

KANSAS ADMINISTRATIVE REGULATIONS

Agency 75 – State Bank Commissioner –

Consumer and Mortgage Lending Division

Article 6 —UNIFORM CONSUMER CREDIT CODE

K.A.R. 75-6-1 - Making transactions outside of the scope of the Kansas uniform consumer credit code subject to same

The parties to a sale, lease, loan, or modification of a sale, lease, or loan that is not a consumer credit transaction may agree in a writing signed by the parties to make the transaction subject to the Kansas uniform consumer credit code. Any such agreement may be included in the contractual agreement evidencing the credit transaction, and when so included, no additional signatures shall be required to evidence the agreement to include the transaction within the scope of the Kansas uniform consumer credit code other than the signatures normally used in executing the credit transaction. In order to be effective, each such agreement shall be executed simultaneously with the contractual agreement evidencing the credit transaction.

(Authorized by K.S.A. 16a-6-104(e), as amended by 2009 SB 240, §21; implementing K.S.A. 16a-1-109; effective, E-74-13, Jan. 1, 1974; effective May 1, 1975; amended Oct. 2, 2009.)

K.A.R. 75-6-9 - Additional charges

(a) The charges enumerated in K.S.A. 16a-2-501 (1)(d), and amendments thereto, shall be considered “additional charges in connection with a consumer credit transaction” if the charges meet the following requirements:

- (1) Are made under conditions that permit their exclusion from the definition of “finance charge” under K.S.A. 16a-1-301 (22) and amendments thereto; and
- (2) are payable to a third party who is not related to the creditor, except as allowed by K.S.A. 16a-1-301 (10)(b) and amendments thereto.

(b) Additional charges shall be considered “in connection with a consumer credit transaction,” as used in K.S.A. 16a-2-501 and amendments thereto and subsection (a) of this regulation, if either of the following conditions is met:

- (1) In relation to insurance premiums, the creditor or a person related to the creditor receives a commission on any insurance sold on the same day on which the consumer credit transaction was consummated.
- (2) In relation to all other additional charges, the charges are made for goods, services, or both rendered within one month before or after the consummation of the consumer credit transaction.

(Authorized by K.S.A. 16a-6-104(e), as amended by 2009 SB 240, §21; implementing K.S.A. 16a-2-501(1)(d); effective, E-74-13, Jan. 1, 1974; effective May 1, 1975; amended May 1, 1985; amended Sept. 20, 1996; amended Oct. 2, 2009.)

K.A.R. 75-6-23 - No assignment of earnings

When a debtor authorizes a deduction from his earnings by the debtor's employer to be paid to the employee's creditor in accordance with the provision permitting such a deduction in K.S.A. 16a-3-305(1), the authorization providing for such "earnings deduction" shall be in a separate printed form or writing apart from the contract. Such authorization shall contain a clear and conspicuous notice to the debtor that the "earnings deduction" that the debtor is authorizing may be revoked by the debtor at any time, and shall also provide appropriate wording so that the form may be used as a form for revoking any such authorization. A copy must be delivered to the debtor at the time of execution. In no such authorization may a reference to an "earnings deduction" be termed a wage assignment. For the purposes of remedies and penalties a violation of this regulation shall constitute a violation of K.S.A. 16a-3-305.

(Authorized by K.S.A. 1976 Supp. 16a-6-104(1)(e); effective Feb. 15, 1977.

K.A.R. 75-6-26 - Federal consumer credit laws.

(a) Each creditor subject to the federal laws and regulations set forth below shall make the disclosures required under these laws and regulations, and shall comply with all other terms and provisions of these laws and regulations applicable to the creditor. The pertinent federal laws and regulations, which are hereby adopted by reference, shall be the following:

- (1) Title I of the consumer credit protection act, 15 USC § 1601 et seq., as amended, and in effect on January 1, 2000;
- (2) regulation M, 12 CFR part 213, including all appendices, as amended and in effect on January 1, 2000; and
- (3) regulation Z, 12 CFR part 226, including all appendices, as amended and in effect on March 31, 2000.

(b) The terms "amount financed" and "annual percentage rate," as used in the Kansas uniform consumer credit code, shall have the same meanings given to these terms in, and shall be interpreted in a manner that is consistent with the usage and treatment of these terms in, and shall be calculated in a manner that conforms to the following:

- (1) Title I of the consumer credit protection act, 15 USC § 1601 et seq., as amended, and in effect on January 1, 2000; and
- (2) regulation Z, 12 CFR part 226, including all appendices, as amended and in effect on March 31, 2000.

(c) The terms "finance charge" and "prepaid finance charge," as used in the Kansas uniform consumer credit code, shall have substantially the same meanings given to these terms in, and shall be interpreted in a manner that is consistent with

the usage and treatment of these terms in, and shall be calculated in a manner that conforms to the following:

- (1) Title I of the consumer credit protection act, 15 USC § 1601 et seq., as amended, and in effect on January 1, 2000; and
- (2) regulation Z, 12 CFR part 226, including all appendices, as amended and in effect on March 31, 2000.

(d) Notwithstanding subsection (c), the following shall not be included in the meaning of the terms "finance charge" and "prepaid finance charge" as used in the Kansas uniform consumer credit code:

- (1) The actual fees paid a public official or agency of the state or federal government, for filing, recording or releasing any instrument relating to the debt; and
- (2) bona fide and reasonable expenses incurred by the lender in connection with the making, closing, disbursing, extending, readjusting, or renewing of the debt that are payable to third parties not related to the lender. However, reasonable fees for an appraisal made by the lender or related party shall be permissible.

