third party without the lender's written*
39 *consent;*

40 *(g) in addition to the information required in subsection (5), the loan*
41 *contract shall include:*

42 *(i) The make, model year and vehicle identification number of the*
43 *motor vehicle in which a security interest is being given as security for the*

1 *loan and the fair market value of the vehicle which value the lender shall*
 2 *determine by reference to the value for the motor vehicle specified in a*
 3 *recognized pricing guide if the motor vehicle is included in a recognized*
 4 *pricing guide; and*

5 *(ii) a statement, printed in at least 14-point bold type immediately*
 6 *above the borrower's signature, as follows: "YOU ARE PLEDGING*
 7 *YOUR MOTOR VEHICLE AS COLLATERAL FOR THIS LOAN. IF YOU*
 8 *FAIL TO REPAY THE LOAN ACCORDING TO THIS AGREEMENT, WE*
 9 *MAY REPOSSESS YOUR MOTOR VEHICLE. Unless you conceal or*
 10 *intentionally damage the motor vehicle or otherwise impair our security*
 11 *interest under the law, your liability for defaulting under this loan is*
 12 *limited to the loss of the motor vehicle. If your motor vehicle is sold due to*
 13 *your default, you are entitled to any surplus obtained at sale beyond what*
 14 *is owed under this agreement plus reasonable costs of collection, recovery*
 15 *or sale not to exceed 5% of the originally contracted loan amount.";* and

16 *(h) a security interest taken in violation of this subsection is void.*

17 ~~(11) As used in this section, "related interest" shall have the same~~
 18 ~~meaning as "person related to" in K.S.A. 16a-1-301, and amendments~~
 19 ~~thereto.~~

20 ~~(12)(17) Any person who facilitates, enables or acts as a conduit or~~
 21 ~~agent for any third party who enters into a consumer loan transaction with~~
 22 ~~the characteristics set out in paragraphs (a) and (b) of subsection (1)~~
 23 ~~governed by this section shall be required to obtain a supervised loan~~
 24 ~~license pursuant to K.S.A. 16a-2-301, and amendments thereto, regardless~~
 25 ~~of whether the third party may be exempt from licensure provisions of the~~
 26 ~~Kansas uniform consumer credit code.~~

27 ~~(13)(18) Notwithstanding that a person may be exempted by virtue of~~
 28 ~~federal law from the interest rate, finance charge and licensure provisions~~
 29 ~~of the Kansas uniform consumer credit code, all other provisions of the~~
 30 ~~code shall apply to both the person and the loan transaction.~~

31 ~~(14)(19) Any person who enters into a consumer loan transaction~~
 32 ~~under this section shall file a report with the administrator each year~~
 33 ~~under oath or affirmation, in a uniform manner prescribed by the~~
 34 ~~administrator; such information as the administrator may require~~
 35 ~~concerning the person's business and operation for the preceding year.~~
 36 ~~The provisions of this subsection do not apply to a lender that is a~~
 37 ~~supervised financial organization.~~

38 *(20) The administrator shall publish and make available to the*
 39 *public, at least annually, an analysis of the information required in*
 40 *subsection (19). The published analysis shall include all of the following:*

- 41 *(a) Total number of borrowers;*
- 42 *(b) total number of loans;*
- 43 *(c) average loan size;*

