

SENATE BILL No. 100

By Committee on Financial Institutions and Insurance

1-28

1 AN ACT concerning the Uniform Consumer Credit Code; relating to
2 consumer loans; pertaining to definitions; certain finance charges;
3 amending K.S.A. 16a-1-301 and 16a-2-401 and repealing the existing
4 sections.
5

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

7 Section 1. K.S.A. 16a-1-301 is hereby amended to read as follows:
8 16a-1-301. In addition to definitions appearing in subsequent articles, in
9 K.S.A. 16a-1-101 through 16a-9-102, and amendments thereto:

10 (1) "Actuarial method" means the method of allocating payments
11 made on a debt between the principal and the finance charge pursuant to
12 which a payment is applied, assuming no delinquency charges or other
13 additional charges are then due, first to the accumulated finance charge
14 and then to the unpaid principal balance. When a finance charge is
15 calculated in accordance with the actuarial method, the contract rate is
16 applied to the unpaid principal balance for the number of days the
17 principal balance is unpaid. At the end of each computational period; or
18 fractional computational period, the unpaid principal balance is increased
19 by the amount of the finance charge earned during that period and is
20 decreased by the total payment, if any, made during the period after the
21 deduction of any delinquency charges or other additional charges due
22 during the period.

23 (2) "Administrator" means the deputy commissioner of the consumer
24 and mortgage lending division appointed by the bank commissioner
25 pursuant to K.S.A. 75-3135, and amendments thereto.

26 (3) "Agreement" means the bargain of the parties in fact as found in
27 their language or by implication from other circumstances, including
28 course of dealing or usage of trade or course of performance.

29 (4) "Amount financed" means the net amount of credit provided to
30 the consumer or on the consumer's behalf. The amount financed shall be
31 calculated as provided in rules and regulations adopted by the
32 administrator pursuant to K.S.A. 16a-6-117, and amendments thereto.

33 (5) "Annual percentage rate" means the finance charge expressed as a
34 yearly rate, as calculated in accordance with the actuarial method. The
35 annual percentage rate shall be calculated as provided in rules and
36 regulations adopted by the administrator pursuant to K.S.A. 16a-6-117,

1 and amendments thereto.

2 (6) "Appraised value" means, with respect to any real estate at any
3 time:

4 (a) The total appraised value of the real estate; as reflected in the most
5 recent records of the tax assessor of the county in which the real estate is
6 located;

7 (b) the fair market value of the real estate; as reflected in a written
8 appraisal of the real estate performed by a Kansas licensed or certified
9 appraiser within the past 12 months; or

10 (c) in the case of a nonpurchase money real estate transaction, the
11 estimated market value as determined through an automated valuation
12 model acceptable to the administrator. As used in this paragraph (c),
13 "automated valuation model" means an automated system that is used to
14 derive a property value through the use of publicly available property
15 records and various analytic methodologies such as comparable sales
16 prices, home characteristics and historical home price appreciations.
17 Automated valuation models must be validated by an independent credit
18 rating agency. An automated valuation model provider shall not accept a
19 property valuation assignment when the assignment itself is contingent
20 upon the automated valuation model provider reporting a predetermined
21 property valuation, or when the fee to be paid to the automated valuation
22 model provider is contingent upon the property valuation reached or upon
23 the consequences resulting from the property valuation assignment.

24 (7) "Billing cycle" means the time interval between periodic billing
25 statement dates.

26 (8) "Cash price" of goods, services; or an interest in land means the
27 price at which they are offered for sale by the seller to cash buyers in the
28 ordinary course of business and may include: (a) The cash price of
29 accessories or services related to the sale, such as delivery, installation,
30 alterations, modifications; and improvements; and (b) taxes to the extent
31 imposed on a cash sale of the goods, services; or interest in land. The cash
32 price stated by the seller to the buyer in a disclosure statement is presumed
33 to be the cash price.

34 (9) "Closed end credit" means a consumer loan or a consumer credit
35 sale which is not incurred pursuant to open end credit.