(Authorized by and implementing K.S.A. 1999 Supp. 16a-1-301, and K.S.A. 1999 Supp. 16a-6-117; effective, E-82-16, Aug. 12, 1981; amended, T-83-2, Jan. 7, 1982; amended, T-83-6, April 14, 1982; amended, T-84-10, May 25, 1983; amended, T-85-15, May 3, 1984; amended, T-86-12, May 1, 1985; amended, T-87-14, June 6, 1986; amended, T-88-15, July 1, 1987; amended, T-75-7-29-88, July 29, 1988; amended Sept. 19, 1988; amended June 11, 1990; amended Oct. 28, 1991; amended Sept. 8, 1992; amended March 7, 1997; amended Dec. 12, 1997; amended July 14, 2000.)

K.A.R.75-6-30 - Application; place of business

(a) Each person who proposes to engage in any of the activities for which a license is required under K.S.A. 16a-2-301, and amendments thereto, shall first apply for and obtain a license for each of the person's places of business. Each applicant for a license and each licensee seeking to license one or more additional places of business shall complete and submit a license application for each place of business.

(b) Each location at which an applicant or licensee regularly performs either of the following activities shall constitute a place of business for the purpose of this regulation:

- (1) Makes a supervised loan to a Kansas consumer or makes any loan for personal, family, or household purposes to a Kansas consumer; or
- (2) accepts payments on loans made to Kansas consumers that the applicant or licensee has taken assignment of for direct collection.

(c) Any location in Kansas at which an applicant or licensee places an automated loan machine shall be deemed a location where an applicant or licensee makes a supervised loan.

(Authorized by and implementing K.S.A. 2004 Supp. 16a-2-302(5), as amended by L. 2005, ch. 144, sec. 9; effective July 14, 2000; amended Jan. 6, 2006.)

K.A.R.75-6-31 - Bond requirements

(a) Each applicant for a supervised loan license shall submit a bond in the following amounts:

- (1) For any applicant who engages in or intends to engage in making loans secured by an interest in real property or contracts for deed, \$250,000.00 for the first licensed place of business, plus an additional \$25,000.00 for each additional licensed place of business or, if the applicant made more than \$50,000,000.00 in such loans in Kansas during the previous calendar year, \$300,000.00; or
- (2) for all other applicants, \$100,000.00 for the first licensed place of business, plus an additional \$25,000.00 for each additional licensed place of business.

(b) The total bond requirement for each applicant shall not exceed \$300,000.00, unless the administrator determines, after consideration of the factors specified in subsection (c), that special circumstances require a higher bond amount in order to adequately protect Kansas consumers.

(c) In determining whether a higher bond amount is necessary, the following factors shall be considered by the administrator:

- (1) Whether the business proposed to be conducted by the applicant involves technology or methods that may require additional regulatory oversight by the administrator;
- (2) whether the applicant has been the subject of regulatory or disciplinary actions by the administrator, any regulatory body of this state or any other state, or any federal regulatory body; or
- (3) whether the applicant's structure, business activities, or operations possess elements of risk that may require additional regulatory oversight by the administrator.

(Authorized by K.S.A. 16a-2-302(1)(a), as amended by 2009 SB 240, §17, and K.S.A. 16a-6-104, as amended by 2009 SB 240, §21; implementing K.S.A. 16a-2-302(2), as amended by 2009 SB 240, §17; effective July 14, 2000; amended Jan. 6, 2006; amended Oct. 2, 2009.)

K.A.R.75-6-32 - Notification

(a) Each person subject to K.S.A. 16a-6-201 through K.S.A. 16a-6-203, and amendments thereto, shall file notification with the administrator within 30 days after commencing business in Kansas and, thereafter, on or before April 30 of each year. The notification shall be submitted on a form provided by the administrator.

(b) If the business's name, status, or list of locations contained in the notification becomes inaccurate after filing, the person shall notify the administrator in writing within 30 days of the date of the change.

(Authorized by K.S.A. 2000 Supp. 16a-6-104; implementing K.S.A. 2000 Supp. 16a-6-202; effective Feb. 23, 2001.)

K.A.R.75-6-35 - Net worth requirements

(a) Each applicant for a supervised loan license who engages in or intends to engage in making loans secured by an interest in real property or contracts for deed shall comply with both of the following requirements:

- (1) Each applicant shall maintain a minimum net worth of \$250,000.
- (2) At least 20% or \$100,000 of the net worth of each applicant, whichever is less, shall be comprised of liquid assets consisting of cash or readily marketable securities registered on a national securities exchange.

(b) As evidence that the applicant is in compliance with subsection (a), each applicant shall submit annually to the administrator, on or before January 1, a current and complete financial statement, accompanied by a written statement signed by an independent certified public accountant attesting that the statement has been reviewed and is in compliance with generally accepted accounting principles. For the purposes of this regulation, a current financial statement shall be one that was prepared within the preceding 12 months.

(Authorized by and implementing K.S.A. 2004 Supp. 16a-2-302(2)(b), as amended by L. 2005, ch. 144, sec. 9; effective Jan. 6, 2006)

K.A.R. 75-6-36 - Prelicensing and continuing education; requirements

(a) Each individual required to register as a residential mortgage loan originator pursuant to the Kansas uniform consumer credit code, K.S.A. 16a-1-101 et seq. and amendments thereto, shall complete at least 20 hours of prelicensing professional education (PPE) approved in accordance with subsection (c), which shall include at least the following:

- (1) Three hours of federal law and regulations;
- (2) three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and
- (3) two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) Each individual required to register as a residential mortgage loan originator pursuant to the Kansas uniform consumer credit code, K.S.A. 16a-1-101 et seq. and amendments thereto, shall annually complete at least eight hours of approved continuing professional education (CPE) as a condition of registration renewal, which shall include at least the following:

- (1) Three hours of federal law and regulations;
- (2) two hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and
- (3) two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(c) Each PPE and CPE course shall first be approved by the administrator, or the administrator's designee, before granting credit.

