Office of the State Bank Commissioner

2024 KANSAS CONSUMER & MORTGAGE LENDING LAW BOOK

(Current as of November 2024)

Kansas Financial Institutions Information Security Act

Kansas Money Transmission Act

Kansas Mortgage Business Act

Earned Wage Access Services Act

Kansas Uniform Consumer Credit Code

Kansas Credit Services Organization Act

OFFICE OF THE STATE BANK COMMISSIONER

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Please note that bills enacting new laws generally take effect July 1 of each year, and from July 1 to the date when the statute books are updated and published, the correct versions of new laws are contained in the bills that passed during that year's legislative session. Bills passed during the session may be found summarized in the Kansas Session Laws.

The Kansas Statutes may be viewed online at the Kansas Legislature website: http://www.kslegislature.org/li/.

KANSAS STATUTES

Chapter 9 – BANKS AND BANKING; TRUST COMPANIES

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Kansas Financial Institutions Information Security Act (K.S.A. 9-551 – K.S.A. 9-554)

KANSAS STATUTES

Chapter 9 – BANKS AND BANKING; TRUST COMPANIES

Article 5 – MISCELLANEOUS PROVISIONS

KANSAS FINANCIAL INSTITUTIONS INFORMATION SECURITY ACT
K.S.A. 9-551 – K.S.A. 9-554

K.S.A. 9-551. Applicability of Act.

(a) Sections 1 through 4, and amendments thereto, shall be known and may be cited as the Kansas financial institutions information security act.

(b) The purpose of the Kansas financial institutions information security act is to establish information security standards for any covered entity consistent with 16 C.F.R. § 314, as in effect on July 1, 2023.

(c) The Kansas financial institutions information security act applies to the handling of customer information by the following covered entities: (1) Credit services organizations, as defined in K.S.A. 50-1117, and amendments thereto; (2) mortgage companies, as defined in K.S.A. 9-2201, and amendments thereto; (3) supervised lenders, as defined in K.S.A. 16a-1-301, and amendments thereto; (4) financial institutions engaging in money transmission, as defined in K.S.A. 9-508, and amendments thereto; (5) trust companies, as defined in K.S.A. 9-701, and amendments thereto; and (6) technology-enabled fiduciary financial institutions, as defined in K.S.A. 9-2301, and amendments thereto.

(d) The commissioner may adopt all rules and regulations necessary to govern and administer the provisions of the Kansas financial institutions information security act.

(e) The Kansas financial institutions information security act shall be a part of and supplemental to chapter 9 of the Kansas Statutes Annotated, and amendments thereto.

History: L. 2023, ch. 54, § 1; April 27.

K.S.A. 9-552. Definitions.

As used in the Kansas financial institutions information security act:

(a) "Commissioner" means the state bank commissioner or the commissioner's designee.

(b) "Covered entity" means each person, applicant, registrant or licensee subject to regulation by the office of the state bank commissioner that is not directly regulated by a federal banking agency.

(c) "Customer information" means any record containing nonpublic personal information about a customer of a covered entity, whether in paper, electronic or other form, that is handled or maintained by or on behalf of the covered entity or its affiliates.

History: L. 2023, ch. 54, § 2; April 27, 2023.

K.S.A. 9-553. Information security requirements.

A covered entity shall:

(a) Set forth standards for developing, implementing and maintaining reasonable safeguards to protect the security, confidentiality and integrity of customer information pursuant to 16 C.F.R. § 314, as in effect on July 1, 2023;

(b) develop and organize its information security program into one or more readily accessible parts; and

(c) maintain its information security program as part of the covered entity's books and records in accordance with the record retention requirements of such covered entity.

History: L. 2023, ch. 54, § 3; April 27, 2023.

K.S.A. 9-554. Powers and duties of the commissioner; enforcement and review.

(a) The Kansas financial institutions information security act shall be implemented, administered and enforced by the commissioner.

(b) (1) The commissioner may conduct:

(A) Routine examinations of the operations of a covered entity; or

(B) investigations of the operations of the covered entity if the commissioner has reason to believe that the covered entity has been engaged or is engaging in any conduct in violation of the Kansas financial institutions information security act.

(2) In furtherance of an investigation or examination, or while enforcing the provisions of the Kansas financial institutions information security act, the commissioner may take such action that is necessary and appropriate, including, but not limited to, the following:

(A) Issue subpoenas and seek enforcement thereof in a court of competent jurisdiction;

(B) assess fines or civil penalties on a covered entity not to exceed $5,000 per violation and assess costs of the investigation, examination or enforcement action;

(C) censure a covered entity if such covered entity is registered or licensed;

(D) enter into a memorandum of understanding or consent order with a covered entity;

(E) issue a summary order to a covered entity;

(F) revoke, suspend or refuse to renew the registration or licensure of a covered entity;

(G) order a covered entity to cease and desist from engaging in any conduct in violation of the Kansas financial institutions information security act or file for an injunction to prohibit the covered entity from continuing such conduct; or

(H) issue emergency orders if necessary to prevent harm to consumers.