36 (10) "Closing costs" with respect to a debt secured by an interest in
37 land includes:

38 (a) The actual fees paid *to* a public official or agency of the state or
39 federal government; for filing, recording or releasing any instrument
40 relating to the debt; and

41 (b) bona fide and reasonable expenses incurred by the lender in
42 connection with the making, closing, disbursing, extending, readjusting or
43 renewing the debt which are payable to third parties not related to the

1 lender, except that reasonable fees for an appraisal made by the lender or
2 related party are permissible.

3 (11) "Code mortgage rate" means the greater of:

4 (a) 12%; or

5 (b) the sum of:

6 (i) The yield on 30-year fixed rate conventional home mortgage loans
7 committed for delivery within 61 to 90 days accepted under the federal
8 home loan mortgage corporation's or any successor's daily offerings for
9 sale on the last day on which commitments for such mortgages were
10 received in the previous month; and

11 (ii) 5%.

12 If the reference rate referred to in subparagraph (i) of paragraph (b) is
13 discontinued, becomes impractical to use, or is otherwise not readily
14 ascertainable for any reason, the administrator may designate a
15 comparable replacement reference rate and, upon publishing notice of the
16 same, such replacement reference rate shall become the reference rate
17 referred to in subparagraph (i) of paragraph (b). The secretary of state shall
18 publish notice of the code mortgage rate not later than the second issue of
19 the Kansas register published each month.

20 (12) "Conspicuous" means a term or clause ~~is conspicuous when it is~~
21 so written that a reasonable person against whom it is to operate ought to
22 have noticed it. Whether a term or clause is conspicuous or not is for
23 decision by the trier of fact.

24 (13) "Consumer" means the buyer, lessee; or debtor to whom credit is
25 granted in a consumer credit transaction.

26 (14) "Consumer credit sale":

27 (a) Except as provided in paragraph (b), ~~a "consumer credit sale"~~ is a
28 sale of goods, services; or an interest in land in which:

29 (i) Credit is granted either by a seller who regularly engages as a
30 seller in credit transactions of the same kind or pursuant to a credit card
31 other than a lender credit card;

32 (ii) the buyer is a person other than an organization;

33 (iii) the goods, services; or interest in land are purchased primarily for
34 a personal, family or household purpose;

35 (iv) either the debt is by written agreement payable in more than four
36 installments or a finance charge is made; and

37 (v) with respect to a sale of goods or services, the amount financed
38 does not exceed \$25,000.

39 (b) ~~A~~"Consumer credit sale" does not include:

40 (i) A sale in which the seller allows the buyer to purchase goods or
41 services pursuant to a lender credit card; or

42 (ii) a sale of an interest in land, unless the parties agree in writing to
43 make the transaction subject to the uniform consumer credit code.

1 (15) "Consumer credit transaction" means a consumer credit sale,
2 consumer lease, or consumer loan or a modification thereof including a
3 refinancing, consolidation, or deferral.

4 (16) "Consumer lease" means a lease of goods:

5 (a) Which a lessor regularly engaged in the business of leasing makes
6 to a person, other than an organization, who takes under the lease
7 primarily for a personal, family or household purpose;

8 (b) in which the amount payable under the lease does not exceed
9 \$25,000;

10 (c) which is for a term exceeding four months; and

11 (d) which is not made pursuant to a lender credit card.

12 (17) "Consumer loan":

13 (a) Except as provided in paragraph (b), ~~a "consumer loan"~~ is a loan
14 made by a person regularly engaged in the business of making loans in
15 which:

16 (i) The debtor is a person other than an organization;

17 (ii) the debt is incurred primarily for a personal, family or household
18 purpose;

19 (iii) either the debt is payable by written agreement in more than four
20 installments or a finance charge is made; and

21 (iv) either the amount financed does not exceed \$25,000 or the debt is
22 secured by an interest in land.

