

## Chapter 16.---CONTRACTS AND PROMISES

### Article 1.---General Provisions

#### **K.S.A. 16-117. Credit agreements; definitions.**

As used in this act:

(a) "Credit agreement" means an agreement by a financial institution to lend or delay repayment of money, goods or things in action, to otherwise extend credit or to make any other financial accommodation. For purposes of this act the term "credit agreement" does not include the following agreements: Open-end or closed-end promissory notes, real estate mortgages, security agreements, guaranty agreements, letters of credit, deposit account agreements, agreements in connection with deposit accounts for the payment of overdrafts, agreements in connection with student loans insured or guaranteed pursuant to the federal higher education act of 1965 and acts amendatory thereof and supplementary thereto, and agreements in connection with "lender credit cards" as defined in the uniform consumer credit code;

(b) "creditor" means a financial institution which extends credit or extends a financial accommodation under a credit agreement with a debtor;

(c) "debtor" means a person who obtains credit or receives a financial accommodation under a credit agreement with a financial institution; and

(d) "financial institution" means a bank, savings and loan association, savings bank or credit union.

**History:** L. 1988, ch. 55, § 1; L. 1989, ch. 70, § 1; L. 1998, ch. 56, § 1; July 1.

#### **K.S.A. 16-118. Same; requirements; failure to comply.**

(a) A debtor or a creditor may not maintain an action for legal or equitable relief or a defense, based in either case upon a failure to perform on an alleged credit agreement, unless the material terms and conditions of the agreement are in writing and signed by the creditor and the debtor.

(b) All credit agreements shall contain a clear, conspicuous and printed notice to the debtor that states that the written credit agreement is a final expression of the credit agreement between the creditor and debtor and such written credit agreement may not be contradicted by evidence of any prior oral credit agreement or of a contemporaneous oral credit agreement between the creditor and debtor. A written credit agreement shall contain a sufficient space for the placement of nonstandard terms, including the reduction to writing of a previous oral credit agreement and an affirmation, signed or initialed by the debtor and the creditor, that no unwritten oral credit agreement between the parties exists.

(c) Failure to comply with provisions of subsections (a) and (b) shall preclude an action or defense based on any of the following legal or equitable theories: (1) An implied agreement based on course of dealing or performance or on a fiduciary relationship; (2) promissory or equitable estoppel; (3) part performance; or (4) negligent representation.

**History:** L. 1988, ch. 55, § 2; L. 1989, ch. 70, § 2; L. 1998, ch. 56, § 2; July 1.

## Article 2.---Interest and Charges

### **K.S.A. 16-201. Legal rate of interest.**

Creditors shall be allowed to receive interest at the rate of ten percent per annum, when no other rate of interest is agreed upon, for any money after it becomes due; for money lent or money due on settlement of account, from the day of liquidating the account and ascertaining the balance; for money received for the use of another and retained without the owner's knowledge of the receipt; for money due and withheld by an unreasonable and vexatious delay of payment or settlement of accounts; for all other money due and to become due for the forbearance of payment whereof an express promise to pay interest has been made; and for money due from corporations and individuals to their daily or monthly employees, from and after the end of each month, unless paid within fifteen days thereafter.

**History:** L. 1889, ch. 164, § 1; L. 1980, ch. 74, § 1; July 1.

### **K.S.A. 16-204. Interest on judgments.**

Except as otherwise provided in accordance with law, and including any judgment rendered on or after July 1, 1973, against the state or any agency or political subdivision of the state:

(a) Any judgment rendered by a court of this state before July 1, 1980, shall bear interest as follows:

- (1) On and after the day on which the judgment is rendered and before July 1, 1980, at the rate of 8% per annum;
- (2) on and after July 1, 1980, and before July 1, 1982, at the rate of 12% per annum;
- (3) on and after July 1, 1982, and before July 1, 1986, at the rate of 15% per annum; and
- (4) on and after July 1, 1986, at the rate provided by subsection (e).

(b) Any judgment rendered by a court of this state on or after July 1, 1980, and before July 1, 1982, shall bear interest as follows:

- (1) On and after the day on which the judgment is rendered and before July 1, 1982, at the rate of 12% per annum;
- (2) on and after July 1, 1982, and before July 1, 1986, at the rate of 15% per annum; and
- (3) on and after July 1, 1986, at the rate provided by subsection (e).

