

**16a-2-401. Finance charge for consumer loan; loan secured by mortgage or interest in manufactured home; prepaid finance charges.** (1) For any consumer loan incurred pursuant to open end credit, including, without limitation, a loan pursuant to a lender credit card, a lender may charge a finance charge at any rate agreed to by the parties, subject, however, to the limitations on prepaid finance charges set forth in subsection (6). This subsection does not apply to a consumer loan secured by a first mortgage or a second mortgage.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**History:** L. 1973, ch. 85, § 27; L. 1974, ch. 91, § 1; L. 1975, ch. 126, § 1; L. 1980, ch. 76, § 9; L. 1980, ch. 77, § 3; L. 1981, ch. 94, § 3; L. 1982, ch. 94, § 1; L. 1983, ch. 79, § 3; L. 1985, ch. 82, § 3; L. 1986, ch. 90, § 1; L. 1988, ch. 85, § 6; L. 1988, ch. 86, § 3; L. 1988, ch. 87, § 2; L. 1993, ch. 200, § 7; L. 1995, ch. 54, § 2; L. 1999, ch. 107, § 15; L. 2000, ch. 27, § 3; L. 2000, ch. 159, § 1; July 1.