

Memorandum

City of Lawrence

City Attorney's Office

TO: David L. Corliss, City Manager
FROM: Maria Kaminska
DATE: August 7, 2014
CC: Toni Wheeler, City Attorney
RE: Payday loans

Background

Kansas regulates consumer lending under its version of the Uniform Consumer Credit Code. *See* K.S.A. 16a-1-101 through 16a-9-102. *Quik Payday, Inc. v. Stork*, 549 F.3d 1302, 1304-1305 (10th Cir. Kan. 2008). Within this Code lies the state law governing payday lending.

While some states prohibit payday lending entirely¹, Kansas permits it with some oversight. K.S.A. 16a-2-404 says that the a payday loan can only be \$500 or less, that lenders cannot have more than two outstanding loans to the same borrower at any one time, and that lenders cannot make more than three loans to the same borrower within a 30 day period. The term of the loan must be between 7 days and 30 days, and the interest rate cannot exceed 15% for each loan. If a borrower fails to pay back the loan within the specified time, the lender can charge 3% of the loan amount for every month that the loan is past due. K.S.A. 16a-2-404.

A lender could also provide an open end credit loan to a borrower, and the interest rate has no cap as long as the parties agree to the charge, subject to an exception for prepaid finance charges. K.S.A. 16a-2-401. In closed end consumer credit sales, the rate is also whatever is agreed to by the parties, plus prepaid finance charges of 2% of the amount financed or \$100, whichever is less. K.S.A. 16a-2-201(2) and (3). However, neither of these types of transactions are considered "payday loans" under K.S.A. 16a-2-404.

¹See, *e.g.*, Arizona (Ariz. Rev. Stat. Ann. §§ 6-601 *et seq.*); Arkansas (Ark. Code Ann. 23-52-101 *et seq.*); District of Columbia (D.C. Code Ann. 28-3301(a); Georgia (Ga. Code Ann. § 7-3-14; §§ 16-17-1 *et seq.*); North Carolina (N.C. Gen. Stat. 53-281).

The Uniform Consumer Credit Code applies uniformly across Kansas, and cities cannot enact local ordinances that conflict with or are less restrictive than the state statutes. In a survey of five surrounding cities, it appears that no city has modified the state's 15% interest rate. However, those cities do have provisions over payday loans, including the requirement that businesses obtain a license (including the requirements for obtaining one) as well as what information must be provided to a borrower up front, for example. For the most part, this language parallels the state statute. See, *e.g.*, Olathe (Chapter 5.43); Kansas City, Kansas (Article XIII); Overland Park (Chapter 5.72); Lenexa (Section 2-15-A-4); Shawnee (Chapter 5.53). Lawrence does not have any provisions governing payday loans.

Whether the City may enact an ordinance changing the state's 15% interest rate depends on whether such an ordinance would conflict with or be less restrictive than the state statute. It is important to note, however, that 15% is about average (and sometimes lower) compared to other states also permitting payday loan services. See, *e.g.*, Missouri (Mo. Rev. Stat. §§ 408.500 *et seq.*) (interest rate can be agreed to by parties but borrower cannot be charged more than 75% in interest and fees of the original loan amount); Oklahoma (Okla. Stat. Tit. 59 §§ 3101 *et seq.*) (\$15 per \$100; an additional fee of \$10 per \$100 up to \$500); Idaho (28-46-401 *et seq.*) (payday loans can be up to \$1,000; no finance charge regulation by statute); Alabama (5-18A-1 *et seq.*) (finance charge not to exceed 17.5% of original loan; 3% monthly permitted after default).

If Lawrence were to adopt an ordinance regulating payday loan businesses, it is recommended that such an ordinance parallel surrounding city ordinances by requiring a license, as well as outline certain requirements set out by statute. In addition, such an ordinance should also include procedures for revoking a license.

Action Requested

Direct staff to prepare ordinances regulating local payday loan businesses, if appropriate.