

SENATE BILL No. 20

AN ACT concerning financial institutions; relating to certain acts under the administration of the state bank commissioner; amending K.S.A. 9-2204, 50-1118, 50-1119, 50-1120, 50-1121, 50-1122, 50-1123, 50-1124, 50-1125, 50-1126, 50-1127, 50-1128 and 50-1129 and K.S.A. 2016 Supp. 9-508, 9-509, 9-513a, 9-1101, 9-1102, 9-1104, 9-1114, 9-2203, 9-2206, 9-2211, 9-2216a and 50-1117 and repealing the existing sections.

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

Section 1. K.S.A. 2016 Supp. 9-1101 is hereby amended to read as follows: 9-1101. (a) Any bank hereby is authorized to exercise by its board of directors or duly authorized officers or agents, subject to law, the following powers:

(1) To receive and to pay interest on deposits. The commissioner, with approval of the state banking board, may by rules and regulations fix maximum rates of interest to be paid on deposit accounts other than accounts for public moneys;

(2) to buy, sell, discount or negotiate domestic currency, gold, silver, foreign currency, bullion, commercial paper, bills of exchange, notes and bonds. Foreign currency shall not be bought, sold, discounted or negotiated for investment purposes;

(3) to make all types of loans, subject to the loan limitations contained in the state banking code;

(4) (A) to buy and sell:

(i) Bonds, securities or other evidences of indebtedness, including temporary notes, of the United States of America;

(ii) bonds, securities or other evidences of indebtedness, including temporary notes, fully guaranteed, directly or indirectly, by the United States of America; or

(iii) general obligation bonds of any state of the United States of America or any municipality or quasi-municipality thereof.

(B) No bank shall invest in bonds, securities or other evidences of indebtedness if:

(i) The direct and overlapping indebtedness of such municipality or quasi-municipality is in excess of 10% of its assessed valuation, excluding therefrom all valuations on intangibles and homestead exemption valuation; or

(ii) any bond, security, or evidence of indebtedness of any such municipality or quasi-municipality that has been in default in the payment of principal or interest within 10 years prior to the time that any bank acquires any such bonds, security or evidence of indebtedness;

(5) to buy and sell investment securities which are evidences of indebtedness limited to buying and selling without recourse marketable obligations evidencing indebtedness of any state or federal agency, including revenue bonds issued pursuant to K.S.A. 76-6a15, and amendments thereto, or the state armory board in the form of bonds, notes or debentures or both. The total amount of such investment securities of any one obligor or maker held by such bank shall at no time exceed 25% of the capital stock, surplus, undivided profits, 100% of the allowance for loan and lease loss, capital notes and debentures and reserve for contingencies of such bank, except that this limit shall not apply to obligations of the United States government or any agency thereof;

(6) to buy and sell investment securities which are evidences of indebtedness limited to buying and selling without recourse marketable obligations evidencing indebtedness of any person, copartnership, association or corporation. The total amount of such investment securities of any one obligor or maker held by such bank shall at no time exceed 25% of the capital stock surplus, undivided profits, 100% of the allowance for loan and lease loss, capital notes and debentures and reserve for contingencies of such bank;

(7) to subscribe to, buy, hold and sell stock of:

(A) The federal national mortgage association in accordance with the national housing act;

(B) the federal home loan mortgage corporation in accordance with the federal home loan mortgage corporation act;

(C) the federal agricultural mortgage corporation, provided no bank's investment in such corporation shall exceed 5% of the bank's capital stock, surplus and undivided profits; and

(D) a federal home loan bank. Any bank may also become a member of a federal home loan bank;

(8) to subscribe to, buy and own stock in one or more small business

investment companies in Kansas as otherwise authorized by federal law, except that in no event shall any bank acquire shares in any small business investment company if, upon the acquisition, the aggregate amount of shares in small business investment companies then held by the bank would exceed 5% of the bank's capital and surplus;

(9) to subscribe to, buy and own stock in any agricultural credit corporation or livestock loan company, or its affiliate, organized pursuant to the provisions of the laws of the United States providing for the information and operation of agricultural credit corporations and livestock loan companies, in an amount not exceeding either the undivided profits or 10% of the capital stock and surplus and undivided profits from such bank, whichever is greater;

(10) to buy, hold and sell any type of investment securities not enumerated in this section with approval of the commissioner and upon such conditions and under such regulations as are prescribed by the state banking board;

(11) to act as escrow agent;

(12) to subscribe to, acquire, hold and dispose of stock of a corporation the purpose of which is to acquire, hold and dispose of loans secured by real estate mortgages, and to acquire, hold and dispose of the debentures and capital notes of such corporation. No bank's investment in such stock, debentures and capital notes shall exceed 2% of its capital stock, surplus and undivided profits;

(13) to purchase and sell securities and stock without recourse solely upon the order, and for the account, of customers;

(14) to subscribe to, acquire, hold and dispose of any class of stock, debentures and capital notes of MABSCO agricultural services, inc. or any similar corporation the purpose of which is to acquire, hold and dispose of agricultural loans originated by Kansas banks. No bank's investment in such stock, debentures and capital notes shall exceed 2% of its capital stock, surplus and undivided profits;

(15) to engage in financial future contracts on United States government and agency securities subject to such rules and regulations as the commissioner may prescribe pursuant to K.S.A. 9-1713, and amendments thereto, to promote safe and sound banking practices;

(16) to subscribe to, buy and own stock in a bankers' bank organized under the laws of the United States, this state or any other state, or a one bank holding company which owns or controls such a bankers' bank, except no bank's investment in such stock shall exceed 10% of its capital stock, surplus and undivided profits;

(17) to buy, hold and sell shares of an open-end investment company in a manner consistent with the parameters outlined by the office of the comptroller of the currency in banking circular 220, as such circular was issued on November 21, 1986;

(18) subject to the prior approval of the commissioner and subject to such rules and regulations as are adopted by the commissioner pursuant to K.S.A. 9-1713, and amendments thereto, to promote safe and sound banking practices, a bank may establish a subsidiary which engages in the following securities activities:

(A) Selling or distributing stocks, bonds, debentures, notes, mutual funds and other securities;

(B) issuing and underwriting municipal bonds;

(C) organizing, sponsoring and operating mutual funds; or

(D) acting as a securities broker-dealer;

(19) to subscribe to, buy and own stock in an insurance company incorporated prior to 1910, under the laws of Kansas, with corporate headquarters in this state, which only provides insurance to financial institutions. The investment in such stock shall not exceed 2% of the bank's capital stock, surplus and undivided profits;

(20) to purchase and hold an interest in life insurance policies and, to the extent applicable, to purchase and hold an annuity in a manner consistent with the parameters outlined in the interagency statement of the purchase and risk management of life insurance, issued by the office of the comptroller of the currency, the board of governors of the federal reserve system, the federal deposit insurance corporation and the office of the thrift supervision on December 7, 2004; and set out in the respective agencies' issuances, including the federal deposit insurance corpo-

ration financial institution letter 127-2004, effective December 7, 2004, subject to the following limitations:

(A) The cash surrender value of any life insurance policy or policies underwritten by any one life insurance company shall not at any time exceed 15% of the total of the bank's capital stock, surplus, undivided profits, 100% of the allowance for loan and lease losses, capital notes and debentures and reserve for contingencies, unless the bank has obtained the prior approval of the commissioner;

(B) the cash surrender value of life insurance policies, in the aggregate from all companies, cannot at any time exceed 25% of the total of the bank's capital stock, surplus, undivided profits, 100% of the allowance for loan and lease losses, capital notes and debentures and reserve for contingencies, unless the bank has obtained the prior approval of the state bank commissioner;

(C) the limitations set forth in subparagraphs (A) and (B) shall not apply to any life insurance policy in place prior to July 1, 1993; and

(D) for the purposes of subsections (a)(20)(A) and (a)(20)(B), intangibles, such as goodwill, shall not be included in the calculation of capital;

(21) act as an agent and receive deposits, renew time deposits, close loans, service loans and receive payments on loans and other obligations for any company which is a subsidiary, as defined in K.S.A. 9-519, and amendments thereto, of the bank holding company which owns the bank. Nothing in this subsection shall authorize a bank to conduct activities as an agent which the bank or the subsidiary would be prohibited from conducting as a principal under any applicable federal or state law. Any bank which enters or terminates any agreement pursuant to this subsection shall within 30 days of the effective date of the agreement or termination provide written notification to the commissioner which details all parties involved and services to be performed or terminated;

(22) to make loans to the bank's stockholders or the bank's controlling holding company stockholders on the security of the shares of the bank or the bank's controlling bank holding company, but loans on the security of the shares of the bank may occur only if the bank would have extended credit to such stockholder on exactly the same terms without the bank shares pledged as collateral;

(23) to make investments in and loans to community and economic development entities as defined in K.S.A. 9-701, and amendments thereto, subject to the limitations prescribed by community reinvestment act pub. l. 95-128, title VIII, 91 Stat. 1147, 12 U.S.C. § 2901 et seq.;

(24) to participate in a school savings deposit program authorized under K.S.A. 9-1138, and amendments thereto;

(25) with prior approval of the commissioner, to control or hold an interest in a financial subsidiary.

(A) The financial subsidiary may engage in one or more of the following activities:

(i) Lending, exchanging, transferring, investing for others or safeguarding money or securities;

(ii) acting as agent or broker for purposes of insuring, guaranteeing or indemnifying against loss, harm, damage, illness, disability, death or providing annuities as agent or broker subject to the requirements of chapter 40 of the Kansas Statutes Annotated, and amendments thereto;

(iii) issuing or selling instruments representing interests in pools or assets permissible for a bank to hold directly;

(iv) operating a travel agency; and

(v) activities that are financial in nature as determined by the commissioner.

(B) Such activities do not include:

(i) Insuring, guaranteeing or indemnifying against loss, harm, damage, illness, disability, death or providing or issuing annuities the income of which is subject to tax treatment under 26 U.S.C. § 72;

(ii) real estate development or real estate investment, except as otherwise expressly authorized by Kansas law; or

(iii) any activity permitted for financial holding companies under 12 U.S.C. § 1843(k)(4)(H) and (I).