(c) Any judgment rendered by a court of this state on or after July 1, 1982, and before July 1, 1986, shall bear interest as follows:

- (1) On and after the day on which the judgment is rendered and before July 1, 1986, at the rate of 15% per annum; and
- (2) on and after July 1, 1986, at the rate provided by subsection (e).

(d) Any judgment rendered by a court of this state on or after July 1, 1986, shall bear interest on and after the day on which the judgment is rendered at the rate provided by subsection (e).

(e) (1) Except as otherwise provided in this subsection, on and after July 1, 1996, the rate of interest on judgments rendered by courts of this state pursuant to the code of civil procedure shall be at a rate per annum:

- (A) Which shall change effective July 1 of each year for both judgments rendered prior to such July 1 and judgments rendered during the twelve-month period beginning such July 1; and

- (B) which is equal to an amount that is four percentage points above the discount rate (the charge on loans to depository institutions by the New York federal reserve bank as reported in the money rates column of the Wall Street Journal) as of July 1 preceding the date the judgment was rendered. The secretary of state shall publish notice of the interest rate provided by this subsection (e) (1) not later than the second issue of the Kansas register published in July of each year.
- (2) On and after the effective date of this act, the rate of interest on judgments rendered by courts of this state pursuant to the code of civil procedure for limited actions shall be 12% per annum.
- (3) On and after July 1, 1996, it shall be presumed that applying interest at the rate of 10% per annum will result in the correct total of interest accrued on any judgments, regardless of when the judgments accrued, arising from a person's duty to support another person. The burden of proving that a different amount is the correct total shall lie with any person contesting the presumed amount.

**History:** L. 1889, ch. 164, § 4; R.S. 1923, 41-104; L. 1969, ch. 114, § 1; L. 1973, ch. 84, § 1; L. 1980, ch. 74, § 2; L. 1982, ch. 88, § 1; L. 1986, ch. 89, § 1; L. 1996, ch. 229, § 160; July 1.

**K.S.A. 16-205. Interest rates or charges; contract rates continue until payment in full; judgments; excess rates and charges void.**

(a) When a rate of interest or charges is specified in any contract, that rate shall continue until full payment is made, and any judgment rendered on any such contract shall bear the same rate of interest or charges mentioned in the contract, which rate shall be specified in the judgment; but in no case shall such rate or charges exceed the maximum rate or amount authorized by law, and any bond, note, bill, or other contract for the payment of money, which in effect provides that any interest or charges or any higher rate of interest or charges shall accrue as a penalty for any default, shall be void as to any such provision.

(b) Judgments taken in accordance with the provisions of subsection (a) shall be expressed as follows:

- (1) Judgments upon interest-bearing contracts shall provide (i) the unpaid principal balance, (ii) the date to which interest is paid, (iii) the contract rate of interest and (iv) that the unpaid principal balance shall draw the contract rate of interest from the date to which interest is paid until payment in full.
- (2) Judgments upon precomputed interest-bearing contracts shall provide: (i) The unpaid principal balance shall be ascertained by deducting from the remaining total of payments owed on the contract that portion of the precomputed finance charges that are unearned as of the date of acceleration of the maturity of the contract, as provided in K.S.A. 16a-2-510 for computing the unearned portion of precomputed finance charges in the event of prepayment in full. Any delinquency or deferral charges added to the unpaid balance subsequent to the date of acceleration shall be first deducted from the unpaid balance prior to any such acceleration. The contract shall be accelerated as of the date provided for in the provisions of the contract, or if the contract does not provide for the date on which the contract shall be accelerated, it shall be accelerated as of the actual date of any such acceleration; (ii) the date to which interest is paid, which date shall be the maturity date of the next installment due after the date of acceleration, except those contracts which are accelerated on an installment due date which shall

be the date of acceleration; the date to which interest is paid for those contracts that have matured prior to judgment shall be calculated from maturity date of the contract; (iii) the contract rate of interest; and (iv) that the unpaid principal balance shall draw the contract rate of interest from the date to which interest is paid until payment in full.

