

HOUSE BILL No. 2241

By Committee on Financial Institutions and Pensions

1-31

1 AN ACT concerning financial institutions; relating to finance charges;
2 increasing the amount charged per annum on closed end credit
3 consumer loans; amending K.S.A. 16a-2-401 and repealing the existing
4 section.

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

7 Section 1. K.S.A. 16a-2-401 is hereby amended to read as follows:
8 16a-2-401. (1) For any consumer loan incurred pursuant to open end
9 credit, including, without limitation, a loan pursuant to a lender credit card,
10 a lender may charge a finance charge at any rate agreed to by the parties,
11 subject, however, to the limitations on prepaid finance charges set forth in
12 subsection (6). This subsection does not apply to a consumer loan secured
13 by a first mortgage or a second mortgage.

14 (2) For any consumer loan incurred pursuant to closed end credit, a
15 lender may charge a periodic finance charge, calculated ~~accordingly~~
16 *according* to the actuarial method, not to exceed ~~(a) 36% per annum on~~
17 ~~the portion of the unpaid balance which is \$860 or less, and (b) 21% per~~
18 ~~annum on the portion of the unpaid balance which exceeds \$860~~, subject,
19 however to the limitations on prepaid finance charges set forth in
20 subsection (6). This subsection does not apply to a consumer loan secured
21 by a first mortgage or a second mortgage.

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

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

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

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

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

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

16 Prepaid finance charges permitted under this subsection are in addition
17 to finance charges permitted under ~~subsection~~ subsections (1), (2), (3) and
18 (4), as applicable. Prepaid finance charges permitted under this subsection
19 are fully earned when paid and are non-refundable, unless the parties agree
20 otherwise in writing.

21 (7) The finance charge limitations in subsections (3) and (4) do not
22 apply to a consumer loan the finance charge for which is governed by
23 ~~subsection (h) of~~ K.S.A. 16-207(h), and amendments thereto.

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

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

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

42 (b) If a prepaid finance charge with respect to the original loan was
43 payable to the lender pursuant to ~~paragraph (b) of~~ subsection (6)(b), then

1 the aggregate amount of prepaid finance charges payable to the lender or
2 any person related to the lender with respect to the new loan may not
3 exceed the lesser of 2% of the additional amount financed or \$100.

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

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

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

16 (12) This section does not apply to a payday loan governed by K.S.A.
17 16a-2-404, and amendments thereto.

18 Sec. 2. K.S.A. 16a-2-401 is hereby repealed.

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