(C) As used in subsection (a)(25), "control" means:

(i) Directly or indirectly owning, controlling or having power to vote 25% or more of any class of the voting shares of a financial subsidiary;

(ii) controlling in any manner the election of a majority of the directors or trustees of the financial subsidiary; or

(iii) otherwise directly or indirectly exercising a controlling influence over the management or policies of the financial subsidiary, as determined by the commissioner;

(26) to maintain and operate a postal substation on banking premises, in accordance with the rules and regulations of the United States postal service. The bank may advertise the services of the substation for the purpose of attracting customers to the bank and receive income therefrom. The bank shall keep the books and records of the substation separate from the records of other banking operations;

(27) with prior approval of the commissioner, to invest in foreign bonds an amount not to exceed 1% of the bank's capital ~~or~~ *stock and surplus* as long as such bonds comply with the form and definition of investment securities;

(28) to act as an agent for any credit life, health and accident insurance, sometimes referred to as credit life and disability insurance, and mortgage life and disability insurance in connection with extensions of credit and only as a source of protection for such extension of credit;

(29) to act as agent for any fire, life or other insurance company authorized to do business in this state at any approved office of the bank which is located in any place the population does not exceed 5,000 inhabitants. Such insurance may be sold to existing and potential customers of the bank regardless of the geographic location of the customers;

(30) to become a stockholder and member of the federal reserve bank of the federal reserve district where such bank is located;

(31) with prior approval of the commissioner, to acquire the stock of, or establish and operate a subsidiary to acquire the stock of, another insured depository institution or the holding company of the insured depository institution provided such acquisition is incidental to a reorganization otherwise authorized by the law of this state and which occurs nearly simultaneously with such acquisition;

(32) with prior approval of the commissioner, to establish and operate a subsidiary for the purpose of owning, holding and managing all or part of the bank's securities portfolio provided the parent bank owns 100% of the stock of the subsidiary and the subsidiary shall not own, hold or manage securities for any party other than the parent bank. The subsidiary shall be subject to:

(A) All banking laws and rules and regulations applicable to the parent bank unless otherwise provided;

(B) consolidation with the parent bank of pertinent book figures for the purpose of applying all applicable statutory limitations including, but not limited to, capital requirements, owning and holding real estate and legal lending limitations;

(C) examination and supervision by the commissioner, the cost and responsibility of which will be attributable to the parent bank; and

(D) any additional terms or conditions required by the commissioner to address any legal or safety and soundness concerns;

(33) with prior approval of the commissioner, to establish or acquire operating subsidiaries for the purpose of engaging in any activity which is part or incidental to the business of banking as long as the parent bank owns at least 50% of the stock of the subsidiary. The subsidiary shall be subject to:

(A) All banking laws and regulations applicable to the parent bank unless otherwise provided;

(B) consolidation with the parent bank of pertinent book figures for the purpose of applying all applicable statutory limitations including, but not limited to, capital requirements, owning and holding real estate and legal lending limitations;

(C) examination and supervision by the commissioner the cost and responsibility of which will be attributable to the parent bank; and

(D) any additional terms or conditions required by the commissioner to address any legal or safety and soundness concerns;

(34) to invest in, without limitation, obligations of or obligations which are insured as to principal and interest by or evidences of indebtedness that are fully collateralized by obligations of the federal home loan banks, the federal national mortgage association, the government national

mortgage association, the federal home loan mortgage corporation, the student loan marketing association and the federal farm credit banks; ~~and~~

(35) any bank or trust company may invest in bonds or notes secured by mortgages which in turn are insured or upon which there is a commitment to insure by the federal housing administration, or any successor thereto, in debentures issued by the federal housing administration or any successor, and in obligations of national mortgage associations; *and*

(36) *to buy tax credits for certain historic structure rehabilitation expenditures pursuant to K.S.A. 2016 Supp. 79-32,211, and amendments thereto. The total amount of such tax credits held by a bank shall at no time exceed 25% of the capital stock, surplus, undivided profits, 100% of the allowance for loan and lease loss, capital notes and debentures and reserve for contingencies of such bank.*

(b) Any bank hereby is authorized to exercise by the bank's board of directors or duly authorized officers or agents, subject to approval by the commissioner, any incidental power necessary to carry on the business of banking.

Sec. 2. K.S.A. 2016 Supp. 9-1102 is hereby amended to read as follows: 9-1102. (a) Any bank or trust company may own, purchase, lease, hold, encumber or convey real property, including any building or buildings necessary for the bank's or trust company's accommodation in the transaction of its business. Real property shall be disposed of or charged off the bank's or trust company's books not later than seven years after the real property's intended use for bank or trust purposes ends. Before the end of the holding period, a bank or trust company may request authorization from the commissioner to hold the real property for an additional year. No bank or trust company shall be granted more than three requests for additional time to hold any one parcel of real property.

(b) Any bank or trust company may own, purchase, lease, hold, encumber or convey certain personal property necessary for the bank's or trust company's accommodation in the transaction of such bank's or trust company's business.

(c) *The insurable tangible property of a bank or trust company shall be insured against loss.*

~~(d)~~ Any bank may own all or part of the stock in a single trust company or safe deposit company organized under the laws of the state of Kansas.

~~(d)~~(e) Any bank may own all of the stock in a corporation or limited liability company organized under the laws of the state of Kansas, owning real estate, all or a part of which is occupied or to be occupied by the bank or trust company.

~~(e)~~(f) A bank's or trust company's total investment or ownership at all times in any one or more of the following shall not exceed 50% of the total of capital stock, surplus, undivided profits, 100% of the allowance for loan and lease loss, capital notes and debentures and reserve for contingencies. For purposes of this subsection, intangibles, such as goodwill, shall not be included in the calculation of capital. Any such excess shall be removed from the bank's or trust company's books unless approval is granted by the commissioner:

- (1) The book value of real estate plus all encumbrances thereon;
- (2) the book value of furniture and fixtures;
- (3) the book value of stock in a safe deposit company;
- (4) the book value of stock in a trust company; or
- (5) the book value of stock in a corporation organized under the laws

of this state owning real estate occupied by the bank or trust company and advances to such corporation acquired or made after July 1, 1973, except that any real estate not necessary for the accommodation of the bank's or trust company's business shall be disposed of or charged off its books according to subsection (a).

~~(f)~~(g) Any bank or trust company may acquire or purchase real estate in satisfaction of any debts due such bank or trust company, and may purchase real estate at judicial sales, subject to the following:

(1) No bank or trust company shall bid at any judicial sale a larger amount than is necessary to protect its debts and costs.

(2) No real estate or interest in oil and gas leasehold acquired in the satisfaction of debts or upon judicial sales shall be carried as a book asset of the bank or trust company for more than 10 years.

(3) At the termination of the 10 years such real estate shall be charged off. The commissioner may grant an extension not to exceed four years, if in the commissioner's judgment, carrying the real estate as an asset for such extended period will be to the advantage of the bank or trust company. Any such extensions issued shall be reviewed by the commissioner on an annual basis.

~~(g)~~(h) No bank or trust company may buy and sell real estate as a business.

~~(h)~~(i) A bank may hold or sell any personal property coming into ownership of the bank in the collection of debts. All such property, except legal investments, shall be sold within one year of acquisition, provided a commercially reasonable sale can occur. If a commercially reasonable sale cannot occur within one year, the commissioner may authorize a bank to carry such property as a book asset for a longer period. The bank shall not carry such property as a nonbook asset.

~~(i)~~(j) The time periods for holding real estate or other property shall begin when:

- (1) The bank has received title or deed to the property;
- (2) the property is in a redemption period following the bank's purchase at a judicial sale; or
- (3) the bank has actual control of the property.

~~(j)~~(k) With prior notification to the commissioner, any bank may operate a wholly owned subsidiary corporation or limited liability company which holds and manages property acquired through debt previously contracted. The subsidiary shall be subject to:

- (1) All banking laws and rules and regulations applicable to the parent bank unless otherwise provided;
- (2) consolidation with the parent bank of pertinent book figures for the purpose of applying all applicable statutory limitations including, but not limited to, capital requirements, owning and holding real estate and legal lending limitations;
- (3) examination and supervision by the commissioner, the cost and responsibility of which will be attributable to the parent bank; and
- (4) any additional terms or conditions required by the commissioner to address any legal or safety and soundness concerns.

~~(k)~~(l) (1) With prior approval of the commissioner, any bank may exchange such bank's participation interest in real estate acquired or purchased in satisfaction of any debts previously contracted for an interest in a corporation or limited liability company which will manage, market and dispose of the real property. Prior to the exchange, the bank's directors must:

(A) Find and document that the exchange is in the best interest of the bank and would improve the ability of the bank to recover, or otherwise limit, the bank's loss on real estate acquired through debts previously contracted;

(B) certify that the bank's loss exposure is limited, as a legal and accounting matter, and that the bank does not have open-ended liability for the obligations of the corporation or limited liability company;

(C) certify that the corporation or limited liability company agrees to be subject to the supervision and examination by the commissioner; and

(D) ensure that the corporation or limited liability company complies with this section and K.A.R. 17-11-17, including obtaining a current appraisal of the real estate.

(2) A bank may not further exchange the bank's interest in the corporation or limited liability company for an interest in any other real or personal property.

Sec. 3. K.S.A. 2016 Supp. 9-1104 is hereby amended to read as follows: 9-1104. (a) *Definitions*. As used in this section:

(1) "Borrower" means an individual, sole proprietorship, partnership, joint venture, association, trust, estate, business trust, corporation, limited liability company, not-for-profit corporation, state government of the United States or a United States government unit or agency, instrumentality or political subdivision thereof or any similar entity or organization.

(2) "Capital" means the total of capital stock, surplus, undivided profits, 100% of the allowance for loan and lease loss, capital notes and debentures and reserve for contingencies. Intangibles, such as goodwill,

shall not be included in the definition of capital when determining lending limits.

(3) “Loan” means:

(A) A bank’s direct or indirect advance of funds to or on behalf of a borrower based on an obligation of the borrower to repay the funds;

(B) a contractual commitment to advance funds;

(C) an overdraft;

(D) loans that have been charged off the bank’s books in whole or in part, unless the loan is unenforceable by reason of:

(i) Discharge in bankruptcy;

(ii) expiration of the statute of limitations;

(iii) judicial decision; or

(iv) the bank’s forgiveness of the debt;

(E) any credit exposure to a borrower arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction or securities borrowing transaction between a bank and that borrower.

(4) “Derivative transaction” means any transaction that is a contract, agreement, swap, warrant, note or option that is based in whole, or in part, on the value of any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices or other assets.

(b) *General lending limit rule.* Subject to the provisions in subsections (d), (e) and (f), loans to one borrower, including any bank officer or employee, shall not exceed 25% of a bank’s capital.