(c) Any enforcement action required or requested under the Kansas financial institutions information security act shall be conducted in accordance with the Kansas administrative procedure act, K.S.A. 77-501 et seq., and amendments thereto.

(d) Any enforcement action required or requested under the Kansas financial institutions information security act shall be subject to review in accordance with the Kansas judicial review act, K.S.A. 77-601 et seq., and amendments thereto.

History: L. 2023, ch. 54, § 4; April 27, 2023.

KANSAS STATUTES

KANSAS MONEY TRANSMISSION ACT

Chapter 9- BANKS AND BANKING; TRUST COMPANIES

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Chapter 9- BANKS AND BANKING; TRUST COMPANIES

Article 5- Miscellaneous

(K.S.A. 9-555 through 9-596)

K.S.A. 9-555 Definitions.

(a) K.S.A. 9-555 through 9-596, and amendments thereto, shall be known and may be cited as the Kansas money transmission act.

(b) As used in the Kansas money transmission act:

(1) “Act” means the Kansas money transmission act.

(2) “Acting in concert” means persons knowingly acting together with a common goal of jointly acquiring control of a licensee whether or not pursuant to an express agreement.

(3) "Authorized delegate" means a person designated by a licensee to engage in money transmission on behalf of the licensee.

(4) "Average daily money transmission liability" means the amount of the licensee's outstanding money transmission obligations in Kansas at the end of each day in a given period of time added together and divided by the total number of days in the given period of time. For any licensee required to calculate "average daily money transmission liability" pursuant to this act, the given period of time shall be the calendar quarters ending March 31, June 30, September 30 and December 31.

(5) "Closed loop stored value" means stored value that is redeemable by the issuer only for goods or services provided by the issuer or the issuer's affiliates or franchisee’s of the issuer or the franchisee’s affiliates, except to the extent required by applicable law to be redeemable in cash for its cash value.

(6) "Commissioner" means the state bank commissioner, or a person designated by the state bank commissioner to enforce this act.

(7) "Control" means the power to:

(A) Vote directly or indirectly at least 25% of the outstanding voting shares or voting interests of a licensee or person in control of a licensee.

(B) elect or appoint a majority of key individuals or executive officers, managers, directors, trustees or other persons exercising managerial authority of a person in control of a licensee; or

(C) exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee.

(8) "Eligible rating" means a credit rating from any of the three highest rating categories provided by an eligible rating service. Each rating category may include rating category modifiers such as plus or minus for Standard & Poor or the equivalent for any other eligible rating service. "Eligible rating" shall be determined as follows:

(A) Long-term credit ratings shall be deemed eligible if the rating is equal to A- or higher by Standard & Poor or the equivalent from any other eligible rating service.

(B) Short-term credit ratings are deemed eligible if the rating is equal to or higher than A-2 or SP-2 by Standard & Poor or the equivalent from any other eligible rating service. If ratings differ among eligible rating services, the highest rating shall apply when determining whether a security bears an eligible rating.

(9) "Eligible rating service" means any nationally recognized statistical rating organization that has been registered by the securities and exchange commission or any organization designated by the commissioner through order or rules and regulations as an eligible rating service.

(10) "Federally insured depository financial institution" means a bank, credit union, savings and loan association, trust company, savings association, savings bank, industrial bank or industrial loan company organized under the laws of the United States or any state of the United States, when such bank, credit union, savings and loan association, trust company, savings association, savings bank, industrial bank or industrial loan company has federally insured deposits.

(11) "In Kansas" means the:

(A) Physical location of a person who is requesting a transaction in person in the state of Kansas; or

(B) person’s residential address or the principal place of business for a person requesting a transaction electronically or by telephone if such residential address or principal place of business is in the state of Kansas.

(12) "Individual" means a natural person.

(13) "Key individual" means any individual ultimately responsible for establishing or directing policies and procedures of the licensee, including, but not limited to, an executive officer, manager, director or trustee.

(14) "Licensee" means a person licensed under this act.

(15) "Material litigation" means litigation, that according to United States generally accepted accounting principles, is significant to a person's financial health and would be a required disclosure in the person's annual audited financial statements, report to shareholders or similar records.

(16) "Money" means a medium of exchange that is authorized or adopted by the United States or a foreign government. "Money" includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments.