(3) Judgments upon contracts where the finance charges are computed in dollars per hundred and added on to the original balance to be financed shall provide:

(i) The unpaid principal balance shall be ascertained by deducting from the remaining total of payments owed on the contract that portion of the precomputed finance charges that are unearned as of the date of acceleration of the maturity of the contract as provided in K.S.A. 16a-2-510 for computing the unearned portion of precomputed finance charges in the event of prepayment in full. Any delinquency or deferral charges added to the unpaid balance subsequent to the date of acceleration shall be first deducted from the unpaid balance prior to any such acceleration. The contract shall be accelerated as of the date provided for in the provisions of the contract, or if the contract does not provide for the date on which the contract shall be accelerated, it shall be accelerated as of the actual date of any acceleration;

(ii) the date to which interest is paid, which date shall be the maturity date of the next installment due after the date of acceleration, except those contracts which are accelerated on an installment due date which shall be the date of acceleration; the date to which interest is paid for those contracts that have matured prior to judgment shall be calculated from the maturity date of the contract;

(iii) the contract rate of interest expressed as an annual percentage figure, which may be taken from the contract if it discloses the annual percentage rate, or it shall be ascertained in accordance with the constant ratio method which is mathematically expressed as follows:

$$2mc \quad R = \frac{\quad}{p(n + 1)} \quad \text{where}$$

R = rate of charge

m = number of payment periods in one year

n = number of payments to discharge the debt

c = charge in dollars

p = principal or cash advanced

and (iv) that the unpaid principal balance shall draw the contract rate of interest as determined herein from the date to which interest is paid until payment in full.

**History:** L. 1889, ch. 164, § 5; R.S. 1923, 41-105; L. 1955, ch. 135, § 27; L. 1974, ch. 90, § 1; L.1976, ch. 96, §1; July 1.

**K.S.A. 16-207. Contract rate; penalties for prepayment of certain loans, recording fees; contracting for interest in excess of limitation, penalties, attorney fees; loans excluded.**

(a) Subject to the following provision, the parties to any bond, bill, promissory note or other instrument of writing for the payment or forbearance of money may stipulate therein for interest receivable upon the amount of such bond, bill, note or other instrument of writing, at a rate not to exceed 15% per annum unless otherwise specifically authorized by law.

(b) No penalty shall be assessed against any party for prepayment of any home loan evidenced by a note secured by a real estate mortgage where such prepayment is made more than six months after execution of such note.

(c) The lender may collect from the borrower:

- (1) The actual fees paid a public official or agency of the state, or federal government, for filing, recording or releasing any instrument relating to a loan subject to the provisions of this section; and
- (2) reasonable expenses incurred by the lender in connection with the making, closing, disbursing, extending, readjusting or renewing of loans subject to the provisions of this section.

(d) Any person so contracting for a greater rate of interest than that authorized by this section shall forfeit all interest so contracted for in excess of the amount authorized under this section; and in addition thereto shall forfeit a sum of money, to be deducted from the amount due for principal and lawful interest, equal to the amount of interest contracted for in excess of the amount authorized by this section and such amounts may be set up as a defense or counterclaim in any action to enforce the collection of such obligation and the borrower shall also recover a reasonable attorney fee.

(e) The interest rates prescribed in subsection (a) shall not apply to a business or agricultural loan. For the purpose of this section unless a loan is made primarily for personal, family or household purposes, the loan shall be considered a business or agricultural loan. For the purpose of this subsection, a business or agricultural loan shall include credit sales and notes secured by contracts for deed to real estate.

(f) Loans made by a qualified plan, as defined in section 401 of the internal revenue code, to an individual participant in such plan or to a member of the family of such individual participant, are not subject to the interest rates prescribed in subsection (a).

(g) The interest rates prescribed in subsection (a) shall not apply to a note secured by a real estate mortgage or a contract for deed to real estate where the note or contract for deed permits adjustment of the interest rate, the term of the loan or the amortization schedule.

