



KANSAS BANKERS ASSOCIATION

Date: March 11, 2024

**To: House Committee on Financial Institutions and Pensions
Representative Nick Hoheisel, Chair**

**From: Kelly VanZwoll, Vice President – Government Relations
Kansas Bankers Association**

Re: HB 2812 – Verbal Proponent Testimony

Chairman Hoheisel and committee members, I am Kelly VanZwoll, VP- Government Relations and I am providing this testimony on behalf of the Kansas Bankers Association (KBA). Thank you for the opportunity to provide proponent testimony on HB 2812.

Kansas Bankers Association Background Information:

The KBA was founded in 1887 and is a voluntary, non-profit trade association governed by its membership. The KBA is headquartered in Topeka, Kansas, and is led by our 24-member board of directors. The KBA staff, which President/CEO Doug Wareham leads, includes 37 professionals, including 11 attorneys, that provide services to Kansas bankers ranging from legislative advocacy to educational training to insurance services to legal and regulatory compliance support. Our mission statement is direct and straightforward:

"Together, we support our member banks and bankers with leadership, advocacy, and education to benefit the communities and customers they serve."

KBA's membership includes 98% of the headquartered banks in Kansas. Our membership also includes 20 out-of-state commercial banks operating in Kansas and seven savings and loans. Our member banks employ more than 22,000 Kansans that provide financial services in every county across the state. While our member banks range in assets from the smallest in our state to the largest in our state, each member bank that belongs to the KBA has one vote on policy positions adopted by either our general membership or our Board of Directors. One member, one vote.

History and Scope of the UCCC

The Uniform Consumer Credit Code (UCCC) was originally created by the National Conference of Commissioners on Uniform State Laws with the intent that it would be passed by every state legislature, making it "uniform" across the states. In reality only a few states passed the UCCC and it has never been truly uniform. Kansas first passed the UCCC in 1973. The 1999 legislature made sweeping changes to the code and few additional changes have been made since that time. The Office of the State Bank Commissioner (OSBC) did revise the official commentary to the code in 2010.

There are a few key points to remember as we work through the UCCC:

1. The UCCC is a consumer protection law covering most consumer purpose loans. It is completely different from the Uniform Commercial Code (UCC), which covers a variety of business-related transactions. Consumer purpose loans are loans made by a person regularly engaged in the business of making loans to individuals primarily for personal, family, or household purposes.
2. Unless explicitly stated, these rules only apply to loans that fall under the UCCC by definition or because the loan is contracted under the UCCC.
3. While the UCCC covers most consumer purpose loans, the following are specifically excluded: (a) non-real estate loans which exceed \$25,000; and (b) first mortgages (regardless of amount, with some exceptions).

Kansas Bankers Association Proposed Changes

Since the last major update of the UCCC in 1999, there have been many changes to federal and state law. The goal of this proposal is to bring Kansas law back into alignment with federal and state law and to make it easier for lenders and consumers to work with the UCCC. The KBA is supportive of the bill as a whole and is grateful to the many stakeholders and interested parties who worked together to come up with this comprehensive update. Our testimony will focus on the changes the KBA proposed to the working group.

1. Change the allowed finance charge rate for a consumer loan from a blended rate to a flat rate of 36% (K.S.A. 16a-2-401)

Under current law, for closed-end non-real estate loans, the maximum UCCC rate is 36% on the first \$860 and 21% on the amounts over \$860. However, loans secured by manufactured homes are capped at 18%. For non-real estate open-end loans (such as credit cards and overdraft lines), there is no statutory rate limit.

This proposal would change the rate on a closed-end non-real estate loan to a flat rate of 36% on the full amount. The current blended rate is difficult for lenders, auditors, and regulators to calculate. Many states have moved away from the blended rate and 18 states allow a rate of 36% or above on all loans. This change will make Kansas institutions more competitive with our surrounding states that have moved away from the blended rate. This change will also increase the likelihood that financial institutions will make more of these loans and will give those with lower credit another financing option.

