AN ACT concerning veterans; relating to the uniform consumer credit code; enacting the Kansas veterans loan act; establishing the Kansas veterans loan act fee fund.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) This section shall be known and may be cited as the Kansas veterans loan act. As used in this act:

(1) "Act" means the Kansas veterans loan act;

(2) "instrument" means any check, draft, nonpurchase vehicle security or other instrument or authorization to transfer or withdraw funds from an account that is signed by the veteran and made payable to a person subject to this section;

(3) "related interest" has the same meaning as "person related to" in K.S.A. 16a-1-301, and amendments thereto; and

(4) "veteran" means any person who served in the United States army, navy, air force, marine corps or coast guard for more than 90 days of active duty, not simply for training purposes, and was discharged or released under conditions other than dishonorable.

(b) On consumer loan transactions with a veteran whereby a lender, for a fee, finance charge or other consideration, does the following:

(1) Accepts an instrument from the veteran as security for a loan;

(2) agrees to hold the instrument for a period of time prior to deposit or negotiation of the instrument;

(3) pays to the veteran, credits to the veteran's account or pays to another person on the veteran's behalf the amount of the instrument, less charges permitted under this section; and

(4) issues a loan equal to or less than $500, shall subject such consumer loan transaction to the requirements of this act.

(c) The minimum term of any loan under this act shall be the number of months equal to the sum of the loan principal and all applicable charges, divided by the maximum allowable monthly payment.

(d) A lender and related interest shall not have more than one loan made under this section outstanding to the same veteran at any time. Each lender shall maintain a journal of loan transactions for each veteran that shall include at least the following information:

(1) Name, address and telephone number of each veteran; and
(2) date made and due date of the loan.
(e) Each loan agreement made under this act shall contain the following notice in at least 10-point boldface type: NOTICE TO VETERAN: KANSAS LAW PROHIBITS THIS LENDER AND THEIR RELATED INTEREST FROM HAVING MORE THAN ONE LOAN OUTSTANDING TO YOU AT ANY TIME. A LENDER CANNOT DIVIDE THE AMOUNT YOU WANT TO BORROW INTO MULTIPLE LOANS IN ORDER TO INCREASE THE FEES YOU PAY.

Prior to consummation of the loan transaction, the lender must:
1. Provide the notice set forth in this subsection in both English and Spanish; and
2. Obtain the veteran's signature or initials next to the English version of the notice or, if the veteran advises the lender that the veteran is more proficient in Spanish than in English, then next to the Spanish version of the notice; and
3. Provide disclosure of periodic payments, total repayment, total loan costs, annual percentage rate inclusive of monthly fees, loan duration, notice of the veteran's right to revoke automated clearing house payment authorization and right to rescind.

(f) The maximum rate of any loan made under this act shall be no more than 36% per annum. The maximum monthly fee or charge for any loan made under this act shall be 5% of the original loan principal or $20, whichever is less. These fees shall not be added to the original contracted loan for purposes of calculating interest. Loans made under this act may be refinanced, however, any refinanced loan shall have a maximum rate of 36% per annum and shall not be subject to any monthly fee or charges. No insurance charges or any other charges of any nature whatsoever shall be permitted, except as stated in subsection (h), including any charges for cashing the loan proceeds if they are given in check form. Notwithstanding any provision of law to the contrary, the total loan charges for any loan made under this act shall not exceed 50% of the loan principal. For purposes of this calculation, all charges made in accordance with the loan shall be considered, except: (1) An allowable returned check charge or late charge in accordance with subsection (h); and (2) interest charges on loans that are refinanced according to this subsection.

(g) (1) The total required monthly payment of a loan made under this act shall not exceed the greater of 5% of the veteran's verified gross monthly income or 6% of the veteran's verified net monthly income. Income shall be verified according to rules and regulations promulgated by the administrator. Such rules and regulations shall include guidance for reasonably relying on evidence of recurring deposits to a depository account or one or more recent paychecks.
2. The lender shall accept prepayment from a veteran prior to the
loan due date and shall not charge the veteran a fee or penalty if the consumer prepays the loan. Upon prepayment of the loan, all finance charges, inclusive of interest and all fees, are pro rata refundable. Prorated monthly fees shall be based on a ratio of the number of days the loan was outstanding to the number of days for which the loan was originally contracted.

(3) All loans made under this act shall be precomputed and require full amortization of balance to zero with all payments reducing principal.