(c) *Calculation of the lending limit.* (1) The bank’s lending limit shall be calculated on the date the loan or written commitment is made. The renewal or refinancing of a loan shall not constitute a new lending limit calculation date unless new funds are advanced.

(2) If the bank’s lending limit increases subsequent to the origination date, a bank may use the current lending limit to determine compliance when advancing funds. An advance of funds includes the lending of money or the repurchase of any portion of a participation.

(3) If the bank’s lending limit decreases subsequent to the origination date, a bank is not prohibited from advancing on a prior commitment that was legal on the date the commitment was made.

(d) *Exemptions.* (1) Overnight federal funds.

(2) That portion of a loan which is continuously secured on a dollar for dollar basis by any of the following will be exempt from any lending limit:

(A) A guaranty, commitment or agreement to take over or to purchase, made by any federal reserve bank or by any department, bureau, board, commission, agency or establishment of the United States of America, including any corporation wholly owned, directly or indirectly by the United States;

(B) a perfected interest in a ~~time~~ *segregated* deposit account in the lending bank. In the case of a ~~time~~ deposit which may be withdrawn in whole or in part ~~prior to maturity~~, the bank shall establish written internal procedures to prevent the release of the deposit;

(C) a bonded warehouse receipt issued to the borrower by some other person;

(D) treasury bills, certificates of indebtedness or bonds or notes of, or fully guaranteed by, the United States of America or instrumentalities or agencies thereof;

(E) general obligation bonds or notes of the state of Kansas or any other state in the United States of America;

(F) general obligation bonds or notes of any Kansas municipality or quasi-municipality; or

(G) a perfected interest in a repurchase agreement of United States government securities with the lending bank.

(e) *Special rules.* (1) The total liability of any borrower may exceed the general 25% limit by up to an additional 10% of the bank’s capital. To qualify for this expanded limit:

(A) The bank shall have as collateral a recorded first lien or liens on real estate securing a portion of the borrower’s total liability equal to at least the amount by which the total liability exceeds the 25% limit;

(B) the appraised value of the real estate shall equal at least twice the amount by which the borrower’s total liability exceeds the 25% limit; and

(C) a portion of the borrower's total liability, equal to at least the amount by which the total liability exceeds the 25% limit, shall amortize within 20 years by regularly scheduled installment payments.

(2) That portion of any loan endorsed or guaranteed by a borrower will not be added to that borrower's liability until the endorsed or guaranteed loan is past due 10 days.

(3) If the total liability of any shareholder owning 25% or more of any class of voting shares, officers or directors will exceed \$50,000, prior approval from the bank's board of directors shall be noted in the minutes.

(4) To the extent time deposits are insured by the federal deposit insurance corporation, such deposits purchased by a bank from another financial institution shall not be considered a loan to that financial institution and shall not be subject to the bank's lending limit.

(5) Third-party paper purchased by the bank will not be considered a loan to the seller unless and until the bank has the right under the agreement to require the seller to repurchase the paper.

(f) *Combination rules.*

(1) *General rule.* Loans to one borrower will be attributed to another borrower and the borrowers' total liability will be combined:

(A) When proceeds of a loan are to be used for the direct benefit of the other borrower, to the extent of the proceeds so used; or

(B) when a common enterprise is deemed to exist between the borrowers.

(2) *Direct benefit.* The proceeds of a loan to a borrower will be deemed to be used for the direct benefit of another person and will be attributed to the other person when the proceeds, or assets purchased with the proceeds, are transferred to another person, other than in a bona fide arm's length transaction where the proceeds are used to acquire property, goods or services.

(3) *Common enterprise.* A common enterprise will be deemed to exist and loans to separate borrowers will be aggregated:

(A) When the expected source of repayment for each loan or extension of credit is the same for each borrower and neither borrower has another source of income from which the loan, together with the borrower's other obligations, may be fully repaid;

(B) when both of the following circumstances are present:

(i) Loans are made to borrowers that are related directly or indirectly through common control, including where one borrower is directly or indirectly controlled by another borrower. Common control means to own, control or have the power to vote 25% or more of any class of voting securities or voting interests or to control, in any manner, the election of a majority of the directors or to have the power to exercise a controlling influence over the management or policies of another person; and

(ii) substantial financial interdependence exists between or among the borrowers. Substantial financial interdependence is deemed to exist when 50% or more of one borrower's gross receipts or gross expenditures, on an annual basis, are derived from transactions with the other borrower. Gross receipts and expenditures include gross revenues, expenses, inter-company loans, dividends, capital contributions and similar receipts or payments; or

(C) when separate persons borrow from a bank to acquire a business enterprise of which those borrowers will own more than 50% of the voting securities or voting interests, in which case a common enterprise is deemed to exist between the borrowers for purposes of combining the acquisition loan.

(D) An employer will not be treated as a source of repayment for purposes of determining a common enterprise because of wages and salaries paid to an employee.

(4) *Special rules for loans to a corporate group.* (A) Loans by a bank to a borrower and the borrower's subsidiaries shall not, in the aggregate, exceed 50% of the bank's capital. At no time shall loans to any one borrower or to any one subsidiary exceed the general lending limit of 25%, except as allowed by other provisions of this section. For purposes of this paragraph, a corporation or a limited liability company is a subsidiary of a borrower if the borrower owns or beneficially owns directly or indirectly more than 50% of the voting securities or voting interests of the corporation or company.

(B) Loans to a borrower and a borrower's subsidiaries that do not

meet the test contained in subsection (f)(4)(A) will not be combined unless either the direct benefit or the common enterprise test is met.

(5) *Special rules for loans to partnerships, joint ventures and associations.* (A) As used in this paragraph, the term “partnership” shall include a partnership, joint venture or association. The term partner shall include a partner in a partnership or a member in a joint venture or association.

(B) *General partner.* Loans to a partnership are considered to be loans to a partner if, by the terms of the partnership agreement, that partner is held generally liable for debts or actions of the partnership.

(C) *Limited partner.* If the liability of a partner is limited by the terms of the partnership agreement, the amount of the partnership debt attributable to the partner is in direct proportion to that partner’s limited partnership liability.

(D) Notwithstanding the provisions of subsections (f)(5)(B) and (f)(5)(C), if by the terms of the loan agreement the liability of any partner is different than delineated in the partnership agreement, for the purpose of attributing debt to the partner, the loan agreement shall control.

(E) Loans to a partner are not attributed to the partnership unless either the direct benefit or the common enterprise test is met.

(F) Loans to one partner are not attributed to other partners unless either the direct benefit or common enterprise test is met.

(G) When a loan is made to a partner to purchase an interest in a partnership, both the direct benefit and common enterprise tests are deemed to be met, and the loan is attributed to the partnership.

(6) Notwithstanding the provisions of this subsection, the commissioner may determine, based upon an evaluation of the facts and circumstances of a particular transaction, that a loan to one borrower may be attributed to another borrower.

(g) The commissioner may order a bank to correct any loan not in compliance with this section within 60 days. A violation of this section shall be deemed corrected if that portion of the borrower’s liability which created the violation could be legally advanced under current lending limits.

Sec. 4. K.S.A. 2016 Supp. 9-1114 is hereby amended to read as follows: 9-1114. (a) The business of any bank or trust company shall be managed and controlled by such bank’s or trust company’s board of directors.

(b) The board shall consist of not less than five nor more than 25 members who shall be elected by the stockholders at any regular annual meeting which shall be held on the date specified in the bank’s or trust company’s bylaws. A majority of the directors shall be residents of this state. *Minutes shall be made of each stockholders’ meeting of a bank or trust company. The minutes shall show any action taken by the stockholders, including the election of all directors.*

(c) If for any reason the meeting cannot be held on the date specified in the bylaws, the meeting shall be held on a subsequent day within 60 days of the day fixed, to be designated by the board of directors, or, if the directors fail to fix the day, by the shareholders representing $\frac{2}{3}$ of the shares.

(d) In all cases, at least 10 days’ notice of the date for the annual meeting shall have been given by first-class mail to the shareholders.

(e) Any newly created directorship must be approved and elected by the shareholders in the manner provided in the general corporation code. A special meeting of the shareholders may be convened at any time for such purpose.

(f) Any vacancy in the board of directors may be filled by the board of directors in the manner provided in the general corporation code.

(g) Any director of any bank or trust company who shall become indebted to such bank or trust company on any judgment or whose indebtedness is charged off or forgiven shall forfeit such person’s position as director.

(h) Within 15 days after the annual meeting the president or cashier of every bank and every trust company shall submit to the commissioner a certified list of stockholders and the number of shares owned by each. This list of stockholders shall be kept and maintained in the bank’s or trust company’s main office and shall be subject to inspection by all stock-

holders during the business hours of the bank or trust company. The commissioner may require the list to be filed using an electronic means.

(i) Each director shall take and subscribe an oath to administer the affairs of such bank or trust company diligently and honestly and to not knowingly or willfully permit any of the laws relating to banks or trust companies to be violated. A copy of each oath shall be retained by the bank or trust company in the bank's or trust company's records after the election of any officer or director, for review by the commissioner's staff during the next examination. The commissioner may require the oath to be filed using an electronic means.

(j) Every bank and trust company shall notify the commissioner of any change in the chief executive officer, president or directors, including in such bank's or trust company's report a statement of the past and current business and professional affiliations of the new chief executive officer, president or directors.