2. Resolve the discrepancy between Truth in Lending (Regulation Z) and the UCCC regarding the prohibition against the pyramiding of late fees. (K.S.A. 16a-2-502)

There is a difference in what federal law, Regulation Z, defines as the pyramiding of late fees versus the UCCC definition. Currently under the UCCC, if a payment is paid on or within the grace period of an installment, it is considered made for that installment. If it is applied to an earlier missed payment, a late fee cannot be taken on the current period. However, for mortgage loans not under the UCCC, Regulation Z controls. Let's walk through a hypothetical to see the difference and where this becomes an issue:

Assume an installment payment is due on the first day of each month. The borrower makes a payment on March 1st, but fails to make a payment on April 1st. The borrower doesn't make a payment until May 4th. The May 4th payment was made within ten days after the May 1st installment due date so it is considered a timely May 1st payment and no late fee can be assessed for May 1st. The full payment is applied to the May 1st installment. The financial institution can still assess a late fee for the missed April 1st payment.

In the above example, the UCCC says that you cannot take a late fee for the current payment period if the customer makes a payment on or within the grace period of the due date of the current payment, even though previous installments are still unpaid. Regulation Z, however, says if the customer doesn't make the previously missed month's payment, you can apply the payment that was made in the current payment period to the previously missed payment and take a late fee for the current month. Regulation Z would only find that illegal pyramiding had occurred if the financial institution took a late fee for the current period, when the only remaining unpaid dollar amount in the previous month was the previous month's late fee.

To summarize the issue, the UCCC would find that a financial institution has illegally pyramided a late fee in situations where Regulation Z would allow it. This error could cause a financial institution to have to refund fees and pay penalties to the consumer for applying the wrong law. Some financial institution's operating systems are unable to apply the UCCC rules to UCCC loans and the Regulation Z rules to non-UCCC mortgage loans. Currently, financial institutions that cannot apply both are defaulting to the UCCC rule. However, it has come to our attention that the companies that create the forms that creditors use are drafting the forms to comply with federal law, rather than taking into account this state law variation. This change will simplify the late fee rules and make it easier for financial institutions to set up their operating systems and forms under Regulation Z's rule.

3. Resolve the discrepancy in the definition of "earnings" between the Kansas garnishment statute (K.S.A. 60-2310) and the UCCC. (K.S.A.16a-1-301)

In 2021, the Kansas Supreme Court decided a garnishment case that impacted a creditor's ability to garnish the funds held in a deposit account that represented earnings deposited to the account. The Court found that "earnings" under state law included funds paid or earned

by an employee. In response to the court case, in May 2023, the Kansas legislature passed House Bill 2608 which revised the definition of “earnings” and removed the phrase “paid or.” Unfortunately, the UCCC utilized the same “paid or payable” definition. In addition, the UCCC prohibits a creditor from taking an assignment of earnings of the consumer for payment or security for payment of a debt arising out of a consumer credit transaction. As a result, creditors are now unable to take a deposit account as collateral that contains funds that are being paid to a person as earnings through direct deposit to the account. The proposed definition would define “earnings” as “compensation payable to an individual for personal services rendered or to be rendered by such individual, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension, retirement, or disability program.” This proposed change would match the two definitions and provide clarity for financial institutions who take CDs or deposit accounts as collateral on loans.

4. Bring the thresholds for consumer loans and leases in conformance with the thresholds found in Regulation Z. (K.S.A. 16a-1-301)

Currently the UCCC definition of a consumer loan and a consumer lease both include a threshold amount to fall under this code. To be considered a UCCC consumer loan or lease the amount financed cannot exceed \$25,000. This threshold amount has not been increased since it was enacted in 1973. Regulation Z also has a threshold amount, however that amount has been increased annually and as of January 1, 2024 it is now \$69,500. This proposed change would match the UCCC threshold amount to the Regulation Z threshold amount of \$69,500. This change will benefit consumers because the code will now include loans from \$25,000 to \$69,500 under the UCCC. Once changed, these consumers will receive both the UCCC and Regulation Z consumer protections.

5. Clarify the reference of “days” to “calendar days.” (K.S.A. 16a-2-502)

K.S.A. 16a-2-502 covers when a consumer can be charged a late fee for a missed installment payment. Currently the bill states that a late fee can be charged “on any installment not paid within 10 days after its scheduled or deferred due date.” This bill would amend days to “calendar days” to make it clear to all parties that the dates would follow the calendar days, and not the business days, schedule. This change will make it clearer for both the lenders and the customers when a late fee would be charged. Additionally, the proposed language in this section changes the term “delinquency charge” to “late fee.” This change is intended to match language in federal law, specifically in Regulation Z.

6. Increase the maximum dollar amount chargeable for a prepaid finance charge for non-real estate consumer transactions. (K.S.A. 16a-2-201)

The current statute sets the finance charge for a closed-end non-real estate loan at “the lesser of 2% of the amount financed or \$100.” The 1999 updates eliminated the term “origination

fee” and implemented “prepaid finance charge.” A finance charge is prepaid if it is (1) paid separately in cash or by check before or at closing or (2) withheld from the proceeds at any time.

