



Date: January 17, 2013

To: Senate Financial Institutions & Insurance Committee  
- Senator Rob Olson, Chairman

From: Doug Wareham, SVP-Government Relations

Re: Bill Introduction Request

The Kansas Bankers Association respectfully requests the introduction of legislation that modifies the residential mortgage usury rate cap. For more information please contact Doug Wareham at [dwareham@ksbankers.com](mailto:dwareham@ksbankers.com) or at (785) 220-5820.

Senate Financial Institutions & Ins.

Date: \_\_\_\_\_

Attachment # \_\_\_\_\_

**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) The interest rate limitation set forth in this subsection applies to all first mortgage loans and contracts for deed to real estate, unless 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. The interest rate limitation set forth in this subsection does not apply to a second mortgage loan governed by the uniform consumer credit code, K.S.A. 16a-1-101 to 16a-9-102, and amendments thereto, unless the lender and the borrower agree in writing that the interest rate for the loan is to be governed by this subsection. The maximum rate of interest per annum for notes secured by real estate mortgages and contracts for deed to real estate governed by this subsection shall be at an amount equal to ~~1 1/2~~ 3 1/2 percentage points above the yield of thirty-year fixed rate conventional home mortgages committed for delivery within 61 to 90 days accepted under the federal home loan mortgage corporation's daily offerings for sale on the last day on which commitments for such mortgages were received in the preceding month unless otherwise specifically authorized by law. Such interest rate shall be computed for each calendar month and be effective on the first day thereof. The secretary of state shall publish notice of such maximum interest rate not later than the second issue of the Kansas register published each month.

(c) 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.

(d) 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.

(e) 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.

(f) The interest rates prescribed in subsections (a) and (b) of this section 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.

(g) 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 subsections (a) and (b) of this section.

(h) The interest rates prescribed in subsections (a) and (b) of this section 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.

(i) 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, then 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.

(j) Subsections (c), (d) and (e) 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 subparts (1) or (2) of the preceding sentence, the applicable provisions of the uniform consumer credit code shall govern the loan in lieu of subsections (c), (d) and (e) of this section.