(d) In addition to the specific topic requirements in subsections (a) and (b), PPE and CPE courses shall focus on issues of mortgage business, as defined by K.S.A. 9-2201 and amendments thereto, or related industry topics.

(e) One PPE or CPE hour shall consist of at least 50 minutes of approved instruction.

(f) Each request for PPE or CPE course approval shall be submitted on a form approved by the administrator. A request for PPE or CPE course approval may be submitted by any person, as defined by K.S.A. 16a-1-301 and amendments thereto.

(g) Evidence of satisfactory completion of approved PPE or CPE courses shall be submitted in the manner prescribed by the administrator. Each residential mortgage loan originator registrant shall ensure that PPE or CPE credit has been properly submitted to the administrator and shall maintain verification records in the form of completion certificates or other documentation of attendance at approved PPE or CPE courses.

(h) Each CPE year shall begin on the first day of January and shall end on the 31st day of December each year.

(i) Each residential mortgage loan originator registrant may receive credit for a CPE course only in the year in which the course is taken. A registrant shall not take the same approved course in the same or successive years to meet the annual requirements for CPE.

(j) Each residential mortgage loan originator registrant who fails to renew the registrant's certificate of registration, in accordance with K.S.A. 16a-2-302 and amendments thereto, shall obtain all delinquent CPE before receiving a new certificate of registration.

(k) A residential mortgage loan originator registrant who is an instructor of an approved continuing education course may receive credit for the registrant's own annual continuing education requirement at the rate of two hours of credit for every one hour taught.

(Authorized by and implementing K.S.A. 16a-6-104, as amended by 2009 SB 240, §21; effective Oct. 2, 2009.)

K.A.R. 75-6-37 - Prelicensure testing

(a) On and after July 31, 2010, each individual required to register as a residential mortgage loan originator pursuant to the Kansas uniform consumer credit code, K.S.A. 16a-1-101 et seq. and amendments thereto, shall pass a qualified written test. For purposes of this regulation, the administrator's designee for developing and administering the qualified written test shall be the nationwide mortgage licensing system and registry.

(b) A written test shall not be treated as a qualified written test for purposes of subsection (a) unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including the following:

- (1) Ethics;
- (2) federal laws and regulations pertaining to mortgage origination;
- (3) state laws and regulations pertaining to mortgage origination;
- (4) federal and state laws and regulations, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(c) (1) An applicant shall not be considered to have passed a qualified written test unless the applicant achieves a test score of at least 75 percent.

- (2) An applicant may retake a test three consecutive times, with each consecutive taking occurring at least 30 days after the preceding test.
- (3) After failing three consecutive tests, an applicant shall wait at least six months before taking the test again.
- (4) A registered mortgage loan originator registrant who fails to maintain a valid license for five years or longer shall retake the test, not including any time during which the individual is a registered loan originator, as defined in section 1503 of title V, S.A.F.E. mortgage licensing act of 2008, P.L. 110-289.

(Authorized by and implementing K.S.A. 16a-6-104, as amended by 2009 SB 240, §21; effective Oct. 2, 2009.)

K.A.R. 75-6-38 - Record retention

(a) In any loan, lease, or credit sale not secured by an interest in real estate, the licensee or any person required to file notification with the administrator pursuant to K.S.A. 16a-6-202, and amendments thereto, shall retain the following:

- (1) The following documents, as applicable, in any transaction closed in the name of the licensee or person filing notification, for at least 36 months following the closing date or, if the transaction is not closed, the application date:
 - (A) The application;
 - (B) the contract and any addendum or rider;
 - (C) the final truth-in-lending disclosure statement, including an itemization of the amount financed and an itemization of any prepaid finance charges, or consumer lease disclosures;
 - (D) any written agreements with the borrower that describe rates or fees;
 - (E) any documentation that aided the licensee or person in making a credit decision, including a credit report, verification of employment, verification of income, bank statements, payroll records, and tax returns;
 - (F) all paid invoices for credit report, filing, and any other closing costs;
 - (G) any credit insurance requests and insurance certificates;
 - (H) the assignment of the contract;
 - (I) phone log or any correspondence with associated notes detailing each contact with the consumer;
 - (J) all other agreements for products or services charged in connection with each transaction by the licensee, person filing notification, or third party, including guaranteed asset protection (GAP) and warranties; and
 - (K) any other disclosures or statements required by law; and
- (2) the following documents, as applicable, in any transaction in which the licensee or person filing notification owns the account and directly or indirectly undertakes collection of payments or enforcement of rights against debtors, for at least 36 months after the final entry to each account:
 - (A) A complete payment history, including the following:
 - (i) An explanation of transaction codes, if used;
 - (ii) the principal balance;