(4) If any payment is more than 10 days delinquent, the lender may accelerate the loan balance, but shall only collect prorated interest and fees earned to date.

(h) On a consumer loan transaction in which cash is advanced in exchange for a personal check, one return check charge or late charge may be charged if the check is deemed insufficient as defined in K.S.A. 16a-2-501(1)(e), and amendments thereto. The maximum return check charge or late charge is the lesser of 5% of the original loan principal or $20, plus any amount passed from another financial institution. Upon receipt of the check from the veteran, the lender shall immediately stamp the back of the check with an endorsement that states: "Negotiated as part of a loan made under the Kansas veterans loan act. Holder takes subject to claims and defenses of maker. No criminal prosecution."

(i) In determining whether a consumer loan transaction made under the provisions of this act is unconscionable conduct under K.S.A. 16a-5-108, and amendments thereto, consideration shall be given, among other factors, to:

(1) The ability of the veteran to repay within the terms of the loan made under this act; or

(2) the original request of the veteran for an amount and the term of the loan are within the limitations under this act.

(j) A veteran may rescind any consumer loan transaction made under the provisions of this act without cost not later than the end of the business day immediately following the day on which the loan transaction was made. To rescind the loan transaction:

(1) A veteran shall inform the lender that the veteran wants to rescind the loan transaction;

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

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

(k) A person shall not commit or cause to be committed any of the following acts or practices in connection with a consumer loan transaction subject to the provisions of this act:

(1) Use any device or agreement that would have the effect of
charging or collecting more fees, charges or interest, or that results in more
fees, charges or interest being paid by the veteran than allowed by the
provisions of this act, including, but not limited to:
(A) Entering into a different type of transaction with the veteran;
(B) entering into a sales/leaseback or rebate arrangement;
(C) catalog sales; or
(D) entering into any other transaction with the veteran or any other
person that is designed to evade the applicability of this act;
(2) use, or threaten to use the criminal process in any state to collect
on the loan;
(3) sell any other product of any kind in connection with the making
or collecting of the loan; or
(4) include any of the following provisions in a loan document:
(A) A hold harmless clause;
(B) a confession of judgment clause; or
(C) a provision in which the veteran agrees not to assert a claim or
defense arising out of a contract.
(l) Any person who facilitates, enables or acts as a conduit or agent
for any third party who enters into a consumer loan transaction with the
characteristics set out in subsection (b), shall be required to obtain a
supervised loan license pursuant to K.S.A. 16a-2-301, and amendments
thereto, regardless of whether the third party may be exempt from
licensure provisions of the Kansas uniform consumer credit code.
(m) Notwithstanding that a person may be exempted by virtue of
federal law from the interest rate, finance charge and licensure provisions
of the Kansas uniform consumer credit code, all other provisions of the
code shall apply to both the person and the loan transaction.
(n) Lenders who enter into veterans loan transactions under this act
shall, on an annual basis, provide the following information to the
administrator, in a uniform manner prescribed by the administrator:
(1) Total number of veteran borrowers;
(2) total number of loans;
(3) average loan size;
(4) total contracted loan charges;
(5) total loan actual charges paid;
(6) number of defaulted loans;
(7) number of charged-off loans;
(8) dollar value of charged-off loans;
(9) number of returned check/late charges and dollar value of such
charges;
(10) average contracted annual percentage rate;
(11) average experienced annual percentage rate;
(12) total number of locations;
(13) average number of veteran borrowers per location; and

(14) any other nonprivate information the administrator may deem necessary.

The administrator shall publish, at least annually, an aggregate report to the public, the legislature and the governor that contains all the information provided by lenders under this subsection. The administrator, or administrator's designee, shall appear before the house standing committee on veterans and military, or the successor of such standing committee, during each regular session of the legislature to present such report.

(o) Only consumer loans made pursuant to the provisions of this act shall be extended to veterans. Before a consumer loan is extended to a veteran, the veteran shall be informed that the veteran may only be loaned money according to this act. A pamphlet entitled "Protecting Our Kansas Veterans," published by the administrator, shall be provided by the lender to the veteran before any consumer loan transaction occurs. Such pamphlet shall contain easy-to-read and understandable explanations of the loan terms and the fact that the loan under the Kansas veterans loan act is the only loan that may be offered to a veteran.

(p) A veteran may not opt out or waive any provision of this act. All veterans must present proper identification of their veteran status at the time the loan is contracted.