23 (b) Unless the loan is made subject to the uniform consumer credit
24 code by written agreement, a "consumer loan" does not include:

25 (i) A loan secured by a first mortgage unless:

26 (A) The loan-to-value ratio of the loan at the time when made
27 exceeds 100%, *except for loans that are guaranteed or insured by the*
28 *United States department of agriculture, the United States department of*
29 *veterans affairs, the rural housing service or the federal housing*
30 *administration*; or

31 (B) in the case of ~~subsection (1) of~~ K.S.A. 16a-3-308a(l), and
32 amendments thereto, the annual percentage rate of the loan exceeds the
33 code mortgage rate; or

34 (ii) a loan made by a qualified plan, as defined in section 401 of the
35 internal revenue code, to an individual participant in such plan or to a
36 member of the family of such individual participant.

37 (18) "Credit" means the right granted by a creditor to a debtor to defer
38 payment of debt or to incur debt and defer its payment.

39 (19) "Credit card" means any card, plate or other single credit device
40 that may be used from time to time to obtain credit. Since this involves the
41 possibility of repeated use of a single device, checks and similar
42 instruments that can be used only once to obtain a single credit extension
43 are not credit cards.

1 (20) "Creditor" means a person who regularly extends credit in a
2 consumer credit transaction which is payable by a written agreement in
3 more than four installments or for which the payment of a finance charge
4 is or may be required and is the person to whom the debt arising from the
5 consumer credit transaction is initially payable on the face of the evidence
6 of indebtedness or, if there is no such evidence of indebtedness, by written
7 agreement. In the case of credit extended pursuant to a credit card, the
8 creditor is the card issuer and not another person honoring the credit card.

9 (21) "Earnings" means compensation paid or payable to an individual
10 or for such individual's account for personal services rendered or to be
11 rendered by such individual, whether denominated as wages, salary,
12 commission, bonus, or otherwise, and includes periodic payments pursuant
13 to a pension, retirement; or disability program.

14 (22) "Finance charge" means all charges payable directly or indirectly
15 by the consumer and imposed directly or indirectly by the creditor as an
16 incident to or as a condition of the extension of credit. The finance charge
17 shall be calculated as provided in rules and regulations adopted by the
18 administrator pursuant to K.S.A. 16a-6-117, and amendments thereto.

19 (23) "First mortgage" means a first priority mortgage lien or similar
20 real property security interest.

21 (24) "Goods" includes goods not in existence at the time the
22 transaction is entered into and merchandise certificates, but excludes
23 money, chattel paper, documents of title; and instruments.

24 (25) Except as otherwise provided, "lender" includes an assignee of
25 the lender's right to payment, but use of the term does not in itself impose
26 on an assignee any obligation of the lender with respect to events
27 occurring before the assignment.

28 (26) "Lender credit card" means a credit card issued by a supervised
29 lender.

30 (27) "Loan":

31 (a) Except as provided in paragraph (b), a "loan" includes:

32 (i) The creation of debt by the lender's payment of or agreement to
33 pay money to the debtor or to a third party for the account of the debtor;

34 (ii) the creation of debt either pursuant to a lender credit card or by a
35 cash advance to a debtor pursuant to a credit card other than a lender credit
36 card;

37 (iii) the creation of debt by a credit to an account with the lender upon
38 which the debtor is entitled to draw immediately; and

39 (iv) the forbearance of debt arising from a loan.

40 (b) A "loan" does not include the payment or agreement to pay money
41 to a third party for the account of a debtor if the debt of the debtor arises
42 from a sale or lease and results from use of either a credit card issued by a
43 person primarily in the business of selling or leasing goods or services or

1 any other credit card which may be used for the purchase of goods or
2 services and which is not a lender credit card.

3 (28) "Loan-to-value ratio", at any time for any loan secured by an
4 interest in real estate, means a fraction expressed as a percentage:

5 (a) The numerator of which is the aggregate unpaid principal balance
6 of all loans secured by a first mortgage or a second mortgage encumbering
7 the real estate at such time; and

8 (b) the denominator of which is the appraised value of the real estate.

9 (29) "Merchandise certificate" means a writing issued by a seller not
10 redeemable in cash and usable in its face amount in lieu of cash in
11 exchange for goods or services.