- (iii) the payment amount;
 - (iv) the payment date;
 - (v) the distribution of the payment amount to interest, principal, and late fees or other fees; and
 - (vi) any other amounts that have been added to, or deducted from, a consumer's account;
- (B) any other statements, disclosures, invoices, or information for each account, including the following:
- (i) Documentation supporting any amounts added to a consumer's account or evidence that a service was actually performed in connection with these amounts, or both, including costs of collection, attorney's fees, skip tracing, retaking, or repossession fees;
 - (ii) loan modification agreements;
 - (iii) forbearance or any other repayment agreements;
 - (iv) subordination agreements;
 - (v) surplus or deficiency balance statements;
 - (vi) default-related correspondence or documents;
 - (vii) evidence of sale of repossessed collateral;
 - (viii) the notice of the consumer's right to cure;
 - (ix) property insurance advance disclosure;
 - (x) force-placed property insurance;
 - (xi) notice and evidence of credit insurance premium refunds;
 - (xii) deferred interest;
 - (xiii) suspense accounts;
 - (xiv) phone log or any correspondence with associated notes detailing each contact between the servicer and the consumer; and
 - (xv) any other product or service agreements; and
- (C) documents related to the general servicing activities of the licensee, including the following:
- (i) Historical records for all adjustable rate indices used;
 - (ii) a log of all accounts sold, transferred, or assigned that details to whom the accounts were sold, transferred, or assigned;
 - (iii) a log of all accounts in which repossession activity has been initiated;
 - (iv) a log of all credit insurance claims and accounts paid by credit insurance; and
 - (v) a schedule of servicing fees and charges imposed by the licensee or a third party.
- (b) In any loan secured by an interest in real estate, the licensee shall retain the following:
- (1) The following documents, as applicable, in any mortgage loan in which the licensee does not close the transaction in the licensee's name, for at least 36 months following the closing date or, if the transaction is not closed, the application date:
 - (A) The application;
 - (B) the good faith estimate;
 - (C) the early truth-in-lending disclosure statement;
 - (D) any written agreements with the borrower that describe rates, fees, broker compensation, and any other similar fees;

- (E) an appraisal performed by a Kansas-licensed or Kansas-certified appraiser completed within 12 months before the loan closing date, the total appraised value of the real estate as reflected in the most recent records of the tax assessor of the county in which the real estate is located, or, for a nonpurchase money real estate transaction, the estimated market value as determined through an automated valuation model, pursuant to K.S.A. 16a-1-301(6) and amendments thereto, acceptable to the administrator;
 - (F) the adjustable rate mortgage (ARM) disclosure;
 - (G) the home equity line of credit (HELOC) disclosure statement;
 - (H) the affiliated business arrangement disclosure;
 - (I) evidence that the special information booklet, consumer handbook on adjustable rate mortgages, home equity brochure, reverse mortgage booklet, or any suitable substitute was delivered in a timely manner;
 - (J) the certificate of counseling for home equity conversion mortgages (HECMs);
 - (K) the loan cost disclosure statement for HECMs; (L) the notice to the borrower for HECMs;
 - (M) phone log or any correspondence with associated notes detailing each contact with the consumer;
 - (N) any documentation that aided the licensee in making a credit decision, including a credit report, title work, verification of employment, verification of income, bank statements, payroll records, and tax returns;
 - (O) the settlement statement; and
 - (P) all paid invoices for appraisal, title work, credit report, and any other closing costs;
- (2) the following documents, as applicable, in any transaction in which the licensee provides any money to fund the loan or closes the mortgage loan in the licensee's name, for at least 36 months from the closing date of the transaction:
- (A) The high loan-to-value notice required by K.S.A. 16a-3-207 and amendments thereto;
 - (B) the final truth-in-lending disclosure statement, including an itemization of the amount financed and an itemization of any prepaid finance charges;
 - (C) any credit insurance requests and insurance certificates;
 - (D) the note and any other applicable contract addendum or rider;
 - (E) a copy of the filed mortgage or deed;
 - (F) a copy of the title policy or search;
 - (G) the assignment of the mortgage and note;
 - (H) the initial escrow account statement or escrow account waiver;
 - (I) the notice of the right to rescind or waiver of the right to rescind;
 - (J) the special home ownership and equity protection act disclosures required by regulation Z in 12 CFR 226.32(c) and 226.34(a)(2), if applicable;
 - (K) the mortgage servicing disclosure statement and applicant acknowledgement;
 - (L) the notice of transfer of mortgage servicing;
 - (M) any interest rate lock-in agreement or float agreement; and
 - (N) any other disclosures or statements required by law; and

- (3) the following documents, as applicable, in any mortgage transaction in which the licensee owns the mortgage loan or the servicing rights of the mortgage loan and directly or indirectly undertakes collection of payments or enforcement of rights against debtors, for at least 36 months from the final entry to each account:
- (A) A complete payment history, including the following:
 - (i) An explanation of transaction codes, if used;
 - (ii) the principal balance;
 - (iii) the payment amount;
 - (iv) the payment date;
 - (v) the distribution of the payment amount to interest, principal, late fees or other fees, and escrow; and
 - (vi) any other amounts that have been added to, or deducted from, a consumer's account;
 - (B) any other statements, disclosures, invoices, or information for each account, including the following:
 - (i) Documentation supporting any amounts added to a consumer's account or evidence that a service was actually performed in connection with these amounts, including costs of collection, attorney's fees, property inspections, property preservations, and broker price opinions;
 - (ii) annual escrow account statements and related escrow account analyses;
 - (iii) notice of shortage or deficiency in escrow account;
 - (iv) loan modification agreements;
 - (v) forbearance or any other repayment agreements;
 - (vi) subordination agreements;
 - (vii) foreclosure notices;
 - (viii) evidence of sale of foreclosed homes;
 - (ix) surplus or deficiency balance statements;
 - (x) default-related correspondence or documents;
 - (xi) the notice of the consumer's right to cure;
 - (xii) property insurance advance disclosure;
 - (xiii) force-placed property insurance;
 - (xiv) notice and evidence of credit insurance premium refunds;
 - (xv) deferred interest;
 - (xvi) suspense accounts;
 - (xvii) phone log or any correspondence with associated notes detailing each contact between the servicer and the consumer; and
 - (xviii) any other product or service agreements; and
 - (C) documents related to the general servicing activities of the licensee, including the following:
 - (i) Historical records for all adjustable rate mortgage indices used;
 - (ii) a log of all accounts sold, transferred, or assigned that details to whom the accounts were sold, transferred, or assigned;
 - (iii) a log of all accounts in which foreclosure activity has been initiated;
 - (iv) a log of all credit insurance claims and accounts paid by credit insurance; and

(v) a schedule of servicing fees and charges imposed by the licensee or a third party.