Sec. 5. K.S.A. 2016 Supp. 9-508 is hereby amended to read as follows: 9-508. As used in this act:

(a) "Agent" means a person designated by a licensee to receive funds from a Kansas resident in order to forward such funds to the licensee to effectuate money transmission at one or more physical locations throughout the state or through the internet, regardless of whether such person would be exempt from the act by conducting money transmission on such person's own behalf;

(b) "commissioner" means the state bank commissioner;

(c) "control" means the power directly or indirectly to direct management or policies of a person engaged in money transmission or to vote 25% or more of any class of voting shares of a person engaged in money transmission;

(d) "electronic instrument" means a card or other tangible object for the transmission or payment of money, including a prepaid access card or device which contains a microprocessor chip, magnetic stripe or other means for the storage of information, that is prefunded and for which the value is decremented upon each use, but does not include a card or other tangible object that is redeemable by the issuer in goods or services;

(e) "licensee" means a person licensed under this act;

(f) "nationwide multi-state licensing system and registry" means a licensing system developed and maintained by the conference of state bank supervisors, or its successors and assigns, for the licensing and reporting of those persons engaging in the money transmission;

(g) "monetary value" means a medium of exchange, whether or not redeemable in money;

(h) "money transmission" means to engage in the business of the sale or issuance of payment instruments or of receiving money or monetary value for transmission to a location within or outside the United States by wire, facsimile, electronic means or any other means, except that money transmission does not include currency exchange where no transmission of money occurs;

(i) "outstanding payment liability" means:

(1) With respect to a payment instrument, any payment instrument issued or sold by the licensee which has been sold in the United States directly by the licensee, or any payment instrument that has been sold by an agent of the licensee in the United States, which has been reported to the licensee as having been sold and which has not yet been paid by or for the licensee; *or*

(2) with respect to the transmission of money or monetary value, any money or monetary value the licensee or an agent of the licensee has received from a customer in the United States for transmission which has not yet been delivered to the recipient or otherwise paid by the licensee;

(j) "payment instrument" means any electronic or written check, draft, money order, travelers check or other electronic or written instrument or order for the transmission or payment of money, sold or issued to one or more persons, whether or not such instrument is negotiable. The term "payment instrument" does not include any credit card voucher, any letter of credit or any instrument which is redeemable by the issuer in goods or services;

(k) "permissible investments" means:

(1) Cash;

(2) deposits in a demand or interest bearing account with a domestic federally insured depository institution, including certificates of deposit;

(3) debt obligations of a domestic federally insured depository institution;

(4) any investment bearing a rating of one of the three highest grades as defined by a nationally recognized organization that rates such securities;

(5) investment grade bonds and other legally created general obligations of a state, an agency or political subdivision of a state, the United States or an instrumentality of the United States;

(6) obligations that a state, an agency or political subdivision of a state, the United States or an instrumentality of the United States has unconditionally agreed to purchase, insure or guarantee and that bear a rating of one of the three highest grades as defined by a nationally recognized organization that rates securities;

(7) shares in a money market mutual fund, interest-bearing bills or notes or bonds, debentures or stock traded on any national securities exchange or on a national over-the-counter market, or mutual funds primarily composed of such securities or a fund composed of one or more permissible investments as set forth herein;

(8) receivables that are payable to a licensee, in the ordinary course of business, pursuant to contracts which are not past due and which do not exceed in the aggregate 40% of the total required permissible investments pursuant to K.S.A. 9-513b, and amendments thereto. A receivable is past due if not remitted to the licensee within 10 business days; or

(9) any other investment or security device approved by the commissioner;

(l) “person” means any individual, partnership, association, joint-stock association, trust, corporation or any other form of business enterprise;

(m) “resident” means any natural person or business entity located in this state; ~~and~~

(n) “service provider” means any person that provides services as described in K.S.A. 9-511(a)(2)(A), and amendments thereto, that are used by an exempt entity or its agent to provide money transmission services to the exempt entity’s customers. A service provider does not contract with the customers of an exempt entity on its own or on behalf of an exempt entity or the exempt entity’s agent; and

~~(n)~~(o) “tangible net worth” means the physical worth of a licensee, calculated by taking a licensee’s assets and subtracting its liabilities and its intangible assets, such as copyrights, patents, intellectual property and goodwill.

Sec. 6. K.S.A. 2016 Supp. 9-509 is hereby amended to read as follows: 9-509. (a) No person shall engage in the business of selling, issuing or delivering its payment instrument, check, draft, money order, personal money order, bill of exchange, evidence of indebtedness or other instrument for the transmission or payment of money or otherwise engage in the business of money transmission with a resident of this state, or, except as provided in K.S.A. 9-510, and amendments thereto, act as agent for another in the transmission of money as a service or for a fee or other consideration, unless such person files ~~an~~ a complete application and obtains a license from the commissioner.

(b) Each license shall expire December 31 of each year. A license shall be renewed by filing with the commissioner a complete application and nonrefundable application fee at least 30 days prior to expiration of the license. *Renewal applications received between December 1 and December 31 of each year and incomplete renewal applications as of December 1 of each year shall be assessed a late fee.* Expired licenses may be reinstated through ~~February 28~~ *the last day of February* of each year by filing a reinstatement application and paying the appropriate application and late fees.

(c) It shall be unlawful for a person, acting directly or indirectly or through concert with one or more persons, to acquire control of any person engaged in money transmission through purchase, assignment, pledge or other disposition of voting shares of such money transmitter, except with the prior approval of the commissioner. Request for approval

of the proposed acquisition shall be made by filing ~~an~~ *a complete* application with the commissioner at least 60 days prior to the acquisition.

(d) All applications shall be submitted in the form and manner prescribed by the commissioner. Additionally, the following shall apply to all applications:

(1) The commissioner may use a nationwide multi-state licensing system and registry for processing applications, renewals, amendments, surrenders, and any other activity the commissioner deems appropriate. The commissioner may also use a nationwide multi-state licensing system and registry for requesting and distributing any information regarding money transmitter licensing to and from any source so directed by the commissioner. The commissioner may establish relationships or contracts with the nationwide multi-state licensing system and registry or other entities to collect and maintain records and process transaction fees or other fees related to applicants, licensees, as may be reasonably necessary to participate in the nationwide multi-state licensing system and registry. The commissioner may report violations of the law, as well as enforcement actions and other relevant information to the nationwide multi-state licensing system and registry. The commissioner may require any applicant or licensee to file reports with the nationwide multi-state licensing system and registry in the form prescribed by the commissioner.

(2) An application shall be accompanied by nonrefundable fees established by the commissioner for the license ~~and each agent location~~. The commissioner shall determine the amount of such fees to provide sufficient funds to meet the budget requirements of administering and enforcing the act for each fiscal year. ~~For the purposes of this subsection, “each agent location” means each physical location within the state where money transmission is conducted, including, but not limited to, branch offices, authorized vendor offices, delegate offices, kiosks and drop boxes.~~ Any person using the multi-state licensing system shall pay all associated costs.

(3) (A) The commissioner may require fingerprinting of any individual, officer, director, partner, member, shareholder or any other person related to the application deemed necessary by the commissioner. If the applicant is a publicly traded corporation or a subsidiary of a publicly traded corporation, no fingerprint check shall be required. Fingerprints may be submitted to the Kansas bureau of investigation and the federal bureau of investigation for a state and national criminal history record check. The fingerprints shall be used to identify the person and to determine whether the person has a record of arrests and convictions in this state or other jurisdiction.

(B) The commissioner may use information obtained from fingerprinting and the criminal history for purposes of verifying the identification of the person and in the official determination of the qualifications and fitness of the person, or in the case of an applicant company, the persons associated with the company.

(C) For purposes of this section and in order to reduce the points of contact which the federal bureau of investigation may have with the individual states, the commissioner may use a nationwide multi-state licensing system and registry for requesting information from and distributing information to the department of justice or any governmental agency.

(D) Whenever the commissioner requires fingerprinting, any associated costs shall be paid by the applicant or the parties to the application.

(4) Each application shall include audited financial statements for each of the two fiscal years immediately preceding the date of the application and an interim financial statement, as of a date not more than 90 days prior to the date of the filing of an application. The audited and interim financial statements shall be prepared in accordance with United States generally accepted accounting principles or in any other form or manner approved by the commissioner. Any person not in business two years prior to the filing of the application shall submit a statement in the form and manner prescribed by the commissioner sufficient to demonstrate compliance with subsection (e).

(e) In addition, each person submitting an application shall meet the following requirements:

(1) The tangible net worth of such person shall be at all times not less than \$250,000, as shown by an audited financial statement and cer-

tified to by an owner, a partner or officer of the corporation or other entity filed in the form and manner prescribed by the commissioner. A consolidated financial statement from an applicant's holding company may be accepted by the commissioner. The commissioner may require any person to file a statement at any other time upon request;

(2) such person shall deposit and at all times keep on deposit with a bank in this state approved by the commissioner, cash or securities satisfactory to the commissioner in an amount not less than \$200,000. The commissioner may increase the amount of cash or securities required up to a maximum of \$1,000,000 upon the basis of:

(A) The volume of money transmission business transacted in this state by such person; or

(B) the impaired financial condition of a licensee, as evidenced by a reduction in net worth or financial losses;

(3) in lieu of the deposit of cash or securities required by this subsection, such person may give a surety bond in an amount equal to that required for the deposit of cash or securities, in a form satisfactory to the commissioner and issued by a company authorized to do business in this state, which bond shall be payable to the office of the state bank commissioner and be filed with the commissioner; and

(4) such person shall submit a list to the commissioner of the names and addresses of other persons who are authorized to act as agents for transactions with Kansas residents.

(f) The commissioner has the discretion to determine the completeness of any application submitted pursuant to this act. In making the determination, the commissioner shall take into consideration compliance with all requirements set out in this section and any other facts and circumstances that the commissioner deems appropriate.

(1) If the applicant fails to complete the application for a new license or for a change of control of a license within 60 days after the commissioner provides written notice of the incomplete application, the application will be considered abandoned and the application fee will not be refunded. An applicant whose application is abandoned under this section may reapply to obtain a license.

(2) If the applicant fails to file a complete renewal application on or before December 31 of the year, the license will be deemed to expire on December 31 of the year.

~~(g)~~ (g) The deposit of cash, securities or surety bond required by this section shall be subject to:

(1) Payment to the commissioner for the protection and benefit of purchasers of money transmission services, purchasers or holders of payment instruments furnished by such person, and those for whom such person has agreed to act as agent in transmission of monetary value and to secure the faithful performance of the obligations of such person in respect to the receipt, handling, transmission and payment of monetary value; and

(2) payment to the commissioner for satisfaction of any expenses, fines, fees or refunds due pursuant to this act, levied by the commissioner or that become lawfully due pursuant to a final judgment or order.

~~(g)~~ (h) The aggregate liability of the surety for all breaches of the conditions of the bond, in no event, shall exceed the amount of such bond. The surety on the bond shall have the right to cancel such bond upon giving 30 days' notice to the commissioner and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of the cancellation. The commissioner or any aggrieved party may enforce claims against such deposit of cash or securities or surety bond. So long as the depositing person is not in violation of this act, such person shall be permitted to receive all interest and dividends on the deposit and shall have the right to substitute other securities satisfactory to the commissioner. If the deposit is made with a bank, any custodial fees shall be paid by such person.

~~(i)~~ (i) (1) The commissioner shall have the authority to examine the books and records of any person operating in accordance with the provisions of this act, at such person's expense, to verify compliance with state and federal law.

(2) The commissioner may require any person operating in accordance with the provisions of this act to maintain such documents and re-

cords as necessary to verify compliance with this act, or any other applicable state or federal law or regulation.