12 (30) "Official fees" means:

13 (a) Fees and charges prescribed by law which actually are or will be
14 paid to public officials for determining the existence of or for perfecting,
15 releasing, or satisfying a security interest related to a consumer credit sale,
16 consumer lease, or consumer loan; or

17 (b) premiums payable for insurance in lieu of perfecting a security
18 interest otherwise required by the creditor in connection with the sale,
19 lease, or loan, if the premium does not exceed the fees and charges
20 described in paragraph (a) which would otherwise be payable.

21 (31) "Open end credit" means an arrangement pursuant to which:

22 (a) A creditor may permit a consumer, from time to time, to purchase
23 goods or services on credit from the creditor or pursuant to a credit card, or
24 to obtain loans from the creditor or pursuant to a credit card;

25 (b) the unpaid balance of amounts financed and the finance and other
26 appropriate charges are debited to an account;

27 (c) the finance charge, if made, is computed on the outstanding
28 unpaid balances of the consumer's account from time to time; and

29 (d) the consumer has the privilege of paying the balances in
30 installments.

31 (32) "Organization" means a corporation, limited liability company,
32 government or governmental subdivision or agency, trust, estate,
33 partnership, cooperative or association.

34 (33) "Person" includes a natural person or an individual, and an
35 organization.

36 (34) (a) "Person related to" with respect to an individual means: (i)
37 The spouse of the individual; (ii) a brother, brother-in-law, sister, or
38 sister-in-law of the individual; (iii) an ancestor or lineal descendant of the
39 individual or the individual's spouse; and (iv) any other relative, by blood,
40 adoption or marriage, of the individual or such individual's spouse who
41 shares the same home with the individual.

42 (b) "Person related to" with respect to an organization means: (i) A
43 person directly or indirectly controlling, controlled by or under common

1 control with the organization; (ii) an officer or director of the organization
2 or a person performing similar functions with respect to the organization
3 or to a person related to the organization; (iii) the spouse of a person
4 related to the organization; and (iv) a relative by blood, adoption or
5 marriage of a person related to the organization who shares the same home
6 with such person.

7 (35) "Prepaid finance charge" means any finance charge paid
8 separately in cash or by check before or at consummation of a transaction,
9 or withheld from the proceeds of the credit at any time. Prepaid finance
10 charges shall be calculated as provided in rules and regulations adopted by
11 the administrator pursuant to K.S.A. 16a-6-117, and amendments thereto.

12 (36) "Presumed" or "presumption" means that the trier of fact must
13 find the existence of the fact presumed unless and until evidence is
14 introduced which would support a finding of its nonexistence.

15 (37) "Principal" means the total of the amount financed and the
16 prepaid finance charges, except that prepaid finance charges are not added
17 to the amount financed to the extent such prepaid finance charges are paid
18 separately in cash or by check by the consumer. The administrator may
19 adopt rules and regulations regarding the determination or calculation of
20 the principal or the principal balance pursuant to K.S.A. 16a-6-117, and
21 amendments thereto.

22 (38) "Sale of goods" includes any agreement in the form of a bailment
23 or lease of goods if the bailee or lessee agrees to pay as compensation for
24 use a sum substantially equivalent to or in excess of the aggregate value of
25 the goods involved and it is agreed that the bailee or lessee will become, or
26 for no other or a nominal consideration has the option to become, the
27 owner of the goods upon full compliance with such bailee's or lessee's
28 obligations under the agreements.

29 (39) "Sale of an interest in land" includes a lease in which the lessee
30 has an option to purchase the interest and all or a substantial part of the
31 rental or other payments previously made by the lessee are applied to the
32 purchase price.

33 (40) "Sale of services" means furnishing or agreeing to furnish
34 services and includes making arrangements to have services furnished by
35 another.

36 (41) "Second mortgage" means a second or other subordinate priority
37 mortgage lien or similar real property security interest.

38 (42) ~~"Seller": Except as otherwise provided,~~ "Seller" includes, *except*
39 *as otherwise provided*, an assignee of the seller's right to payment, but use
40 of the term does not in itself impose on an assignee any obligation of the
41 seller with respect to events occurring before the assignment.