(c) In addition to meeting the requirements specified in subsections (a) and (b), each licensee or person filing notification shall retain for at least the previous 36 months the documents related to the general business activities of the licensee or person filing notification, which shall include the following:

- (1) Advertising records, including copies of printed advertisements or solicitations and those by internet or other electronic means;
- (2) the business account check ledger or register;
- (3) all financial statements, balance sheets, or statements of condition;
- (4) a detailed list of all transactions originated, closed, purchased, or serviced; and
- (5) a schedule of the licensee's fees and charges.

(Authorized by K.S.A. 16a-6-104, as amended by 2009 SB 240, §21; implementing K.S.A. 16a-2-304, as amended by 2009 SB 240, §19; effective Oct. 2, 2009.)

Agency 104 - Joint Regulation – Consumer Credit Commissioner, Credit Union Administrator, Savings and Loan Commissioner and Bank Commissioner

Article 1 —ADJUSTABLE RATE NOTES

K.A.R.104-1-2 - Consumer-purpose adjustable rate real estate transactions

(a) A creditor may use any interest-rate index that is readily verifiable by the borrower if it is beyond the control of the creditor to adjust the interest rate on any of the following:

- (1) consumer-purpose adjustable rate notes secured by a real estate mortgage;
- or
- (2) consumer-purpose contracts for deed to real estate which contain an adjustable interest rate provision.

(b) Adjustments to the interest rate shall correspond directly to the movement of the index, subject to any rate-adjustment limitations that a creditor may provide.

(c) When the movement of the index permits an interest-rate increase, the creditor may decline to increase the interest rate by the indicated amount. The creditor may decrease the interest rate at any time.

(d) The creditor may implement adjustments to the interest rate through adjustments to the outstanding principal loan balance, loan term, payment amount, or any combination of the above.

(e) The creditor shall not charge the borrower any costs or fees in connection with regularly-scheduled adjustments to the interest rate, payment, outstanding principal loan balance, or loan term.

(f) For purposes of this regulation, “consumer-purpose” means primarily for personal, family or household purposes.

(Authorized by and implementing K.S.A. 16-207d; effective, T-88-28, Aug. 19, 1987; effective May 1, 1988; amended Aug. 9, 1996.)

Agency 40 – Insurance Department**Article 5—CREDIT INSURANCE****K.A.R.40-5-6 - Credit insurance; property and liability; insurance sold in connection with the uniform consumer credit code; types**

The following types of insurance shall be authorized for sale:

(a) For motor vehicles:

- (1) Fire, theft, windstorm coverage; or comprehensive coverage, including fire, theft and windstorm;
- (2) collision coverage with a deductible of \$50 or more; and
- (3) bodily injury and property damage liability insurance in accordance with K.S.A. 16a-4-303.

(b) For real property and tangible personal property, other than motor vehicles:

- (1) Fire, including lightning coverage and extended coverage. Extended coverage shall be limited to perils of windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, and smoke;
- (2) other perils as set out in the extended coverage endorsement approved by the Kansas insurance commissioner for use by a fire or multiple line insurance company; and
- (3) bodily injury and property damage liability insurance.

(Authorized by K.S.A. 40-103, 16a-4-112; implementing K.S.A. 16a-4-301, 16a-4-303; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1974; amended May 1, 1986.)

K.A.R.40-5-8 - Same; vendors single interest

Insurers are prohibited from selling to purchasers, or mortgagors of automobile vendors, single interest coverages including loss by wrongful conversion, embezzlement, or secretion or any other vendors single interest coverage in which a purchaser or mortgagor has no insurable interest. When a vendor single interest coverage is included in an insurance policy covering the interest of a purchaser or mortgagor, the insurance contract shall clearly indicate that the premium for the vendor single interest coverage has been charged to the vendor or mortgagee.

(Authorized by K.S.A. 40-103, 16a-4-112; implementing K.S.A. 16a-4-202; effective Jan. 1, 1966; amended Jan. 1, 1974; amended May 1, 1986.)

K.A.R.40-5-9 - Credit insurance; fire, casualty and allied lines; mortgagors and mortgagees; conditional sales vendors; and vendors; requirements

(a) All insurers writing insurance specified in Kansas Statutes Annotated, chapter 40, articles 9, 10, 11, 12, and 16 shall be prohibited from issuing policies covering the interests of a mortgagor and a mortgagee or conditional sales vendor where the mortgagee or conditional sales vendor is, in any manner, the named insured on the policy.

(b) The policy shall be issued only in the name of the mortgagor and mortgagee or conditional sales vendor's interest in the policy shall be limited to participation in recoveries under the perils insured as its interest may appear.

(c) The mortgagee or conditional sales vendor shall not be entitled to the return of unearned premium unless the insurer has notice of assignment of unearned premium by the mortgagor to the mortgagee or conditional sales vendor.

(Authorized by K.S.A. 40-103, 16a-4-112; implementing K.S.A. 16a-4-301; effective Jan. 1, 1966; amended Jan. 1, 1974; amended May 1, 1979; amended May 1, 1986.)

K.A.R.40-5-10 - Credit insurance; fire and extended coverage; issuance for single indivisible premium; requirements

Fire and extended coverage insurance permitted by Kansas administrative regulation 40-5-6 may be issued for a single indivisible premium subject to the following requirements:

(a) The location of the property insured shall be extended by the policy provisions to insure the property at any location within the continental limits of the United States.

(b) The maximum amount of insurance permitted under this policy shall not exceed \$10,000.

(c) The insurer shall be required to obtain a statement from the insured that indicates all of the following:

(1) No other valid and collectible insurance on the insured property exists.