(h) A first mortgage loan incurred for personal, family or household purposes may be subject to certain provisions of the uniform consumer credit code, K.S.A. 16a-1-101 to 16a-9-102, and amendments thereto, as follows:

- (1) Certain high loan-to-value first mortgage loans are subject to the provisions of the uniform consumer credit code, other than its usury provisions. Examples of provisions of the uniform consumer credit code applicable to high loan-to-value first mortgage loans include, but are not limited to: Limitations on prepaid finance charges; mandatory appraisals; required disclosures; restrictions on balloon payments and negative amortization; limitations on late fees and collection costs; and mandatory default notices and cure rights.
- (2) Certain high interest rate first mortgage loans are subject to certain provisions of the uniform consumer credit code, including, without limitation, provisions which impose restrictions on balloon payments and negative amortization.
- (3) If the parties to a first mortgage loan agree in writing to make the transaction subject to the uniform consumer credit code, than all applicable provisions of the uniform consumer credit code, including its usury provisions, apply to the loan.

This subsection is for informational purposes only and does not limit or expand the scope of the uniform consumer credit code.

(i) Subsections (b), (c) and (d) of this section do not apply to a first mortgage loan if:

- (1) The parties agree in writing to make the transaction subject to the uniform consumer credit code, K.S.A. 16a-1-101 to 16a-9-102, and amendments thereto; or

(2) the loan is a high loan-to-value first mortgage loan subject to any provision of the uniform consumer credit code.

In the case of a loan described in paragraphs (1) or (2), the applicable provisions of the uniform consumer credit code shall govern the loan in lieu of subsections (b), (c) and (d).

**History:** L. 1969, ch. 112, § 36; L. 1973, ch. 85, § 132; L. 1975, ch. 125, § 1; L. 1978, ch. 72, § 1; L. 1980, ch. 75, § 1; L. 1980, ch. 76, § 2; L. 1981, ch. 88, § 1; L. 1982, ch. 89, § 1; L. 1983, ch. 74, § 1; L. 1999, ch. 107, § 5; L. 2013, ch. 103, § 1 (S.B. 129), effective July 1.

**K.S.A. 16-207a. State override of federal preemption.**

The provisions of section 501 (a) (1) of title V of public law 96-221 shall not apply with respect to loans, mortgages, credit sales and advances made in this state on and after the effective date of this act.

**History:** L. 1980, ch. 76, § 1; May 17.

**K.S.A. 16-207b. Contract rate; exceptions.**

The provisions of this act shall not apply to loans made under the provisions of article 52 of chapter 12 of the Kansas Statutes Annotated.

**History:** L. 1980, ch. 75, § 3; L. 1980, ch. 76, § 3; May 17.

**K.S.A. 16-207d. Rules and regulations; loans secured by real estate; adjustable loans.**

The state bank commissioner, consumer credit commissioner, savings and loan commissioner and credit union administrator shall jointly adopt rules and regulations for the purpose of governing loans made primarily for personal, family or household purposes and made under the provisions of subsection (h) of K.S.A. 16-207, and any amendments thereto, and subsection (8) of K.S.A. 16a-2-401, and any amendments thereto. Such rules and regulations shall be published in only one place in the Kansas administrative regulations as directed by the state rules and regulations board.

**History:** L. 1982, ch. 94, § 2; L. 1983, ch. 75, § 1; July 1.

**K.S.A. 16-214. Interest rate on advance made for purchase or carrying of securities; advance not subject to uniform consumer credit code.**

Whenever advances of money, repayable on demand, are made upon any securities, as defined in K.S.A. 84-8-102(1)(a), and amendments thereto, pledged as collateral for repayment of such advances and in which such advances are used by the borrower only for the purpose of the purchasing or the carrying of such securities, it shall be lawful for a broker-dealer, as defined by K.S.A. 17-12a102, and amendments thereto, to charge, receive or contract to receive and collect, as compensation for making such advances, a rate of interest not to exceed the higher of 10% per annum, or the rate of interest last obtained from a commercial lender by the broker-dealer plus an annual percentage rate of not to exceed 1 1/2%, which rate shall be established by written notification to the borrower. Any such advances shall not be subject to any of the provisions of articles 1 through 9, inclusive, of chapter 16a of the Kansas Statutes Annotated, and amendments thereto.

**History:** L. 1977, ch. 69, § 1; L. 2004, ch. 154, § 56.