

## HOUSE BILL No. 2334

By Committee on Federal and State Affairs

2-12

1 AN ACT concerning the uniform consumer credit code; relating to cash  
2 advance consumer loan requirements; amending K.S.A. 16a-2-404 and  
3 repealing the existing section.

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

6 Section 1. K.S.A. 16a-2-404 is hereby amended to read as follows:  
7 16a-2-404. (1) On consumer loan transactions in which cash is advanced:

8 (a) With a short term,  
9 (b) a single payment repayment is anticipated, and  
10 (c) such cash advance is equal to or less than ~~\$500~~ \$1,000, a licensed  
11 or supervised lender may charge an amount not to exceed 15% of the  
12 amount of the cash advance.

13 (2) The minimum term of any loan under this section shall be ~~7 days~~  
14 ~~and the maximum term of any loan made under this section shall be 30~~  
15 ~~days:~~

16 (a) *No less than 60 days for any cash advance less than \$500; or*  
17 (b) *no less than 120 days for any cash advance that is equal to or*  
18 *greater than \$500.*

19 (3) A lender and related interest shall not have more than ~~two loans~~  
20 *one loan* made under this section outstanding to the same borrower at any  
21 one time and shall not make more than three loans to any one borrower  
22 within a ~~30~~ 60 calendar day period. Each lender shall maintain a journal of  
23 loan transactions for each borrower which shall include at least the  
24 following information:

25 (a) Name, address and telephone number of each borrower; and  
26 (b) date made and due date of each loan.

27 (4) Each loan agreement made under this section shall contain the  
28 following notice in at least 10 point bold face type: NOTICE TO  
29 BORROWER: KANSAS LAW PROHIBITS THIS LENDER AND  
30 THEIR RELATED INTEREST FROM HAVING MORE THAN ~~TWO~~  
31 ~~LOANS~~ *ONE LOAN* OUTSTANDING TO YOU AT ANY ONE TIME. A  
32 LENDER CANNOT DIVIDE THE AMOUNT YOU WANT TO  
33 BORROW INTO MULTIPLE LOANS IN ORDER TO INCREASE THE  
34 FEES YOU PAY.

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

36 (a) Provide the notice set forth in this subsection in both English and

1 Spanish; and

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

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

11 (6) Any loan made under this section shall not be repaid by proceeds  
12 of another loan made under this section by the same lender or related  
13 interest. The proceeds from any loan made under this section shall not be  
14 applied to any other loan from the same lender or related interest.

15 (7) On a consumer loan transaction in which cash is advanced in  
16 exchange for a personal check, one return check charge may be charged if  
17 the check is deemed insufficient as defined in ~~paragraph (c) of subsection~~  
18 ~~(1) of~~ K.S.A. 16a-2-501(1)(e), and amendments thereto. Upon receipt of  
19 the check from the consumer, the lender shall immediately stamp the back  
20 of the check with an endorsement that states: "Negotiated as part of a loan  
21 made under K.S.A. 16a-2-404. Holder takes subject to claims and defenses  
22 of maker. No criminal prosecution."

23 (8) *Any consumer loan transaction made under the provisions of this*  
24 *section shall become due on the first day after the expiration of the*  
25 *minimum term, as specified in subsection (2), on which the borrower*  
26 *receives compensation from employment, which is the principle income*  
27 *source of the borrower for repayment of the loan. If the borrower no*  
28 *longer receives such compensation, the loan shall become due seven days*  
29 *after the expiration of the minimum term, as specified in subsection (2).*

30 ~~(8)~~ (9) In determining whether a consumer loan transaction made  
31 under the provisions of this section is unconscionable conduct under  
32 K.S.A. 16a-5-108, and amendments thereto, consideration shall be given,  
33 among other factors, to:

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

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

38 ~~(9)~~ (10) A consumer may rescind any consumer loan transaction  
39 made under the provisions of this section without cost not later than the  
40 end of the business day immediately following the day on which the loan  
41 transaction was made. To rescind the loan transaction:

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

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

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

5 ~~(10)~~ (11) A person shall not commit or cause to be committed any of  
6 the following acts or practices in connection with a consumer loan  
7 transaction subject to the provisions of this section:

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

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

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

14 (iii) catalog sales; or

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

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

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

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

22 (i) A hold harmless clause;

23 (ii) a confession of judgment clause;

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

26 ~~(11)~~ (12) As used in this section, "related interest" shall have the  
27 same meaning as "person related to" in K.S.A. 16a-1-301, and  
28 amendments thereto.

29 ~~(12)~~ (13) Any person who facilitates, enables or acts as a conduit or  
30 agent for any third party who enters into a consumer loan transaction with  
31 the characteristics set out in ~~paragraphs (a) and (b) of subsection~~  
32 ~~subsections (1)(a) and (b)~~ shall be required to obtain a supervised loan  
33 license pursuant to K.S.A. 16a-2-301, and amendments thereto, regardless  
34 of whether the third party may be exempt from licensure provisions of the  
35 Kansas uniform consumer credit code.

36 ~~(13)~~ (14) Notwithstanding that a person may be exempted by virtue  
37 of federal law from the interest rate, finance charge and licensure  
38 provisions of the Kansas uniform consumer credit code, all other  
39 provisions of the code shall apply to both the person and the loan  
40 transaction.

41 ~~(14)~~ (15) This section shall be supplemental to and a part of the  
42 uniform consumer credit code.

43 Sec. 2. K.S.A. 16a-2-404 is hereby repealed.

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