(17) "Monetary value" means a medium of exchange, whether or not redeemable in money

(18) (A) "Money transmission" means any of the following

(i) Selling or issuing payment instruments to a person located in Kansas;

(ii) selling or issuing stored value to a person located in Kansas;

(iii) receiving money for transmission from a person located in Kansas; or

(iv) payroll processing services.

(B) "Money transmission" does not include the provision of solely online or telecommunications services or network access.

(19) "Money service business accredited state" means a state agency that is accredited by the conference of state bank supervisors and money transmitter regulators association for money transmission licensing and supervision.

(20) "Multistate licensing process" means any agreement entered into by state regulators relating to coordinated processing of applications for money transmission licenses, applications for the acquisition of control of a licensee, control determinations or notice and information requirements for a change of key individuals.

(21) "Nationwide multistate licensing system and registry" means a licensing system developed by the conference of state bank supervisors and the American association of residential mortgage regulators and owned and operated by the

state regulatory registry, limited liability company or any successor or affiliated entity for the licensing and registration of persons in financial services industries.

(22) (A) "Outstanding money transmission obligation" means:

(i) Any payment instrument or stored value issued or sold by the licensee to a person located in the United States or reported as sold by an authorized delegate of the licensee to a person that is located in the United States that has not yet been paid or refunded by or for the licensee or escheated in accordance with applicable abandoned property laws; or

(ii) any money received for transmission by the licensee or an authorized delegate in the United States from a person located in the United States that has not been received by the payee or refunded to the sender or escheated in accordance with applicable abandoned property laws.

(B) "In the United States" includes a person in any state, territory or possession of the United States, the District of Columbia, the commonwealth of Puerto Rico or a United States military installation that is located in a foreign country.

(23) "Passive investor" means a person that:

(A) Does not have the power to elect a majority of key individuals or executive officers, managers, directors, trustees or other persons exercising managerial authority of a person in control of a licensee;

(B) is not employed by and does not have any managerial duties of the licensee or person in control of a licensee; or

(C) does not have the power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee; and

(D) (i) Either attests to subparagraphs (A), (B) and (C) in a form and in a manner prescribed by the commissioner; or

(ii) commits to the passivity characteristics of subparagraphs (A), (B) and (C) in a written document.

(24) (A) “Payment instrument” means a written or electronic check, draft, money order, traveler’s check or other written or electronic instrument for the transmission or payment of money or monetary value, regardless of negotiability.

(B) "Payment instrument" does not include stored value or any instrument that is:

(i) Redeemable by the issuer only for goods or services provided by the issuer or the issuer's affiliate or franchisees of the issuer or the franchisees' affiliate, except to the extent required by applicable law to be redeemable in cash for its cash value; or

(ii) not sold to the public but issued and distributed as part of a loyalty rewards or promotional program.

(25) "Payroll processing services" means the receipt of money for transmission pursuant to a contract with a person to deliver wages or salaries, make payment of payroll taxes to state and federal agencies, make payments relating to employee benefit plans or make distributions of other authorized deductions from wages or salaries. "Payroll processing services" does not include an employer performing payroll processing services on the employer's own behalf or on behalf of an affiliate.

(26) "Person" means any individual, general partnership, limited partnership, limited liability company, corporation, trust, association, joint stock corporation or other corporate entity identified or recognized by the commissioner.

(27) "Receiving money for transmission" or "money received for transmission" means the receipt of money or monetary value in the United States for transmission within or outside the United States by electronic or other means.

(28) "Stored value" means monetary value representing a claim against the issuer evidenced by an electronic or digital record and that is intended and accepted for use as a means of redemption for money or monetary value or payment for goods or services. "Stored value" includes, but is not limited to, prepaid access as defined by 31 C.F.R. § 1010.100. "Stored value" does not include a payment instrument or closed loop stored value or stored value not sold to the public but issued and distributed as part of a loyalty, rewards or promotional program.

(29) "Tangible net worth" means the aggregate assets of a licensee excluding all intangible assets, less liabilities, as determined in accordance with United States generally accepted accounting principles.

(c) This section shall take effect on and after January 1, 2025.

K.S.A. 9-556 Exemptions.

(a) This act does not apply to:

(1) An operator of a payment system to the extent that such operator provides processing, clearing or settlement services between persons exempted under this subsection or licensees in connection with wire transfers, credit card

transactions, debit card transactions, stored value transactions, automated clearing house transfers or similar funds transfers.

