



History & Overview of the Uniform Consumer Credit Code

By Ryan E. Hodge

The Uniform Consumer Credit Code is extremely complex and requires a working knowledge in order to become proficient at its application. Further, Kansas judicial interpretation of the Code is relatively limited, and thus exploration of judicial authority from all jurisdictions utilizing the Code is necessary. The following will provide a history and overview of the Code, as well as explore some threshold issues as to causes of action arising under the Code.

The Uniform Consumer Credit Code (UCCC) was originally developed and promulgated by the National Conference on Uniform State Laws in 1968, and later amended in 1974. The Kansas Legislature adopted its version of the Code in 1973. Its language was substantially similar to that contained in the 1974 version of the Code and is numbered to correspond directly with the Uniform text.¹

The original Kansas Comments to the Code were developed by Barkley Clark, professor of law at the University of Kansas, and were based in part

on the comments promulgated by the National Conference.² A thorough review of the comments is absolutely imperative to achieving an understanding of the Code.

The UCCC governs all "consumer credit transactions" made in Kansas (and likewise some multi-state transactions), including "consumer loans," "consumer leases" and "consumer credit sales." These are all terms of art specifically defined by the Code. The Code likewise specifically indicates its purpose and rules of construction at K.S.A. 16a-1-102:

(1) K.S.A. 16a-1-101 through 16a-9-102, and amendments thereto, shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this act are:

(a) To simplify, clarify and modernize the law governing retail installment sales, consumer credit and consumer loans;

(b) To provide rate ceilings to assure an adequate supply of credit to consumers;

(c) To further consumer understanding of the terms of credit transactions and to foster competition among suppliers of consumer credit so that consumers may obtain credit at reasonable cost;

(d) To protect consumer buyers, lessors, and borrowers against unfair practices by some suppliers of consumer credit, having due regard for the interests of legitimate and scrupulous creditors;

(e) To permit and encourage the development of fair and economically

sound consumer credit practices; and
(f) To make uniform law, including administrative rules and regulations, among the various jurisdictions.

The Code should thus be liberally construed to comprehensively effect the law governing consumer credit transactions and to shelter the uninformed consumer from unfair practices, usurious finance rates, and otherwise unscrupulous credit practices.

As indicated, the Code is organized into Articles. Article I contains the General Provisions and Definitions. Article II deals with Finance Charges and Related Provisions, setting rate ceilings and restrictions on charges in addition or incident to a Consumer Credit Transaction. Article III addresses the Regulation of Agreements and Practices and prescribes various requirements with which a merchant must comply. Article IV addresses Credit Insurance. Article V addresses the remedies and penalties to which a merchant in violation of the act is subject. Article VI contains the administrative provisions, Articles VII and VIII are reserved, while Article IX contains the effective date and repealer.

The UCCC is akin to the Truth in Lending Act in that any violation of the requirements provided by the Code creates a cause of action for the consumer. Thus, while charging in excess of an interest rate ceiling is clearly a violation of the Code, it is likewise a violation when the merchant fails to provide a receipt to the consumer evidencing a payment on their debt³, or drafts a contract taking an assignment of the earnings of the creditor as security for the note.⁴ In



Ryan E. Hodge is a managing partner at the firm of Ray Hodge & Associates, Wichita. He has been in practice since 1994, practicing in the areas of criminal, domestic, bankruptcy

and civil litigation. His current emphasis is personal injury litigation. He received his J.D. from the University of Kansas and an M.B.A. from Eastern College in Philadelphia, Pa. He serves as "Consumer Law" editor on KTLA's Board of Editors.

short, if a creditor acts outside of the restrictions dictated by the UCCC in affecting a consumer credit transaction, then that creditor is subject to sanction.

The causes of action or sources for potential violation are not neatly contained in one article. However, K.S.A. 16a-5-201 lists the primary sources for potential violation in the context of remedies and penalties, and thereby provides a handy checklist of potential causes of action, including the corresponding section numbers. These include violations of the sections applying to collection of excess charges or enforcement of rights (subsection (4) of section 16a-1-201), restrictions on interests in land as security (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 (16a-3-403), limitations on default charges (section 16a-3-402), or the authority to make supervised loans (section 16a-2-301).