(2) The purchase of insurance from any insurer or agent was the choice of the insured.

(3) The purchase of insurance in connection with the credit transaction is entirely voluntary and not a prerequisite to the extension of credit.

(d) The creditor shall not refuse or decline the insurance provided by the consumer except for reasonable cause.

(Authorized by K.S.A. 40-103, 16a-4-112; implementing K.S.A. 16a-4-301, 16a-4-111; effective Jan. 1, 1966; amended Jan. 1, 1974; amended May 1, 1979; amended May 1, 1986; amended May 1, 1987; amended Oct. 30, 1998.)

K.A.R.40-5-12 - Consumer credit insurance; termination of coverage; prohibited contractual provisions

(a) A policy or certificate of consumer credit insurance as defined in K.S.A. 16a-4-103, that may be issued, delivered, renewed or continued within or outside this state covering residents of this state, shall not contain provisions which permit coverage to be terminated by the insurer with respect to any policyholder, certificate holder or other insured person unless:

- (1) The policy or certificate is formally and specifically terminated;
 - (2) the insured and any affected certificate holder is provided not less than ten days written notice of termination; and
 - (3) any unearned premium is returned to the borrower or credited to the account of the consumer as required by K.S.A. 16a-4-108.
- (b) The restrictions imposed by section (a) of this regulation shall not apply with respect to transactions permitted or required by K.S.A. 16a-4-108.

(Authorized by K.S.A. 40-103; 16a-4-112; implementing K.S.A. 16a-4-203; effective Nov. 29, 1993.)

K.A.R.40-5-102 - Consumer credit insurance; definitions

- (a) "Credit life insurance" means insurance on the life of a consumer pursuant to or in connection with a consumer credit transaction.
- (b) "Credit accident and health insurance" means insurance, written in connection with a consumer credit transaction, to provide benefits in the event of disability of a consumer.
- (c) "Claims incurred" means claims actually paid during the year, appropriately adjusted for the yearly change in claim reserves, including reserves for reported claims in process of settlement and claims incurred but not reported.
- (d) "Claims" means benefits payable on death or disability excluding loss adjustment expense, claims settlement costs, or other additions of any kind.
- (e) "Premiums earned" means the total gross premiums which become due to the insurance company, without reduction of any kind, except the premiums refunded or adjusted on account of termination of coverage, and appropriately adjusted for changes in gross unearned premiums in force upon a pro rata basis or a "sum of the digits" basis consistent with K.A.R. 40-5-108(a).
- (f) "Commissioner" means the commissioner of insurance of the state of Kansas.

(Authorized by K.S.A. 40-103, 16a-4-112; implementing K.S.A. 16a-4-101 through 16a-4-203; effective Jan. 1, 1974; amended May 1, 1979; amended May 1, 1983; amended May 1, 1986.)

K.A.R.40-5-103 - Same; rights and treatment of consumers

- (a) Multiple plans of insurance. If a creditor makes available to consumers more than one plan of credit life insurance, or more than one plan of credit accident and health insurance, all appropriate consumers shall be informed of all available plans.
- (b) Substitution. When a creditor requires credit life insurance, credit accident and health insurance, or both, as additional security for an indebtedness, the debtor shall be given the option of furnishing the required amount of insurance through existing policies of insurance, or procuring and furnishing the required coverage through any insurer authorized to transact insurance business in this state. In such a case, the debtor shall be informed by the creditor of the right to provide alternative coverage before the transaction is completed.

(c) Evidence of coverage.

(1) All consumer credit insurance shall be evidenced by an individual policy, or in the case of group insurance, by a certificate of insurance. The individual policy or certificate of insurance shall be delivered to the consumer in accordance with K.S.A. 16a-4-105.

(2) Policy provisions.

(A) Each insurance policy or certificate used in connection with a loan or credit transaction shall contain:

- (i) the name and home office address of the insurer; (ii) the name or names of the debtor;
- (iii) the premium, or amount of payment by the debtor, if any, for credit life insurance and for credit accident and health insurance;
- (iv) a statement specifying when the insurance of the debtor will become effective and its termination conditions, or the month, day, and year the insurance begins and terminates;
- (v) any exceptions, limitations, or restrictions; and
- (vi) a statement that the life of the debtor is insured under the policy and that any death benefit paid by reason of death of the debtor shall be applied first to reduce or extinguish the indebtedness.

(B) In addition to the requirements of paragraph (A), each insurance policy issued in connection with a credit transaction or loan shall set forth the kind or kinds of insurance included, the coverages, and all the terms, exceptions, limitations, restrictions, and conditions of the contract or contracts of insurance. Certificates shall contain all provisions of the master policy applicable to the debtor.

(C) The requirements of paragraph (2) are in addition to other requirements imposed by law concerning policy forms and their approval.

(3) Settlement of claims. Separate credit life insurance payments shall be made to the creditor, beneficiary, and to the named second beneficiary, if any, as their interests may appear. If the policy contains no provision for the designation of a second beneficiary, the insurance shall go to the estate of the insured. Each payment made to the creditor shall reduce the indebtedness.

(d) Termination of coverage.

(1) If a debtor is covered by a group insurance policy on which a single premium is charged for insurance, the policy shall provide that the group policy may terminate only with respect to debtors who would otherwise become eligible for coverage after the date of termination, and that insurance coverage with respect to any debtor insured under the policy shall be continued for the entire period for which a single charge has been made, subject to subsections (g) and (h).

(2) If a debtor covered by a group credit insurance policy is charged for insurance on a monthly outstanding balance basis, the policy shall provide that, if the policy is terminated, the insured debtor shall be notified that coverage will terminate not less than 15 days after mailing of the notice. If notice is not given to each insured debtor, coverage shall continue for 30 days from the date of notice to the policyholder, except where replacement of the coverage by the same or another insurer in the same or greater amount takes place without lapse of coverage. The notice to insured debtors required in this

paragraph shall be given by the insurer, or at the option of the insurer, by the creditor.