(q) The administrator shall cause to be published and distributed widely, within 30 days after the effective date of this act, and shall update on an annual basis, the following easily comprehensible informational materials:

(1) Geographically indexed printed materials designed to inform veterans of locations where loans under the Kansas veterans loan act are available. The materials shall include a comprehensive list of participating lenders, their telephone numbers and addresses;

(2) a toll-free 24-hour telephone number that may be called to obtain, orally, such a list and a description of lenders who offer loans under the Kansas veterans loan act; and

(3) a statement that it is unlawful for any lender to coerce a veteran to agree to any other loan terms, regardless of whether or not they appear to present better terms, and that any lender extending credit to a veteran without informing the veteran of such veteran's eligibility for loans under the Kansas veterans loan act may be liable for damages.

(r) (1) Any location that provides consumer loan transactions under this act shall conspicuously post a sign in a location so as to be clearly visible to veterans. The sign required pursuant to this subsection shall be printed with lettering that is legible and shall be at least $\frac{3}{4}$ of an inch boldfaced type, and shall include the following text:
"If you are a United States military veteran, you are protected by the Kansas veterans loan act. Lenders must offer you the pamphlet "Protecting Our Kansas Veterans," published by the Kansas office of the state bank commissioner. You are eligible only for a loan under the Kansas veterans loan act. No other loan may be offered to you. If the branch you have visited does not offer a Kansas veterans loan, please visit http://www.osbckansas.org/ for the location of nearby Kansas veterans loan providers."

(2) If a supervised lender does not provide consumer loan transactions to veterans under this section, such lender shall conspicuously post a sign in a location so as to be clearly visible to veterans. The sign required pursuant to this subsection shall be printed with lettering that is legible and shall be at least $3/4$ of an inch boldfaced type, and shall include the following text:

"We do not lend money to Kansas veterans. Please visit http://www.osbckansas.org/ for nearby lenders who offer Kansas veterans loans."

(s) The administrator shall charge a fee to all supervised loan licensees to cover the costs of administering and enforcing this act, including the production of all signs, printed materials and websites required by this act. The amount of such fee shall be determined through rules and regulations promulgated by the administrator. The administrator shall remit all moneys received from such fee to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the Kansas veterans loan act fee fund.

(t) The remedies and rights provided under this act are in addition to and do not preclude any remedy otherwise available under state or federal law or rules and regulations to the veteran claiming relief under this act, including any award for consequential damages or punitive damages. Any loan transaction or other contract with a veteran that fails to comply with this act is void from the inception of the transaction or contract. Notwithstanding any provision of law to the contrary, no agreement to arbitrate any dispute involving the extension of consumer credit to a veteran pursuant to this act shall be enforceable against any veteran.

(u) (1) Any lender who violates any provision of this act with respect to any veteran shall be civilly liable to such veteran for:

(A) Any actual damage sustained as a result, but not less than $500 for each violation;

(B) appropriate punitive damages;

(C) appropriate equitable or declaratory relief; and

(D) any other relief provided by law.
(2) In any successful action to enforce the civil liability described in paragraph (1), the person who violated this act shall be liable also for the costs of the action, together with reasonable attorney fees, as determined by the court.

(3) In any successful action by a defendant under this act, if the court finds the action was brought in bad faith and for the purpose of harassment, the plaintiff shall be liable for the attorney fees of the defendant as determined by the court to be reasonable in relation to the work expended and costs incurred.

(4) A person may not be held liable for civil liability under this act if the person shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. Examples of bona fide errors include, but are not limited to, clerical, calculation, computer malfunction and programming and printing errors, except that an error of legal judgment with respect to a person's obligations under this act is not a bona fide error.

(5) An action for civil liability under this act may be brought in the district court of any county in which there occurred an act or practice declared to be a violation of the Kansas veterans loan act, not later than the earlier of: (A) Two years after the date of discovery by the plaintiff of the violation that is the basis for such liability; or (B) five years after the date on which the violation that is the basis for such liability occurs.

(v) The provisions of this act shall be enforced by the administrator in the manner set for in this act or under any other applicable authorities available to the administrator by the uniform consumer credit code.

(w) There is hereby established in the state treasury the Kansas veterans loan act fee fund. The moneys in the Kansas veterans loan act fee fund shall be used only for the administration and enforcement of the Kansas veterans loan act by the office of the state bank commissioner, including the production of all signs, printed materials and websites required by the Kansas veterans loan act. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the administrator or by a person or persons designated by the administrator.

(x) This act shall be part of and supplemental to the uniform consumer credit code.

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