

2018 Kansas Statutes

16a-5-201. (UCCC) Effect of violations on rights of parties. (1) If a creditor has violated the provisions of this act applying to collection of excess charges or enforcement of rights (subsection (4) of section 16a-1-201), restrictions on interests in land as security (section 16a-2-307), limitations on the schedule of payments or loan terms for supervised loans (section 16a-2-308), attorney's fees (section 16a-2-507), security in sales and leases (section 16a-3-301), assignments of earnings (section 16a-3-305), authorizations to confess judgment (section 16a-3-306), certain negotiable instruments prohibited (section 16a-3-307), assignees subject to defenses (section 16a-3-404), credit card issuer subject to defenses (section 16a-3-403), or limitations on default charges (section 16a-3-402), the consumer has a cause of action to recover actual damages and in addition a right in an action other than a class action to recover from the person violating such provisions of this act a penalty in an amount determined by the court not less than \$100 nor more than \$1,000. With respect to violations arising from sales or loans made pursuant to open end credit, no action pursuant to this subsection may be brought more than two years after the violations occurred. With respect to violations arising from other consumer transactions, no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement.

(2) If a creditor has violated the provisions of this act applying to authority to make supervised loans (section 16a-2-301), the loan is void and the consumer is not obligated to pay either the amount financed or finance charge. If the consumer has paid any part of the amount financed or of the finance charge, the consumer has a right to recover the payment from the person violating this act or from an assignee of that person's rights who undertakes direct collection of payments or enforcement of rights arising from the debt. With respect to violations arising from loans made pursuant to open end credit, no action pursuant to this subsection may be brought more than two years after the violation occurred. With respect to violations arising from other loans, no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was paid. Persons subject to the penalties in this subsection shall not include attorneys or collection agencies who do not purchase a consumer obligation.

(3) A consumer is not obligated to pay a charge in excess of that allowed by this act, and if the consumer has paid an excess charge the consumer has a right to a refund of twice the excess charge. A refund may be made by reducing the consumer's obligation by twice the amount of the excess charge. If the consumer has paid an amount in excess of the lawful obligation under the agreement, the consumer may recover twice the excess amount from the person who made the excess charge or from an assignee of that person's rights who undertakes direct collection of payments from or enforcement of rights against debtors arising from the debt. Persons subject to the penalties in this subsection shall not include attorneys or collection agencies who do not purchase a consumer obligation.

(4) If a creditor has contracted for or received a charge in excess of that allowed by this act, or if a consumer is entitled to a refund and a person liable to the consumer refuses to make a refund within a reasonable time after demand, the consumer may recover from the creditor or the person liable in an action other than a class action a penalty in an amount determined by the court not less than \$100 or more than \$1,000. With respect to excess charges arising from sales or loans made pursuant to open end credit, no action pursuant to this subsection may be brought more than two years after the time the excess charge was made. With respect to excess charges arising from other consumer credit transactions no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was made. Persons subject to the penalties in this subsection shall not include attorneys or collection agencies who do not purchase a consumer obligation.

(5) Except as otherwise provided, no violation of the provisions of K.S.A. 16a-1-101 through 16a-9-102, and amendments thereto, impairs rights on a debt.

(6) A creditor has no liability for a penalty under subsection (1) or subsection (4) if within 15 days after discovering an error, and prior to the institution of an action under this section or the receipt of written notice of the error, the creditor notifies the person concerned of the error and corrects the error. If the violation consists of a prohibited agreement, giving the consumer a corrected copy of the writing containing the error is sufficient notification and correction. If the violation consists of an excess charge, correction shall be made by an adjustment or refund.

(7) If the creditor establishes by a preponderance of evidence that a violation is unintentional or the result of a bona fide error of law or fact notwithstanding the maintenance of procedures reasonably adapted to avoid any such violation or error, no liability is imposed under subsections (1), (2), and (3), the validity of the transaction is not affected, and no liability is imposed under subsection (4) except for refusal to make a refund.

(8) In an action in which it is found that a creditor has violated any provision of K.S.A. 16a-1-101 through 16a-9-102, and amendments thereto, the court shall award to the consumer the costs of the action and to the consumer's attorneys their reasonable fees. Reasonable attorney's fees shall be determined by the value of the time reasonably expended by the attorney and not by the amount of the recovery on behalf of the consumer.

(9) A creditor who in good faith complies with a written administrative interpretation shall not be subject to any penalties under this section for any act done or omitted in conformity with such written administrative interpretation.

History: L. 1973, ch. 85, § 89; L. 1992, ch. 80, § 2; July 1.