(e) Interest on premiums. If the creditor adds identifiable insurance charges or premiums for consumer credit insurance to the indebtedness, and any direct or indirect finance, carrying, credit, or service charge is made to the consumer on the insurance charges or premiums, the creditor shall remit and the insurer shall collect on a single premium basis only.

(f) Renewal or refinancing of indebtedness. If the indebtedness is discharged due to renewal or refinancing prior to the scheduled maturity date, the insurance in force shall be terminated before any new insurance may be issued in connection with the renewed or refinanced indebtedness. In all cases of termination prior to scheduled maturity, a refund shall be paid or credited to the debtor as provided in K.A.R. 40-5-108. In any renewal or refinancing of indebtedness, the effective date of the coverage of any policy provision shall be the first date on which the debtor became insured under the policy covering the indebtedness which was renewed or refinanced, at least in the amount of the indebtedness outstanding at the time of renewal and refinancing of the debt.

(g) Voluntary prepayment of indebtedness. If a debtor prepays indebtedness for a reason other than death or a lump sum disability payment:

- (1) Any credit life insurance covering an indebtedness shall be terminated and an appropriate refund shall be paid or credited to the debtor by the creditor at the time of prepayment pursuant to K.A.R. 40-5-108; and
- (2) any credit accident and health insurance covering an indebtedness shall be terminated and an appropriate refund shall be paid or credited to the debtor by the creditor at the time of prepayment. If the indebtedness is prepaid by the debtor during any period of disability for which benefits are payable, the disability coverage shall continue in force and the insurer shall make periodic payments directly to the debtor until the disability no longer exists or until the end of the term of insurance, whichever occurs first.

(h) Involuntary prepayment of indebtedness. If an indebtedness is prepaid by the proceeds of a credit life insurance policy covering the debtor or by a lump sum payment of a disability claim under a credit accident and health insurance policy covering the debtor, the insurer shall ensure that the following refunds are made by the creditor at the time of prepayment:

- (1) In case of prepayment by the proceeds of a credit life insurance policy, an appropriate refund under the credit accident and health insurance coverage; and
- (2) in the case of prepayment by a lump sum disability claim, an appropriate refund under the credit life insurance coverage.

(Authorized by K.S.A. 40-103, 16a-4-112; implementing K.S.A. 16a-4-101 through 16a-4-203; effective Jan. 1, 1974; amended May 1, 1979; amended May 1, 1986.)

K.A.R.40-5-104 - Same; coverage without separate charge

(a) If no separate charge is made to the consumer for consumer credit insurance, the consumer shall be charged a specific amount for insurance if an identifiable charge for insurance is disclosed in the credit or other instrument furnished the consumer setting out the financial elements of the credit transactions, or if there is a differential in the finance charge (as defined in section 16a-1-301(19)) made to consumers in like circumstances, except for their insured or non-insured status.

(b) The rate standards set out in K.A.R. 40-5-107 shall apply to the premiums for consumer credit insurance. The insurer issuing the coverage must obtain form and rate approval by the commissioner.

(Authorized by K.S.A. 40-103, 16a-4-112; implementing K.S.A. 16a-4-101 through 16a-4-203; effective Jan. 1, 1974; amended May 1, 1986.)

K.A.R.40-5-105 - Same; filing requirements

(a) Each policy form, certificate of insurance, notice of proposed insurance, application for insurance, endorsement, and rider to be delivered or issued for delivery in this state and the schedule of premium rates or charges pertaining thereto shall be filed with the commissioner as required by K.S.A. 16a-4-203 (UCCC), including those approved prior to the effective date of this regulation.

(b) Each filing shall be accompanied by supporting information which establishes that the rates meet the standards set out in K.A.R. 40-5-107 or are the actuarial equivalent.

(c) When forms providing benefits as described in K.A.R. 40-5-107 are filed at or below the rates described, supporting information shall not be submitted.

(Authorized by K.S.A. 40-103, 16a-4-112; implementing K.S.A. 16a-4-101 through 16a-4-203; effective Jan. 1, 1974; amended May 1, 1986.)

K.A.R.40-5-107 - Same; credit insurance rates and forms

(a) The basic test of the reasonableness of the relation of benefits to the premium charges shall be an anticipated loss ratio of "claims incurred" to "premiums earned" of not less than 50 percent. Due consideration shall be given to a reasonable allowance for expenses.

(b) Benefits shall not be reasonable in relation to the premium charged if the premiums or premium rates filed with the commissioner exceed the following, or actuarially equivalent, rates:

(1) Credit life insurance.

(A) For decreasing term life insurance the rate shall not exceed \$.65 per \$100 insurance per annum;

(B) for joint life insurance the rate shall not exceed one and two-thirds of the appropriate single life rate;

(C) for level term life insurance the rate shall not exceed \$1.20 per \$100 insurance per annum;

(D) for monthly outstanding balance insurance the rate shall not exceed \$1.00 per month per \$1,000 of insurance; and

(E) The rates shall be presumed reasonable only if the policies contain:

(i) No exceptions, limitations or exclusions, except for suicide, during the first two years; and

(ii) no age restriction or only age restrictions making ineligible for coverage debtors 65 years or over at the time the indebtedness is incurred, or debtors who have attained age 66 years or over on the maturity date of the indebtedness.

(2) Credit accident and health insurance.