(3) For purposes of investigation, examination or other proceeding under this act, the commissioner may administer or cause to be administered oaths, subpoena witnesses and documents, compel the attendance of witnesses, take evidence and require the production of any document that the commissioner determines to be relevant to the inquiry.

~~(j)~~ Except as authorized with regard to the appointment of agents, a licensee is prohibited from transferring, assigning, allowing another person to use the licensee's license, or aiding any person who does not hold a valid license under this act in engaging in the business of money transmission.

Sec. 7. K.S.A. 2016 Supp. 9-513a is hereby amended to read as follows: 9-513a. The commissioner, after notice and an opportunity for a hearing, may deny, suspend, revoke or refuse to renew *or approve* a license issued pursuant to this act, or issue a cease and desist order if the commissioner finds any of the following are applicable to any person who is required to be licensed under this act or such person's agent:

(a) The financial responsibility, character, reputation, experience and general fitness of the person, such person's senior officers, directors and principal stockholders are such to warrant the belief that the business may not be operated efficiently, fairly and in the public interest;

(b) the person may be financially unable to perform such person's obligations or that the person has willfully failed without reasonable cause to pay or provide for payment of any of such person's obligations related to the person's money transmission business;

(c) the person no longer meets a requirement for initial granting of a license;

(d) the person has filed with the commissioner any document or statement falsely representing or omitting a material fact;

(e) the person concealed a fact or a condition exists which would clearly have justified the commissioner's refusal to grant a license had the fact or condition been known to exist at the time the application for the license was made;

(f) the person or a senior officer, director or a stockholder who owns more than 10% of the money transmission business' outstanding stock has been convicted of a crime involving fraud, dishonesty or deceit;

(g) there has been entry of a federal or state administrative order against the person for violation of any rule and regulation applicable to the conduct of the person's money transmission business;

(h) the person refused to provide information requested by the commissioner or refused to permit an examination or investigation by the commissioner;

(i) a failure to pay to the commissioner any fee required by this act;

(j) the person has engaged in any transaction, practice or business conduct that is fraudulent or deceptive in connection with the business of money transmission;

(k) the person advertises, displays, distributes, broadcasts or televises any false, misleading or deceptive statement or representation with regard to rates, terms or conditions for the transmission of money;

(l) the person fails to keep and maintain sufficient records to permit an audit to satisfactorily disclose to the commissioner the licensee's compliance with the provisions of the act;

(m) the person has been the subject of any disciplinary action by this or any other state or federal agency;

(n) a final judgment has been entered against the person in a civil action and the commissioner finds the conduct on which the judgment is based indicates that it would be contrary to the public interest to permit such person to be licensed;

(o) the person has violated any order issued by the commissioner, any provision of this act, any rule and regulation adopted thereto, or any other state or federal law applicable to money transmission; or

(p) the person has refused or otherwise failed to provide, after a reasonable time as determined by the commissioner, any information necessary to approve or renew an application or license issued pursuant to this act.

Sec. 8. K.S.A. 2016 Supp. 9-2203 is hereby amended to read as fol-

laws: 9-2203. (a) Mortgage business shall only be conducted in this state at or from a mortgage company licensed by the commissioner as required by this act. A licensee shall be responsible for all mortgage business conducted on their behalf by loan originators or other employees.

(b) Mortgage business involving loan origination shall only be conducted in this state by an individual who has first been registered with the commissioner as a loan originator as required by this act and maintains a valid unique identifier issued by the nationwide mortgage licensing system and registry, if operational at the time of registration.

(c) Loan origination shall only be conducted at or from a mortgage company and a registrant shall only engage in mortgage business on behalf of one mortgage company.

(d) Nothing under this act shall require a licensee to obtain any other license *under any other act* for the sole purpose of conducting non-depository mortgage business.

(e) Any person who willfully or knowingly violates any of the provisions of this act, any rule and regulation adopted or order issued under this act commits a severity level 7 nonperson felony. A second or subsequent conviction of this act, regardless of its location on the sentencing grid block, shall have a presumptive sentence of imprisonment.

(f) No prosecution for any crime under this act may be commenced more than five years after the alleged violation. A prosecution is commenced when a complaint or information is filed, or an indictment returned, and a warrant thereon is delivered to the sheriff or other officer for execution, except that no prosecution shall be deemed to have been commenced if the warrant so issued is not executed without unreasonable delay.

(g) Nothing in this act limits the power of the state to punish any person for any conduct which constitutes a crime by statute.

Sec. 9. K.S.A. 9-2204 is hereby amended to read as follows: 9-2204.

(a) Any person required to be licensed as a mortgage company pursuant to this act shall submit to the commissioner a separate application for the principal place of business and each branch office on forms prescribed and provided by the commissioner. The application or applications shall contain information the commissioner deems necessary to adequately identify:

(1) The nature of the mortgage business to be conducted, principal place of business address and each branch office address;

(2) the identity, character and qualifications of an individual applicant;

(3) the identity, character and qualifications of the loan originators, owners, officers, directors, members, partners and employees of the applicant;

(4) the name under which the applicant intends to conduct business; and

(5) other information the commissioner requires to evaluate the financial responsibility and condition, character, qualifications and fitness of the applicant and compliance with the provisions of this act.

(b) Any individual required to register as a loan originator pursuant to this act shall submit to the commissioner an application for registration on forms prescribed and provided by the commissioner. The application shall contain information the commissioner deems necessary to adequately identify the location where the individual engages in mortgage business activities, the licensee for whom the registrant will conduct mortgage business and other information the commissioner requires to evaluate the condition, character, qualifications, and fitness of the applicant and compliance with the provisions of this act.

(c) Each application shall be accompanied by a nonrefundable fee of not less than \$50, which may be increased by rules and regulations pursuant to K.S.A. 9-2209, and amendments thereto.

(d) *The commissioner shall consider an application for a license or registration abandoned if the applicant fails to complete the application within 60 days after the commissioner provides the applicant with written notice of the incomplete application. An applicant whose application is abandoned under this section may reapply to obtain a license or registration and shall pay the fee set forth in subsection (c) upon such application.*

(e) An application shall be approved, and a nonassignable license or registration shall be issued to the applicant provided:

(1) The commissioner has received the complete application and fee required by this section;

(2) the commissioner determines the proposed name under which an applicant for a mortgage company license intends to conduct business is not misleading or otherwise deceptive; and

(3) the commissioner determines the financial responsibility and condition, character, qualifications and fitness of the applicant warrants a belief that the business of the applicant will be conducted competently, honestly, fairly and in accordance with all applicable state and federal laws.

Sec. 10. K.S.A. 2016 Supp. 9-2206 is hereby amended to read as follows: 9-2206. (a) If the commissioner fails to issue a license or registration within 60 days or grant a renewal within 30 days after an application is deemed complete by the commissioner, the applicant may make written request for a hearing. The commissioner shall conduct a hearing in accordance with the Kansas administrative procedure act.

(b) *If an application is considered abandoned pursuant to K.S.A. 9-2204, and amendments thereto, an applicant may make written request for a hearing. The commissioner shall conduct a hearing in accordance with the Kansas administrative procedure act.*

Sec. 11. K.S.A. 2016 Supp. 9-2211 is hereby amended to read as follows: 9-2211. (a) Each applicant or licensee who maintains a bona fide office shall file with the commissioner a surety bond in the amount of not less than \$50,000, in a form acceptable to the commissioner, issued by an insurance company authorized to conduct business in this state, securing the applicant's or licensee's faithful performance of all duties and obligations of a licensee meeting the following requirements:

(1) The bond shall be payable to the office of the state bank commissioner and shall be in an amount established by the commissioner by rules and regulations adopted pursuant to K.S.A. 9-2209, and amendments thereto;

(2) the terms of the bond shall provide that it may not be terminated without 30 days prior written notice to the commissioner, provided that such termination shall not affect the surety's liability for violations of the Kansas mortgage business act occurring prior to the effective date of cancellation and principal and surety shall be and remain liable for a period of two years from the date of any action or inaction of principal that gives rise to a claim under the bond; and

(3) the bond shall be available for the recovery of expenses, fines and fees levied by the commissioner under this act, and for losses or damages which are determined by the commissioner to have been incurred by any borrower or consumer as a result of the applicant's or licensee's failure to comply with the requirements of this act.

(b) Each applicant or licensee who does not maintain a bona fide office shall comply with both of the following:

(1) File with the commissioner a surety bond in the amount of not less than \$100,000, in a form acceptable to the commissioner, issued by an insurance company authorized to conduct business in this state, securing the applicant's or licensee's faithful performance of all duties and obligations of a licensee meeting the requirements set forth in ~~paragraphs subsections~~ (a)(1), (a)(2) and (a)(3) of this ~~act~~ ~~section~~; and

(2) submit evidence that establishes, to the commissioner's satisfaction, that the applicant or licensee shall at all times maintain a minimum net worth of \$50,000. Evidence of net worth shall include the submission of a balance sheet of the applicant or a consolidated financial statement of the entity that owns or controls the applicant accompanied by a written statement by an independent certified public accountant attesting that the balance sheet or the consolidated financial statement has been reviewed in accordance with generally accepted accounting principles. *Should the applicant or licensee choose a different accounting system other than generally accepted accounting principles, the burden to demonstrate that the accounting principles meet or exceed the generally accepted accounting principles shall be on the applicant or licensee using the alternate accounting principle method.*

Sec. 12. K.S.A. 2016 Supp. 9-2216a is hereby amended to read as

follows: 9-2216a. (a) Each licensee shall annually, on or before April 1, file a written report with the commissioner containing the information that the commissioner may reasonably require concerning the licensee's business and operations during the preceding calendar year. The report shall be made in the form prescribed by the commissioner, which may include reports filed with the nationwide mortgage licensing system and registry. Any licensee who fails to file the report required by this section with the commissioner by April 1 shall be subject to a late penalty of \$100 for each day after April 1 the report is delinquent, but in no event shall the aggregate of late penalties exceed \$5,000. The commissioner may relieve any licensee from the payment of any penalty, in whole or in part, for good cause. The filing of the annual written report required under this section shall satisfy any other reports required of a licensee under this act.

(b) *Information contained in the annual report shall be confidential and may be published only in composite form. The provisions of this subsection shall expire on July 1, 2022, unless the legislature reviews and reenacts this provision prior to July 1, 2022.*

Sec. 13. K.S.A. 2016 Supp. 50-1117 is hereby amended to read as follows: 50-1117. Definitions as used in this act: (a) "Commissioner" means the state bank commissioner or *designee, who shall be the deputy commissioner of the consumer and mortgage lending division of the office of the state bank commissioner.*

(b) "Consumer" means an individual who is a resident of this state.