The proposed bill would increase the amount chargeable for a finance charge for non-real estate consumer transactions to “the lesser of 2% of the amount financed or \$300.” This amount has not been adjusted since 1999 and since then the cost of doing business has greatly increased. The increase of regulatory and legal compliance and I.T. security have greatly impacted all financial institutions. The current limit is not feasible when you take into consideration the actual cost of making these loans. One example of this is that in 1999 it cost about \$10 to pull a credit report, and today it costs about \$50. Increasing this maximum allowed charge will increase the ability for financial institutions to make these small dollar loans.

7. Eliminate the 100% loan to value ratio limitation for loans guaranteed by federal government agencies. (K.S.A. 16a-1-301)

The Federal government has some loans programs where they completely guarantee the loan and allow that loan to exceed the 100% loan to value ratio. An example of this type of loan program is the USDA Rural Development Home Loans. Currently many financial institutions participate in the USDA Rural Development Home Loans program and have loans that exceed the 100% loan to value ratio as allowed by the program. Under the current definition, if a consumer loan meets the other requirements and exceeds the 100% loan to value ratio, it falls under the UCCC. This becomes an issue for a financial institution who wants or needs to sell the loan to the secondary market. A loan that is under a state law, such as the UCCC, is not marketable to the secondary market and will have to remain on the financial institution’s books. If the proposed change is made, then loans that meet the necessary requirements and exceed the 100% loan to value ratio would not fall under the UCCC if they are guaranteed by a federal government agency of the United States. This change will make these loans more marketable on the secondary market and will make them more attractive for Kansas financial institutions.

Thank you for the opportunity to provide proponent testimony and we appreciate your consideration. We respectfully request that when the Committee takes action on HB 2812 it act favorably. I would be happy to stand for questions at the appropriate time, but if later you have questions or require additional information, please contact me at kvanzwoll@ksbankers.com or (785) 232-3444.

Uniform Consumer Credit Code Modernization Bill Summary

The Uniform Consumer Credit Code (UCCC) is a consumer protection law covering most consumer credit, including loans to individuals primarily for personal, family, or household purposes. In general, transactions greater than \$25,000 are outside the scope of the UCCC, but any transaction may become a consumer credit transaction if the parties to the agreement choose to do so.

In 1999 the Kansas legislature made sweeping changes to the UCCC and since then few changes have been made. Many of these long-awaited changes will put the UCCC in alignment with federal regulations and make it easier for lenders to comply with both state and federal laws.

This bill will:

- Resolve the discrepancy between the definition of “earnings” between the Kansas garnishment statute and the UCCC;
- Change the allowed finance charge on a closed-end non-real estate loan from a blended rate to a flat 36% rate;
- Increase the threshold amount for all consumer credit transactions from \$25,000 to \$69,500 to match Regulation Z which is annually updated;
- Clarify the reference of “days” to “calendar days” regarding late fees;
- Resolve the discrepancy between Regulation Z and the UCCC regarding the prohibition against pyramiding late fees;
- Increase the maximum prepaid finance charge on non-real estate consumer credit transactions to the lesser of 2% of the amount financed or \$300;
- Eliminate the 100% loan-to-value limitation for loans guaranteed by a federal government agency;
- Move all portions of the UCCC that relate to mortgages into the Kansas Mortgage Business Act;
- Amend the ban on credit card surcharges to allow a surcharge if the customer receives proper notice at the point of sale or in advance of the transaction;
- Provide for an annual extended payment plan option for consumers unable to repay a payday loan;
- Modify the statute to allow the UCCC administrator to abandon a license application if it is incomplete after 60 days following written notice to the applicant;
- Clarify expiration date of licenses as December 31, requirement that a renewal application and fee are due by December 1, and that a late fee may be assessed after the due date;
- Include a reinstatement period through the last day of February of each year without a lapse in the license coverage;
- Clarify that any renewal or reinstatement application received after the reinstatement period will be treated as an original application and be subject to reporting and fees;
- Clarify that late fees paid by the licensee may be designated by the administrator for consumer education;
- Exempt supervised loan licenses from certain notification filing;
- Modify the recordkeeping requirements to require books and records be delivered within three business days; and
- Add language allowing the administrator of the UCCC to enter into an informal agreement with a person to resolve a matter arising under the act.