As just indicated, the remedies available to the consumer are contained in Article V of the Code. K.S.A. 16a-5-201 through 16a-5-203 spell out the consumer's civil remedies against a merchant in violation, which can include actual damages suffered, a civil penalty of \$100 - \$1000, or rescission of the agreement. Further, 16a-5-301 imposes criminal sanctions against a merchant for a deliberate violation of the Code.

An important issue that should be addressed at this point is best characterized by the following question: What if a merchant contracts for a provision that is a technical violation of the Code but, in fact, never attempts enforcement of that provision?

The answer to this question is twofold. First, one must note that the Code provides the merchant with an opportunity to correct its mistakes. K.S.A.

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16a-5-201(6) provides that a merchant has 15 days after having discovered an "error" in order to make a correction of that error, but must do so prior to an the institution of an action under 5-201 or receipt of written notice of the error. Assuming, then, that the consumer has "beaten the creditor to the punch," what result regarding our question?

The simple answer is that the violation is in the contractual provision and not in the 2actual enforcement of the contractual provision. Consider the case of *Halloran v. North Plaza State Bank*, 17 K.A.2d 840, 844 P.2d 764 (1993). Here, the contract at issue indicated that the debtor would be responsible for the attorney fees of the creditor in the event of default "if permitted by law." (Note: Attorney fee provision were, at the time, completely prohibited by K.S.A. 16a-2-507; they are allowed under the current statute, though they are restricted.) Even though the creditor in that case had never tried to enforce the provision at issue, the court held that the fact of a clause which violated the UCCC was enough to indicate a violation. Actual damages to the debtor were not necessary for a cause of action, and the debtors were entitled to statutory penalties against the lender. *Id.*, Syl ¶ 2.

It is important to note that the *Halloran* case was subsequently overturned in the Kansas Supreme Court case of *Credit Union One of Kansas v. Stamm*, 254 Kan. 367, 867 P.2d 285 (1994). However, the basis upon which this case was overturned is vitally important to understanding its effect on the construction of the UCCC. This case simply indicated that a clause indicated "to the extent provided by law" was not a clause that provided for the payment of attorney fees because the law operated against its enforcement. Consider the following language from the *Stamm* decision:

While we recognize the basic policy in Kansas against fee provisions in consumer credit transactions governed by the UCCC, K.S.A. 16a-2-507 requires that the agreement "provide for the payment by the consumer of attorney's fees" before a violation occurs. The specific language used in this agreement, "to the extent permitted under state law," does not "provide for payment by the consumer of attorney's fees" because such payment would not be permitted under state law. *Id.*, at 372.

Thus, the court in *Stamm* reasoned that a violation occurs when an *agreement provides* for the payment of attorney fees, and not when a given creditor attempts to enforce such a provision. The conclusion which logically follows, therefore, is that an agreement between the parties to a transaction violates the UCCC when it *provides for* a violation, regardless of whether or not that provision was actually enforced.

Another and perhaps more important step toward an understanding the Code is an examination of its Definition section, located at K.S.A. 16a-1-301. As we have indicated, the Code specifically governs what is known as a "Consumer Credit Transaction." As we have likewise indicated, this is a term of art specifically defined by the Code. It is located at subsection (15) of 1-301, which reads as follows: "Consumer Credit Transaction" means a consumer credit sale, consumer lease, or consumer loan or modification thereof including a refinancing, consolidation, or deferral."

It naturally follows that further exploration of 1-301 is

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necessary in order to understand the term "Consumer Credit Transaction." Consider each of the following:

(14) "Consumer Credit Sale":

(a) Except as provided in paragraph (b), a "consumer credit sale" is a sale of goods, services, or an interest in land in which:

- (i) Credit is granted either by a seller who regularly engages as a seller in credit transactions of the same kind or pursuant to a credit card other than a lender credit card,
- (ii) the buyer is a person other than an organization,
- (iii) the goods, services, or interest in land are purchased primarily for a personal, family or household purpose,
- (iv) either the debt is by written agreement payable in more than four installments or a finance charge is made, and
- (v) with respect to a sale of goods or services, the amount financed does not exceed \$25,000.

(b) A "consumer credit sale" does not include:

- (i) A sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card; or
- (ii) a sale of an interest in land, unless the parties agree in writing to make the transaction subject to the uniform consumer credit code.