(c) "Credit services organization" means a person who engages in, or holds out to the public as willing to engage in, the business of debt management services for a fee, compensation or gain, or in the expectation of a fee, compensation or gain.

(d) "Debt management service" means:

(1) Receiving or offering to receive funds from a consumer for the purpose of distributing the funds among such consumer's creditors in full or partial payment of such consumer's debts;

(2) improving or offering to improve a consumer's credit record, history or rating or score; or

(3) negotiating or offering to negotiate to defer or reduce a consumer's obligations with respect to credit extended by others.

(e) "Insolvent" means a person whose debts exceed their assets.

(f) "Law firm" means a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization.

(g) "Licensee" means a person who is licensed by the commissioner as a credit services organization.

(h) "Nationwide mortgage licensing system and registry" means a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the licensing and registration of licensed mortgage loan originators and other financial service providers.

(i) "Person" means any individual, corporation, partnership, association, unincorporated organization or other form of entity, however organized, including a nonprofit entity.

~~(h) "Related interest" means a person:~~

~~(1) With respect to an individual who is:~~

~~(A) The spouse of the individual;~~

~~(B) a brother, brother-in-law, sister, sister-in-law of the individual;~~

~~(C) an ancestor or lineal descendant of the individual or the individual's spouse; and~~

~~(D) any other relative, by blood, adoption or marriage, of the individual or such individual's spouse who shares the same residence with the individual.~~

~~(2) With respect to a corporation, partnership, association, unincorporated organization or other form of entity, however organized, including a nonprofit entity, which is:~~

~~(A) Directly or indirectly controlling, controlled by or under common control by a person; or~~

~~(B) an officer or director of a person or a person performing similar functions.~~

~~(i) “Registrant” means a person who is registered by the commissioner as a credit services organization.~~

(j) “Trust account” means an account established by the applicant or ~~registrant licensee~~ in a federally insured financial institution used to hold funds paid by consumers to a credit services organization for ~~disbursement to creditors of consumers that is designated as a trust account or other appropriate~~ designation indicating the funds in the account are:

(1) Not funds of the applicant or ~~registrant licensee~~ or its owners, officers or employees; and

(2) unavailable to creditors of the applicant or ~~registrant licensee~~.

Sec. 14. K.S.A. 50-1118 is hereby amended to read as follows: 50-1118. (a) No person shall engage in, or hold such person out as willing to engage in any credit services organization business with a resident of this state without first obtaining ~~registration~~ *licensing* from the commissioner. Any person required to be ~~registered~~ *licensed* as a credit services organization shall submit to the commissioner an application for ~~registration~~ *licensing* on forms prescribed and provided by the commissioner. The application for ~~registration~~ *licensing* shall include:

(1) The applicant’s name, business address, telephone number and website address, if any;

(2) the name and address of each owner, officer, director, member or partner of the applicant;

(3) a description of the ownership interest of any officer, director, member, partner, agent or employee of the applicant in any affiliate or subsidiary of the applicant or in any other entity that provides any service to the applicant or any consumer relating to the applicant’s credit services organization business;

(4) a description of the applicant’s consumer education program; and

(5) any other information the commissioner may deem necessary to evaluate the financial responsibility and condition, character, qualifications and fitness of the applicant.

(b) Each application for ~~registration~~ *licensing* shall be accompanied by a nonrefundable fee of ~~\$100 which shall be established by the commissioner through the adoption of rules and regulations. The amount of the registration fee may be increased by rules and regulations adopted by the commissioner.~~

(c) The application shall be approved and a nontransferable and non-assignable ~~registration~~ *license* shall be issued to the applicant provided:

(1) The commissioner has received the complete application and fee required by this section; and

(2) the commissioner determines the financial responsibility and condition, character, qualifications and fitness of the applicant warrants a belief ~~that~~ the business of the applicant will be conducted competently, honestly, fairly and in accordance with all applicable state and federal laws.

(d) Each credit services organization ~~registration~~ *license* issued under this section shall expire on ~~June~~ *April* 30 of each year. A ~~registration~~ *license* shall be renewed by filing with the commissioner, at least 30 days prior to the expiration of the ~~registration~~ *license*, a complete renewal application, containing information the commissioner requires to determine the existence and effect of any material changes from the information contained in the applicant’s original application, annual reports or prior renewal applications. Each renewal shall be accompanied by a non-refundable renewal fee which shall be established by rules and regulations of the commissioner.

(e) If the commissioner fails to issue a ~~registration~~ *license* within 60 days after a filed application is deemed complete by the commissioner, the applicant may make written request for hearing. The commissioner shall conduct a hearing in accordance with the Kansas administrative procedure act.

Sec. 15. K.S.A. 50-1119 is hereby amended to read as follows: 50-1119. Each applicant or ~~registrant licensee~~ shall file with the commissioner a surety bond in a form acceptable to the commissioner. The surety bond shall be issued by a surety or insurance company authorized to conduct business in this state, securing the applicant’s or ~~registrant’s~~ *licensee’s* faithful performance of all duties and obligations of a ~~registrant~~ *licensee*. The surety bond shall:

- (a) Be payable to the office of the state bank commissioner;
- (b) provide that the bond may not be terminated without 30 days prior written notice to the commissioner, *and that such termination shall not affect the surety's liability for violations of the Kansas credit services organization act occurring prior to the effective date of cancellation, and principal and surety shall be and remain liable for a period of two years from the date of any action or inaction of principal that gives rise to a claim under the bond;*
- (c) provide that the bond shall not expire for two years after the date of surrender, revocation or expiration of the applicant's or ~~registrant's registration~~ *licensee's license*, whichever shall first occur;
- (d) be available for:
 - (1) The recovery of expenses, fines and fees levied by the commissioner under this act; and
 - (2) payment of losses or damages which are determined by the commissioner to have been incurred by any consumer as a result of the applicant's or ~~registrant's~~ *licensee's* failure to comply with the requirements of this act; and
- (e) the amount of the bond shall be \$25,000. The amount of the bond may be increased up to \$1,000,000, as further defined by rules and regulations adopted by the commissioner.

Sec. 16. K.S.A. 50-1120 is hereby amended to read as follows: 50-1120. ~~No credit services organization~~ *person required to be licensed by this act shall engage in debt management services unless:*

- (a) ~~The registrant provides~~ *licensee has provided* the consumer with a credit education program designed to improve the financial literacy of the consumer.
- (b) ~~The registrant~~ *licensee* has:
 - (1) (A) Taken reasonable steps to identify all creditors of a consumer; and
 - (B) prepared and provided to the consumer a written financial analysis of ~~and an~~ initial budget plan for all of the consumer's debt obligations which indicates the consumer can reasonably meet the requirements set forth in the budget plan, ~~and~~ *For purposes of the initial budget plan, the licensee shall include all outstanding debt obligations as listed on the consumer's credit report as well as any debt obligations identified by the consumer; and*
 - (2) provided to the consumer a list of each creditor the ~~registrant licensee~~ *licensee* reasonably expects:
 - (A) To participate in the ~~plan~~ *debt management services agreement*; and
 - (B) not to participate in the ~~plan~~ *debt management services agreement*.
 - (c) The ~~registrant licensee~~ *licensee* and the consumer have entered into a written debt management services agreement and a copy of the signed agreement has been provided to the consumer by the ~~registrant licensee~~ *licensee*. Such agreement shall be in at least 12 point type, signed and dated by the consumer and ~~registrant licensee~~ *licensee* and include:
 - (1) The *full legal name, doing business as "dba" name, address, and phone number of the consumer and the registrant licensee;*
 - (2) *the name, address and phone number of the consumer;*
 - (3) a description of the debt management services to be provided to the consumer and an itemization of any fees to be charged to the consumer;
 - ~~(3)~~(4) a notice of the consumer's right to rescind the debt management services agreement at any time by giving written notice of rescission to the ~~registrant licensee~~ *licensee*;
 - ~~(4)~~(5) a schedule of payments, including the amount and due date of each payment, that the consumer must make to the ~~registrant licensee~~ *licensee* for disbursement to such consumer's creditors;
 - ~~(5)~~(6) a list of each participating creditor of the consumer to which payments will be made by the ~~registrant licensee~~ *licensee* under the debt management services agreement. The listing shall include the:
 - (A) Amount owed to each creditor;
 - (B) amount of each payment;
 - (C) date on which each payment will be made; and
 - (D) anticipated payoff date for each creditor;

~~(6)~~(7) the name of each creditor that the ~~registrant~~ licensee reasonably expects not to participate in the debt management ~~plan~~ services agreement;

~~(7)~~(8) a disclosure that the ~~registrant~~ licensee also may receive compensation from the consumer's creditors for providing debt management services to the consumer;

~~(8)~~(9) a disclosure that the ~~registrant~~ licensee may not, as a condition of entering into a debt management services agreement, require a consumer to purchase any other product or service, nor solicit or offer to sell any other product or service to the consumer during the term of the debt management services agreement;

~~(9)~~(10) a disclosure that the ~~registrant~~ licensee may not require a voluntary contribution from a consumer for any service provided by the ~~registrant~~ licensee to the consumer;

~~(10)~~(11) a disclosure that, by executing the debt management services agreement, the consumer authorizes any financial institution in which the ~~registrant~~ licensee has established a trust account for the deposit of the consumer's funds to disclose to the commissioner any financial records relating to the trust account during the course of any investigation or examination by the commissioner; and

~~(11)~~(12) ~~the following~~ a notice substantially similar to the following: "The Kansas Office of the State Bank Commissioner ~~will accept~~ accepts questions and complaints from consumers regarding (name and ~~registration~~ license number of ~~registrant~~ licensee) at 700 SW Jackson, Suite 300, Topeka, Kansas, 66603, or by calling toll-free 1-877-387-8523".

(d) All solicitations and published advertisements concerning a credit services organization directed at Kansas residents, including those on the internet or by other electronic means, shall contain the name and license number of the licensee on record with the commissioner. Each licensee shall maintain a record of all solicitations or advertisements for a period of 36 months. For purposes of this subsection, "advertising" does not include business cards or promotional items.

(e) No solicitation or advertisement shall contain false, misleading or deceptive information.

(f) No licensee shall conduct credit services organization business in this state using any name other than the name or names stated on its license.