- 1 (d) *total contracted finance charges;*
2 (e) *total actual finance charges paid;*
3 (f) *number of defaulted loans;*
4 (g) *number of charged-off loans;*
5 (h) *dollar value of charged-off loans;*
6 (i) *total number and dollar value of each of the following:*
7 (i) *Delinquency charges; and*
8 (ii) *service charges for insufficient checks;*
9 (j) *average contracted annual percentage rate;*
10 (k) *total number of locations;*
11 (l) *average number of borrowers per location;*
12 (m) *average number of days in contracted loan duration;*
13 (n) *average number of days in experienced loan duration; and*
14 (o) *total number of lenders that included a security interest in a*
15 *contract for a loan made under this section during the period and the*
16 *following information regarding such loans:*
17 (i) *The total number of loans subject to a security interest;*
18 (ii) *the total number of loans that resulted in repossession or*
19 *surrender of a motor vehicle;*
20 (iii) *the total number of loans that resulted in a borrower redeeming*
21 *a repossessed or surrendered motor vehicle;*
22 (iv) *the total number of repossessed or surrendered motor vehicles*
23 *that were sold;*
24 (v) *the total amount lenders received from the sale of repossessed or*
25 *surrendered vehicles; and*
26 (vi) *the unpaid amount of debt associated with loans that resulted in*
27 *the sale of repossessed or surrendered vehicles.*
28 (21) *The administrator may, from time to time, by regulation, adjust*
29 *the following amounts to reflect the rate of inflation from the previous date*
30 *that the dollar amount was established, as measured by the consumer*
31 *price index or other method of measuring the rate of inflation that the*
32 *administrator determines is reliable and generally accepted:*
33 (a) *The dollar amount of \$30 specified in subsection (1)(b); and*
34 (b) *the dollar amount of \$2,500 specified in subsection (2).*
35 (22) *As used in this section:*
36 (a) *"Charged-off loan" means a loan on which a lender has stopped*
37 *pursuing first-party collection efforts;*
38 (b) *"motor vehicle" means and includes all motor vehicles required to*
39 *be registered under the provisions of article 1 of chapter 8 of the Kansas*
40 *Statutes Annotated, and amendments thereto; and*
41 (c) *"related interest" means the same as "person related to" as*
42 *defined in K.S.A. 16a-1-301, and amendments thereto.*
43 (23) *This section shall be supplemental to and a part of the uniform*

1 consumer credit code.

2 Sec. 4. K.S.A. 16a-2-501 is hereby amended to read as follows: 16a-
3 2-501. (1) In addition to the finance charge permitted by the parts of this
4 article on maximum finance charges for consumer credit sales and
5 consumer loans (parts 2 and 4), a creditor may contract for and receive the
6 following additional charges in connection with a consumer credit
7 transaction:

8 (a) Official fees and taxes;

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

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

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

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

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

32 (ii) "Written notice" shall be presumed to have been given a drawer or
33 maker of an insufficient check when notice is sent by first class mail
34 addressed to the person to be given notice of such person's address as it
35 appears on the insufficient check or to such person's last known address or
36 notice provided on a regular monthly statement provides clear notice of the
37 insufficient check charge being assessed.

38 (iii) When an insufficient check has been given to a payee, the payee
39 may charge and collect a \$10 insufficient check service charge from the
40 drawer or maker, subject to limitations contained in this subsection or, if a
41 larger amount is provided within the contract, the larger amount, if the
42 payee has given the drawer or maker oral or written notice of demand that
43 the amount of the insufficient check plus the insufficient check service

1 charge be paid to the payee within 14 days from the giving of notice. In no
2 event shall the amount of such insufficient check service charge exceed
3 \$30.

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

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

15 (f) *This subsection shall not apply to consumer loans pursuant to*
16 *open end credit by persons required to be licensed under this act, unless*
17 *such loans are secured by:*

18 (i) *A first mortgage;*

19 (ii) *a second mortgage; or*

20 (iii) *an interest in a manufactured home as defined by 42 U.S.C. §*
21 *5402(6).*

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

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

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

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

42 (a) Fees on a monthly or annual basis;

43 (b) over-limit fees; and

1 (c) cash advance fees. The fees permitted under this subsection are in
2 addition to any finance charges, additional charges or other charges
3 permitted by the uniform consumer credit code. *Notwithstanding the*
4 *foregoing, with respect to a consumer loan pursuant to open end credit*
5 *that is not a loan secured by a dwelling as described in subsection (1)(f), a*
6 *person required to be licensed under this act may not charge the fees*
7 *permitted under this subsection, other than fees on a monthly or annual*
8 *basis in an amount not to exceed \$50 per year.*

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

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

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

19 Sec. 5. K.S.A. 16a-2-308, 16a-2-401, 16a-2-404 and 16a-2-501 are
20 hereby repealed.

21 Sec. 6. This act shall take effect and be in force from and after
22 January 1, 2022, and its publication in the statute book.