(16) "Consumer lease" means a lease of goods:

- (a) Which a lessor regularly engaged in the business of

leasing makes to a person, other than an organization, who takes under the lease primarily for a personal, family or household purpose;

(b) in which the amount payable under the lease is less than \$25,000;

(c) which is for a term exceeding four months; and

(d) which is not made pursuant to a lender credit card.

(17) "Consumer loan":

(a) Except as provided in paragraph (b), a "consumer loan" is a loan made by a person regularly engaged in the business of making loans in which:

(i) The debtor is a person other than an organization

(ii) the debt is incurred primarily for a personal, family or household purpose;

(iii) either the debt is payable by written agreement in more than four installments or a finance charge is made; and

(iv) either the amount financed does not exceed \$25,000 or the debt is secured by an interest in land.

(b) Unless the loan is made subject to the uniform consumer credit code by written agreement, a "consumer loan" does not include:

(i) A loan secured by a first mortgage unless:

(A) The loan-to-value ratio of the loan at the time when made exceeds 100%; or

(B) in the case of subsection (1) of K.S.A. 16a-3-308a and amendments thereto, the annual percentage rate of the loans exceeds the mortgage loan rate; or

(ii) a loan 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.

(27) "Loan":

(a) Except as provided in paragraph (b), a "loan" includes:

(i) The creation of a debt by the lender's payment of or agreement to pay money to the debtor or to a third party for the account of the debtor;

(ii) the creation of debt either pursuant to a lender credit card or by a cash advance to a debtor pursuant to a credit card other than a lender credit card;

(iii) the creation of a debt by a credit to an account with the lender upon which the debtor is entitled to draw immediately, and

(iv) the forbearance of a debt arising from a loan.

(b) A "loan" does not include the payment or agreement to pay money to a third party for the account of a debtor if the debt arises from a sale or lease and results from use of either a credit card issued by a person primarily in the business of selling or leasing goods or services or any other credit card which may be used for the purchase of goods or services which is not a lender credit card.

While it may at first seem excessive to have recounted the definitions of each of these terms in their entirety, it was done with a two-fold purpose in mind. First, it clearly illustrates the complexity typical of the Uniform Consumer Credit Code. Attempting to understand the most basic ele-

ment of the Code—the types of transactions covered—may take several readings and will include cross-references to several other definitions (the terms "credit card," "lender credit card," "credit," "sale of goods," "person" and "person related to" each have their own definition within 1-301, and must each be understood to completely understand the definitions above).

Second, the definitions provided likewise exemplify the importance of the Official Comments to one's complete understanding of the Code. While they will not be recounted here, suffice it to say that the comment for "consumer loan" alone is four paragraphs long, and is indicative of the extent and detail of the commentary associated with the other terms defined above as well with the majority of the other sections of the Code.

The depth and complexity of these definitions point toward another distinct but related issue. It is this issue which forms the core of most UCCC arguments and is the basis for the majority of the litigation thereunder. When the facts of a given transaction are in violation of the Code, that is typically very obvious. For example, consumer lenders can only charge so much interest. If they charge more, there's a violation. Likewise, consumer creditors are required under the code to make certain disclosures. If they fail to make such disclosures, there's a violation. Quite often, however, it is not whether a given transaction is or is not a violation that is at issue. Instead, it is whether the given transaction was—in the first place—subject to the restrictions and requirement of the UCCC. The scope of the UCCC, therefore, becomes the primary source of dispute.

With a basic understanding of its definitions, violations, and scope, one truly only understands the depth and complexity embodied by the UCCC, but not much more. It bears repeating that a thorough review of its text and the full text of the Official Comments as well as a grasp on the relevant judicial authority is imperative to successful UCCC litigation. ♦


Endnotes

¹ The UCCC is numbered much like the UCC, with the article number preceding a section number (1-201, 3-203). Likewise, much like the UCC, the Kansas Legislature has simply added a chapter number to the front of the UCCC section number. In the case of the UCCC, that chapter number is 16a (thus resulting in 16a-1-201, 16a-3-203).

² See, Reviser's Note, K.S.A. Chapter 16a, Consumer Credit Code.

³ K.S.A. 16a-3-205.

⁴ K.S.A. 16a-3-305.



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