Sec. 17. K.S.A. 50-1121 is hereby amended to read as follows: 50-1121. No person required to be ~~registered~~ licensed under this act shall: (a) Delay payment of a consumer's debt for the purpose of increasing interest, costs, fees or charges payable by the consumer.

(b) Make any misrepresentation of any material fact or false promise intended to:

(1) Influence, persuade or induce a consumer to enter into a debt management services agreement; or

(2) cause or contribute to any misrepresentation by any other person acting on such person's behalf.

(c) Make or use any false or misleading representation in the offer or sale of the services of a debt management services agreement or credit services organization business, including, but not limited to, guaranteeing to "erase bad credit" or words to that effect unless the representation clearly discloses that guaranteed action can be done only if the consumer's credit history is inaccurate or obsolete.

(d) Engage, directly or indirectly, in any fraudulent or deceptive act, practice or course of business in connection with the offer or sale of the services of a credit services organization.

(e) Make, or advise a consumer to make, any statement with respect to a consumer's credit worthiness, credit standing or credit capacity that is false or misleading, or that should be known by the exercise of reasonable care to be false or misleading, to a consumer reporting agency or to a person who has extended credit to a consumer or to whom a consumer is applying for an extension of credit.

(f) Advertise or cause to be advertised, in any manner whatsoever, the services of a credit services organization to Kansas consumers without first obtaining proper ~~registration~~ licensure from the commissioner.

(g) Receive compensation for rendering debt management services where the person has otherwise acted as a creditor for the consumer.

(h) Transfer, assign or attempt to transfer or assign, a ~~registration license~~ to any other person.

(i) Conduct credit services organization activities using any name other than the name or names approved by the commissioner.

(j) Operate as a collection agency.

(k) Receive or charge any fee in the form of a promissory note or other promise to pay.

(l) Accept or receive any reward, bonus, premium, commission or any other consideration for referring a consumer to any person ~~or related interest~~.

(m) Give a reward, bonus, premium, commission or any other consideration for the referral of a consumer to the ~~registrant's licensee's~~ credit services organization business *and charge the consumer for the amount*.

(n) Lend money or provide credit to a consumer.

(o) Obtain a mortgage or other security interest in real or personal property owned by a consumer.

(p) Structure a debt management services agreement in any manner that would result in a negative amortization of any of the consumer's debts.

(q) Charge for or provide credit insurance.

(r) Purchase any debt or obligation of a consumer.

(s) Use any communication which simulates in any manner a legal or judicial process, or which gives the false appearance of being authorized, issued or approved by a government, governmental agency or attorney-at-law.

(t) While operating as a ~~registrant licensee~~, or a director, manager or officer of such ~~registrant or any related interest of such registrant licensee~~, be a director, manager, officer, *or owner or related interest* of any creditor or a subsidiary of any such creditor, that is receiving or will receive payments from the ~~registrant licensee~~ on behalf of a consumer with whom the ~~registrant licensee~~ has entered into a debt management services agreement.

(u) Attempt to cause a consumer to waive or agree to forego rights or benefits under this act.

Sec. 18. K.S.A. 50-1122 is hereby amended to read as follows: 50-1122. (a) Within four calendar days after receipt of any funds paid to the ~~registrant licensee~~ by or on behalf of a consumer for disbursement to such consumer's creditors, a ~~registrant licensee~~ shall deposit such funds in a trust account established for the benefit of consumers.

(b) A ~~registrant licensee~~ shall:

(1) Maintain separate records of account for each consumer to whom the ~~registrant licensee~~ provides debt management services;

(2) disburse any funds paid by or on behalf of a consumer to such consumer's creditors within ~~10~~ 20 calendar days after receipt of such funds *or the latest date before the consumer would incur any fee, charge or penalty due to delay in payment*;

(3) correct any misdirected payments resulting from an error by the ~~registrant licensee~~;

(4) reimburse the consumer for any actual fees or other charges imposed by a creditor as a result of the misdirection; and

(5) disburse a consumer's funds from the trust account only to such consumer's creditors or back to the consumer.

(c) If a consumer rescinds the debt management services agreement, all funds held in the trust account on behalf of such consumer shall be refunded to the consumer within 10 calendar days from receipt of rescission by the ~~registrant licensee~~.

(d) A ~~registrant licensee~~ shall not commingle any trust account established for the benefit of consumers with any operating accounts of the ~~registrant or its related interests licensee~~.

Sec. 19. K.S.A. 50-1123 is hereby amended to read as follows: 50-1123. A ~~registrant licensee~~ shall provide a report at least once every three months to each consumer who has entered into a debt management services agreement with the ~~registrant licensee~~. The report shall include the:

(a) Total amount received from the consumer to date;

(b) total amount paid to each creditor to date;

(c) total *payoff* amount ~~any~~ *or an estimated balance due to each cred-*

itor ~~has agreed to accept as payment in full~~ on any debt owed by the consumer;

- (d) ~~any~~ fees paid to the ~~registrant~~ licensee by the consumer; and
- (e) ~~any~~ amount held in the trust account on behalf of the consumer, or statement that no amount is currently held.

Sec. 20. K.S.A. 50-1124 is hereby amended to read as follows: 50-1124. (a) (1) On or before ~~March~~ April 1, of each year, each ~~registrant~~ licensee shall file with the commissioner an annual report relating to credit services organization business conducted by the ~~registrant~~ licensee during the preceding calendar year. The annual report shall be on a form prescribed by the commissioner.

(2) *The information contained in the annual report shall be confidential and may be published only in composite form. The provisions of this paragraph shall expire on July 1, 2022, unless the legislature reviews and reenacts the provision prior to July 1, 2022.*

(b) Within 15 calendar days after the occurrence of any of the following events, a ~~registrant~~ licensee shall file a written report with the commissioner describing the event and its expected impact on the ~~registrant's~~ licensee's business:

- (1) The filing for bankruptcy or reorganization by the ~~registrant~~ licensee;
- (2) the institution of a revocation, suspension or other proceeding against the ~~registrant~~ licensee by a governmental authority that is related to the ~~registrant's~~ licensee's credit services organization business in any state; ~~and~~
- (3) a felony conviction of the ~~registrant~~ licensee or any of its owners, officers, principals, directors, partners, members or debt management counselors;
- (4) a change in the licensee's name or legal entity status; and
- (5) the addition or loss of any owner, officer, partner or director.

(c) If a ~~registrant~~ licensee fails to make any report required by this section to the commissioner, the commissioner may require the ~~registrant~~ licensee to pay a late penalty of \$100 for each day the report is overdue.

Sec. 21. K.S.A. 50-1125 is hereby amended to read as follows: 50-1125. (a) Each ~~registrant~~ licensee shall maintain and preserve complete and adequate business records including a general ledger containing all assets, liabilities, capital, income and expense accounts for a period of five years.

(b) Each ~~registrant~~ licensee shall maintain and preserve complete and adequate records of each debt management services agreement during the term of the agreement and for a period of five years from the date of cancellation or completion of the agreement with each consumer. Such records shall contain all consumer information including, but not limited to, the debt management services agreement and any extensions thereto, payments, disbursements, charges and correspondence.

(c) If the ~~registrant's~~ licensee's records are located outside this state, the ~~registrant~~ licensee shall provide the records to the commissioner within three calendar days or, at the commissioner's discretion, pay reasonable and necessary expenses for the commissioner or commissioner's designee to examine them at the place where they are maintained.

Sec. 22. K.S.A. 50-1126 is hereby amended to read as follows: 50-1126. (a) No ~~registrant~~ licensee shall impose any fees or other charges on a consumer, or receive any funds or other payments from a consumer or another person on behalf of a consumer:

(1) Except as provided in ~~paragraph (5) of~~ subsection (b)(5), until after the ~~registrant~~ licensee and consumer have executed a debt management services agreement; and

(2) except as allowed under this section, or as permitted by rule and regulation adopted by the commissioner.

(b) A ~~registrant~~ licensee may:

(1) Charge a one-time consultation fee not exceeding ~~\$50~~ \$75. The cost of a credit report on a consumer shall be paid from the consultation fee paid by the consumer;

(2) charge and collect monthly the lesser of a total maintenance fee of ~~\$20~~ \$40 per month, or \$5 per month for each creditor of a consumer that is listed in the debt management services agreement between the ~~registrant~~ licensee and the consumer;

(3) collect from or on behalf of a consumer the funds for disbursement to creditors that the consumer has agreed to pay to the ~~registrant licensee~~ under the debt management services agreement;

(4) accept a voluntary contribution from a consumer for a debt management service provided by the ~~registrant licensee~~ to the consumer if the aggregate amount of the voluntary contribution and any other fees received by the ~~registrant licensee~~ from the consumer does not exceed the total amount the ~~registrant licensee~~ is authorized to charge the consumer under paragraphs (1) and (2) of this subsection;

(5) charge the consumer, ~~if provided to the consumer,~~ a reasonable fee, ~~not to exceed \$50,~~ for a ~~providing reverse mortgage counseling, bankruptcy counseling, student loan counseling, other counseling-session services authorized by the commissioner,~~ an educational program, or materials and supplies ~~if the consumer does not enter into a debt management services agreement with the registrant; and~~

(6) accept fee payments from a consumer's creditors for debt management services rendered to a consumer, provided the consumer's creditor does not assess the fee to the consumer;

(7) *charge the consumer up to \$30 one time for each insufficient payment; and*

(8) *charge the consumer up to \$5 to process a payment made by the consumer to the credit services organization through electronic means, if authorized by the consumer. No charge shall be assessed where the consumer has agreed to make all scheduled payments by electronic means.*

(c) *A licensee may waive any of the fees permitted in subsections (b)(1) through (b)(8) if the licensee determines that the consumer is unable to pay the fees.*

~~(c)~~(d) No ~~registrant licensee~~ shall:

(1) Charge ~~a~~ an additional fee to a consumer, if the consumer enters into a debt management services agreement with the ~~registrant licensee~~, to:

(A) Prepare a financial analysis or an initial budget plan for the consumer;

(B) counsel a consumer about debt management;

(C) provide a consumer with the consumer education program described in the ~~registrant's licensee's~~ application to engage in business as a credit services organization; or

(D) rescind a debt management services agreement.

(2) Require a voluntary contribution from a consumer for any service provided by the ~~registrant licensee~~ to the consumer.

(3) As a condition of entering into a debt management services agreement, require a consumer to purchase for a fee a counseling session, an educational program or materials and supplies.

(d) If a ~~registrant licensee~~ imposes any fee or other charge or receives any funds or other payments not authorized under this section, except as a result of an accidental and bona fide error:

(1) The debt management services agreement shall be void; and

(2) the ~~registrant licensee~~ shall return the amount of the unauthorized fees, charges, funds or payments to the consumer.