(A) For credit accident and health insurance the following single premium rates per \$100 initial insured indebtedness:

NONRETROACTIVE BASIS

Number of months in which indebtedness is repayable

	14 day elimination period	30 day elimination period
6 or less	1.00	.40
12	1.40	.80
24	2.20	1.60
36	3.00	2.40
48	3.50	2.90
60	3.90	3.30

RETROACTIVE BASIS

	14 day elimination period	30 day elimination period
6 or less	1.80	1.30
12	2.20	1.70
24	3.00	2.50
36	3.80	3.30
48	4.30	3.80
60	4.70	4.20

(B) Rates for policies of credit accident and health insurance, the premiums for which are paid other than on a single premium basis, for benefits on a basis different than as provided in (C) below, or for different monthly durations than illustrated, shall be actuarially consistent with the rates specified above.

(C) The premium rates specified shall be for policies which contain no exclusion for pre-existing conditions except for those conditions which manifest themselves to the insured by requiring medical diagnosis or treatment, or would cause a reasonably prudent person to seek medical diagnosis or treatment within six months preceding the effective date of the coverage as to the insured debtor, and which cause loss within the six months following effective date of coverage. Disabilities thereafter resulting from the condition shall be covered.

(c) Each contract to which the foregoing rules apply may contain provisions excluding or restricting coverage in the event of total disability resulting from pregnancy, intentionally self-inflicted injuries, flight in nonscheduled aircraft, or war. The policies may contain the same age limitation on eligibility as set forth for credit life policies.

(d) Each new policy or certificate of consumer credit insurance issued after the effective date of this regulation shall not be at a rate exceeding any provision of this regulation.

(e) Each insurer may receive approval of a higher premium rate or schedule of rates to be used in connection with a particular policy form providing insurance on the debtors of a creditor or a class or classes of debtors if the insurer demonstrates, to the satisfaction of the commissioner, that the mortality or morbidity experience which may reasonably be anticipated shall develop a loss ratio in excess of 60 percent when the rate standards in K.A.R. 40-5-107 are used.

(f) On the basis of mortality or morbidity experience reported under K.A.R. 40-5-109, the premium rates may be continued, allowed to be increased, or required to be decreased.

(Authorized by K.S.A. 40-103, 16a-4-112; implementing K.S.A. 16a-4-203; effective Jan. 1, 1974; amended May 1, 1979; amended May 1, 1986; amended May 1, 1988.)

K.A.R.40-5-108 - Same; refunds

(a) Formulas for computing refunds of credit insurance premiums shall be acceptable to the commissioner for coverage as follows:

(1) Pro rata method. The pro rata unearned gross premium method for level term credit life insurance, credit accident and health insurance where the insured is covered for a constant maximum indemnity for a given period of time, after which the maximum indemnity begins to decrease in even amounts per month, and for credit insurance coverages under which premiums are collected from the consumer on a basis other than the single premium basis. (2) Sum of the digits method. The "rule of 78" or "sum of the digits" unearned premium method of coverages other than those included in paragraph (1). (b) At the option of the insurer but consistent with subsection (a):

(1) Any charge for credit insurance may not be made for the first 15 days of a loan month and a full month may be charged for 16 days or more of a loan month; or

(2) a refund may be made on a pro rata basis for each day within the loan month. (c)

The requirements of K.S.A. 16a-4-108 that refund formulas be filed with the commissioner shall be considered fulfilled if the refund formulas shall be set forth in the individual policy or group certificate filed with the commissioner. If the appropriate refund formula is the "sum of the digits" formula, commonly known as the "rule of 78," reference by either phrase shall be sufficient.

(d) Any insurance refund need not be made to the consumer if all refunds and credits due to the consumer amount to less than \$1.

(Authorized by K.S.A. 40-103, 16a-4-112; implementing K.S.A. 16a-4-108; effective Jan. 1, 1974; amended May 1, 1979; amended May 1, 1986; amended May 1, 1988; amended July 10, 1989.)

K.A.R.40-5-109 - Same; experience reports

Each insurer doing consumer credit insurance business in this state shall annually file with the insurance department a report of credit life and credit accident and health business written on a calendar year basis. This report shall utilize the credit insurance supplement-annual statement blank promulgated by the national association of insurance commissioners June 1985. The filing shall be made each year not later than the filing date stated on the most recently adopted "NAIC Credit Insurance Experience Exhibit Form of 1985," which is hereby adopted by reference.

(Authorized by K.S.A. 40-103, 16a-4-112; implementing K.S.A. 16a-4-203; effective Jan. 1, 1974; amended May 1, 1979; amended May 1, 1986; amended May 1, 1988; amended Feb. 9, 1996.)

K.A.R.40-5-110 - Same; supervision of credit insurance operations

(a) Each insurer transacting credit insurance in this state shall be responsible to conduct a reasonable annual review of the procedures of each creditor with respect to credit insurance business to insure compliance with the insurance laws of this state and the regulations promulgated by the commissioner.

(b) The review required in subsection (a) shall include a determination that all of the following conditions are met:

(1) The proper charges are being made by the creditor. (2) The proper refunds are being made.

(3) All claims are being filed and properly handled.

(4) All amounts of insurance payable on death in excess of the amounts necessary to discharge the indebtedness are properly refunded.

(5) The creditor is promptly and fairly processing complaints concerning credit insurance operations and is maintaining proper procedures for, and records of, the complaints processed.

(c) Each insurer shall provide the results of the annual reviews for inspection during an examination, upon the request of the commissioner or the commissioner's designee.

(Authorized by K.S.A. 40-103 and K.S.A. 2002 Supp. 16a-4-112; implementing K.S.A. 16a-4-103, 16a-4-104, 16a-4-107, 16a-4-108, and K.S.A. 2002 Supp. 16a-4-112; effective Jan. 1, 1974; amended May 1, 1979; amended May 1, 1986; amended Oct. 17, 2003.)