42 (43) "Services" includes: (a) Work, labor, and other personal
43 services; (b) privileges with respect to transportation, hotel and restaurant

1 accommodations, education, entertainment, recreation, physical culture,
2 hospital accommodations, funerals, cemetery accommodations, and the
3 like; and (c) insurance.

4 (44) "Supervised financial organization" means a person, other than
5 an insurance company or other organization, primarily engaged in an
6 insurance business:

7 (a) Organized, chartered, or holding an authorization certificate under
8 the laws of any state or of the United States which authorize the person to
9 make loans and to receive deposits, including a savings, share, certificate
10 or deposit account; and

11 (b) subject to supervision by an official or agency of such state or of
12 the United States.

13 (45) "Supervised lender" means a person authorized to make or take
14 assignments of supervised loans, either under a license issued by the
15 administrator ~~(, according to K.S.A. 16a-2-301, and amendments thereto),~~
16 or as a supervised financial organization ~~(subsection (44) of K.S.A. 16a-1-~~
17 ~~301(44), and amendments thereto).~~

18 (46) "Supervised loan" means a consumer loan, including a loan
19 made pursuant to open end credit, with respect to which the annual
20 percentage rate exceeds 12%.

21 (47) "Written agreement" means an agreement such as a promissory
22 note, contract or lease that is evidence of or relates to the indebtedness. A
23 letter that merely confirms an oral agreement does not constitute a written
24 agreement for purposes of this subsection unless signed by the person
25 against whom enforcement is sought.

26 (48) "Written administrative interpretation" means any written
27 communication from the consumer credit commissioner which is the
28 official interpretation as so stated in said written communication by the
29 consumer credit commissioner of the Kansas uniform consumer credit
30 code and rules and regulations pertaining thereto.

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

38 (2) For any consumer loan incurred pursuant to closed end credit, a
39 lender may charge a periodic finance charge, calculated accordingly to the
40 actuarial method, not to exceed: ~~(a) 36% per annum on the portion of the~~
41 ~~unpaid balance which is \$860 or less, and (b) 21% per annum on the~~
42 ~~portion of the unpaid balance which exceeds \$860, subject, however to the~~
43 limitations on prepaid finance charges set forth in subsection (6). This

1 subsection does not apply to a consumer loan secured by a first mortgage
2 or a second mortgage.

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

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

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

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

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

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

33 Prepaid finance charges permitted under this subsection are in addition
34 to finance charges permitted under subsection (1), (2), (3) and (4), as
35 applicable. Prepaid finance charges permitted under this subsection are
36 fully earned when paid and are non-refundable, unless the parties agree
37 otherwise in writing.

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

41 (8) If a loan secured by a first mortgage constitutes a "consumer loan"
42 ~~under subsection (17) of K.S.A. 16a-1-301(17)~~, and amendments thereto,
43 by virtue of the loan-to-value ratio exceeding 100% at the time the loan is

1 made, then the periodic finance charge for the loan shall not exceed that
2 authorized by ~~subsection (b) of K.S.A. 16-207(b)~~, and amendments
3 thereto, but the loan is subject to the limitations on prepaid finance charges
4 set forth in ~~paragraph (a) of subsection (6)(a)~~, which prepaid finance
5 charges may be charged in addition to the finance charges permitted under
6 ~~subsection (b) of K.S.A. 16-207(b)~~, and amendments thereto.

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

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

16 (b) If a prepaid finance charge with respect to the original loan was
17 payable to the lender pursuant to ~~paragraph (b) of subsection (6)(b)~~, 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 the lesser of 2% of the additional amount financed or \$100.

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

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

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

33 (12) This section does not apply to a payday loan governed by K.S.A.
34 16a-2-404, and amendments thereto.

35 Sec. 3. K.S.A. 16a-1-301 and 16a-2-401 are hereby repealed.

36 Sec. 4. This act shall take effect and be in force from and after its
37 publication in the statute book.