Sec. 23. K.S.A. 50-1127 is hereby amended to read as follows: 50-1127. The commissioner may deny, suspend, revoke or refuse to renew a ~~registration license~~ issued pursuant to this act, and amendments thereto, if the commissioner finds, after notice and opportunity for a hearing conducted in accordance with the provisions of the Kansas administrative procedure act, that:

(a) The applicant or ~~registrant licensee~~ has repeatedly or willfully violated any provision of this act, any rule and regulation promulgated thereunder or any order lawfully issued by the commissioner pursuant to this act;

(b) the applicant or ~~registrant licensee~~ has failed to file and maintain the surety bond required under this act;

(c) the applicant or ~~registrant licensee~~ is insolvent;

(d) the applicant or ~~registrant licensee~~ has filed with the commissioner any document or statement containing any false representation of a material fact or omitting to state a material fact;

(e) the applicant, ~~registrant licensee~~ or any officer, director, member,

owner, partner, principal or debt management counselor thereof has been convicted of any crime;

(f) the applicant or ~~registrant licensee~~ fails to keep and maintain sufficient records to permit an audit satisfactorily disclosing to the commissioner the applicant's or ~~registrant's licensee's~~ compliance with the provision of this act;

(g) the applicant, ~~registrant licensee~~ or an employee of the applicant or ~~registrant licensee~~ has been the subject of any disciplinary action by the commissioner or any other state or federal regulatory agency;

(h) a final judgment has been entered against the applicant or ~~registrant licensee~~ in a civil action and the commissioner finds the conduct on which the judgment is based indicates that it would be contrary to the public interest to permit such person to be ~~registered licensed~~;

(i) the applicant or ~~registrant licensee~~ has engaged in any deceptive business practice;

(j) facts or conditions exist which would have justified the denial of the ~~registration license~~ or renewal had such facts or conditions existed or been known to exist at the time the application for ~~registration license~~ or renewal was made; or

(k) the applicant or ~~registrant licensee~~ has refused to furnish information required by the commissioner within a reasonable period of time as established by the commissioner.

Sec. 24. K.S.A. 50-1128 is hereby amended to read as follows: 50-1128. This act shall be administered by the commissioner. In addition to other powers granted by this act, the commissioner, within the limitations provided by law, may exercise the following powers:

(a) Adopt, amend and revoke rules and regulations as necessary to carry out the intent and purpose of this act.

(b) Make any investigation and examination of the ~~registrant's~~ operations, books and records of a *credit services organization*, as the commissioner deems necessary:

~~(1) For the protection of the public;~~

~~(2) to determine whether any registration should be granted, denied or revoked;~~

~~(3) to determine whether any person has violated or is about to violate any provision of this act, any rule and regulation promulgated thereunder or any order issued thereunder; or~~

~~(4) to aid in the enforcement of this act.~~

~~(c)(1) For examination purposes~~ The commissioner, or the commissioner's designee, shall have free and reasonable access to the offices, places of business and all records of the ~~registrant and the registrant's related interests licensee~~ that relate to the debt management or credit services organization business. The commissioner may designate persons, including comparable officials of the state in which the records are located, to inspect the records on the commissioner's behalf.

~~(d)(2) The commissioner may charge reasonable costs, including a per diem and actual travel and lodging expenses, of investigation, administration or examination to be paid by the applicant or registrant under investigation, examination or requiring administrative action, and of investigation, examination and administration of this act, to be paid by the applicant or licensee, in such amounts as the commissioner may determine to be sufficient to meet the budget requirements of the commissioner for each fiscal year. The commissioner may maintain an action in any court to recover such costs.~~

~~(c)(c)~~ To order any ~~registrant licensee~~ or person to cease any activity or practice which the commissioner deems to be deceptive, dishonest, or a violation of this act, or of other state or federal law, or unduly harmful to the interests of the public.

~~(d)(d) (1)~~ Exchange any information regarding the administration of this act with any agency of the United States or any state which regulates the applicant or ~~registrant licensee~~ or administers statutes, rules and regulations or programs related to debt management or credit services organization laws.

(2) *Examination reports and correspondence regarding such reports made by the commissioner or the commissioner's designees shall be confidential.* The commissioner may release examination reports and correspondence regarding the reports in connection with a disciplinary pro-

ceeding conducted by the commissioner, a liquidation proceeding or a criminal investigation or proceeding. Additionally, the commissioner may furnish to federal or other state regulatory agencies or any officer or examiner thereof, a copy of any or all examination reports and correspondence regarding the reports made by the commissioner or the commissioner's designees. *The provisions of this paragraph shall expire on July 1, 2022, unless the legislature reviews and reenacts this provision prior to July 1, 2022.*

~~(g)~~(e) Disclose to any person or entity that an applicant's or ~~registrant's~~ licensee's application or ~~registration~~ license has been denied, suspended, revoked or refused renewal.

~~(h)~~(f) Require or permit any person to file a written statement, under oath or otherwise as the commissioner may direct, setting forth all the facts and circumstances concerning any apparent violation of this act, any rule and regulation promulgated hereunder, or any order issued pursuant to this act.

~~(i)~~(g) Receive, as a condition in settlement of any investigation or examination, a payment designated for consumer education to be expended for such purpose as directed by the commissioner.

~~(j)~~(h) Delegate the authority to sign any orders, official documents or papers issued under or related to this act to the deputy of consumer and mortgage lending in the office of the state bank commissioner.

~~(k)~~(i) Require fingerprinting of any ~~registrant~~ licensee, agent acting on behalf of a ~~registrant~~ licensee or other person as deemed appropriate by the commissioner, or the commissioner's designee. The commissioner, or commissioner's designee, may submit such fingerprints to the Kansas bureau of investigation, federal bureau of investigation or other law enforcement agency for the purposes of verifying the identity of such persons and obtaining records of their criminal arrests and convictions. *For purposes of this section and in order to reduce the points of contact that the federal bureau of investigation may have to maintain with the individual states, the commissioner may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the department of justice or any governmental agency.*

(j) *Use the nationwide mortgage licensing system and registry as a channeling agent for requesting and distributing information regarding credit services organization licensing to and from any source so directed by the commissioner.*

(k) *Establish relationships or contracts with the nationwide mortgage licensing system and registry or other entities to collect and maintain records and process transaction fees or other fees related to applicants, licensees or other persons subject to this act, and to take other such actions as may be reasonably necessary to participate in the nationwide mortgage licensing system and registry.*

(l) Charge, establish and collect from ~~registrants~~ licensees such fees as are necessary and in such amounts as the commissioner may determine to be sufficient to meet the expense requirements of the commissioner in administering this act.

(m) Seize and distribute a ~~registrant's~~ licensee's trust account funds to protect consumers and the public interest.

(n) For the purpose of any examination, investigation or proceeding under this act, the commissioner or the commissioner's designee may administer oaths and affirmations, subpoena witnesses, compel such witnesses' attendance, adduce evidence and require the production of any matter which is relevant to the examination or investigation, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of relevant information or items.

(o) *To enter into any informal agreement with any person for a plan of action to address violations of this act. The adoption of an informal agreement authorized by this subsection shall not be subject to the provisions of the Kansas administrative procedure act or the Kansas judicial review act. Any informal agreement authorized by this subsection shall not be considered an order or other agency action, and shall be considered confidential examination material pursuant to K.S.A. 50-1128(d), and*

amendments thereto. All such examination material shall be confidential by law and privileged, shall not be subject to the open records act, shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private civil action. The provisions of this subsection shall expire on July 1, 2022, unless the legislature reviews and reenacts this provision prior to July 1, 2022.

(p) Issue, amend and revoke written administrative guidance documents in accordance with the applicable provisions of the Kansas administrative procedure act.

Sec. 25. K.S.A. 50-1129 is hereby amended to read as follows: 50-1129. (a) If the commissioner determines after notice and opportunity for a hearing pursuant to the Kansas administrative procedure act that any person has engaged, is engaging or is about to engage in any act or practice constituting a violation of any provision of this act or any rule and regulation promulgated or order issued thereunder, the commissioner by order may require any or all of the following:

(1) That the person cease and desist from the unlawful act or practice;

(2) that the person pay a fine not to exceed \$10,000 per incident for the unlawful act or practice;

(3) *if any person is found to have violated any provision of this act and such violation is committed against elder or disabled persons as defined in K.S.A. 50-676, and amendments thereto, the commissioner may impose an additional penalty not to exceed \$10,000 for each such violation, in addition to any civil penalty otherwise provided by law;*

(4) *issue an order requiring the person to pay restitution for any loss arising from the violation or requiring the person to disgorge any profits arising from the violation. Such order may include the assessment of interest not to exceed 8% per annum from the date of the violation;*

(5) that the person take such affirmative action as in the judgment of the commissioner will carry out the purposes of this act; or

~~(4)(6)~~ that the person be barred from subsequently applying for ~~registration~~ licensure under this act.

(b) If the commissioner makes written findings of fact that the public interest will be irreparably harmed by delay in issuing an order under subsection (a), the commissioner may issue an emergency cease and desist order.

(1) Such emergency order, even when not an order within the meaning of K.S.A. 77-502, and amendments thereto, shall be subject to the same procedures as an emergency order issued under K.S.A. 77-536, and amendments thereto.

(2) Upon the entry of such an emergency order, the commissioner shall promptly notify the person subject to the order that it has been entered, of the reasons, and that a hearing will be held upon written request by the person.

(3) If the person requests a hearing, or in the absence of any request, if the commissioner determines that a hearing should be held, the matter will be set for a hearing which shall be conducted in accordance with the provisions of the Kansas administrative procedure act. Upon completion of the hearing the commissioner shall, by written findings of fact and conclusions of law vacate, modify or make permanent the emergency order.

(4) If no hearing is requested and none is ordered by the commissioner, the emergency order shall remain in effect until such order is modified or vacated by the commissioner.

Sec. 26. K.S.A. 9-2204, 50-1118, 50-1119, 50-1120, 50-1121, 50-1122, 50-1123, 50-1124, 50-1125, 50-1126, 50-1127, 50-1128 and 50-1129 and K.S.A. 2016 Supp. 9-508, 9-509, 9-513a, 9-1101, 9-1102, 9-1104, 9-1114, 9-2203, 9-2206, 9-2211, 9-2216a and 50-1117 are hereby repealed.

Sec. 27. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE concurred in
HOUSE amendments _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.