(2) A person appointed as an agent of a payee to collect and process a payment from a payor to the payee for goods or services other than money transmission provided to the payor by the payee if:

(A) A written agreement exists between the payee and the agent directing the agent to collect and process payments from payors on the payee's behalf;

(B) the payee holds the agent out to the public as accepting payments for goods or services on the payee's behalf; and

(C) payment for the goods and services is treated as received by the payee upon receipt by the agent so that the payor's obligation is extinguished and there is no risk of loss to the payor if the agent fails to remit the funds to the payee.

(3) A person that acts as an intermediary by processing payments between an entity that has directly incurred an outstanding money transmission obligation to a sender and the sender's designated recipient, if the entity:

(A) Is properly licensed or exempt from licensing requirements under this act;

(B) provides a receipt, electronic record or other written confirmation to the sender identifying the entity as the provider of money transmission in the transaction; and

(C) bears sole responsibility to satisfy the outstanding money transmission obligation to the sender, including the obligation to make the sender whole in connection with any failure to transmit the funds to the sender’s designated recipient.

(4) The United States government and any agency, bureau, department, office or instrumentality, corporate or otherwise, thereof, including any official, employee or agent of any such entity

(5) Money transmission by the United States postal service or by an agent of the United States postal service.

(6) Any state office or officer, department, board, commission, bureau, division, authority, agency or institution of this state, including any political subdivision thereof, and any county, city or other municipality.

(7) A federally insured depository financial institution, bank holding company, office of an international banking corporation, foreign bank that establishes a federal branch pursuant to 12 U.S.C. § 3102, a corporation organized pursuant

to 12 U.S.C. §§ 1861 through 1867 or a corporation organized under 12 U.S.C. §§ 611 through 633.

(8) Electronic funds transfer of governmental benefits for a federal, state, county or governmental agency by a contractor on behalf of the United States or a department, agency or instrumentality thereof or on behalf of a state or governmental subdivision, agency or instrumentality thereof.

(9) A board of trade designated as a contract market under 7 U.S.C.§§ 1 through 25 or a person that in the ordinary course of business provides clearance and settlement services for a board of trade to the extent of the board of trade's operation as or for such a board.

(10) A futures commission merchant registered under federal commodities law to the extent of the registrant's operation as such a futures commission merchant.

(11) A person registered as a securities broker-dealer under federal or state securities law to the extent of such registrant's operation as such a securities broker-dealer.

(12) An individual employed by a licensee, authorized delegate or any person exempted from the licensing requirements of the act when acting within the scope of employment and under the supervision of the licensee, authorized delegate or exempted person as an employee and not as an independent contractor.

(13) A person expressly appointed as a third-party service provider to or agent of an entity exempt under paragraph (a)(6) solely to the extent that:

(A) Such service provider or agent is engaging in money transmission on behalf of and pursuant to a written agreement with the exempt entity that sets forth the specific functions that the service provider or agent is to perform; and

(B) the exempt entity assumes all risk of loss and all legal responsibility for satisfying the outstanding money transmission obligations owed to purchasers and holders of the outstanding money transmission obligations upon receipt of the purchaser's or holder's money or monetary value by the service provider or agent.

(14) A person engaging in the practice of law, bookkeeping, accounting, real estate sales or brokerage.

(15) A person appointed as an agent of a payor for purposes of providing payroll processing services for which such agent would otherwise need to be licensed if:

(A) There is a written agreement between the payor and the agent that directs the agent to provide payroll processing services on the payor's behalf;

(B) the payor holds the agent out to employees and other payees as providing payroll processing services on the payor's behalf; and

(C) the payor's obligation to a payee, including an employee or any other party entitled to receive funds via the payroll processing services provided by the agent, is not extinguished if such agent fails to remit such funds to the payee.

(16) A person exempt by any rules or regulations adopted or by an order issued if the commissioner finds such exemption to be in the public interest and that the regulation of such person is not necessary for the purposes of this act.

(b) The commissioner may require that any person claiming to be exempt from licensing pursuant to this section provide information and documentation to the commissioner demonstrating that such person qualifies for any claimed exemption.

(c) This section shall take effect on and after January 1, 2025.

K.S.A. 9-557 Execution of act by commissioner.

(a) To carry out the purposes of this act, the commissioner may:

(1) Enter into agreements or relationships with other government officials or federal and state regulatory agencies and regulatory associations to improve efficiencies and reduce regulatory burden by standardizing methods or procedures and sharing resources, records or related information obtained under this act;

(2) use, hire, contract or employ analytical systems, methods or software to examine or investigate any person subject to this act;

(3) accept from other state or federal government agencies or officials, licensing, examination or investigation reports made by such other state or federal government agencies or officials; and

(4) accept audit reports made by an independent certified public accountant or other qualified third-party auditor for an applicant or licensee and incorporate the audit report in any report of examination or investigation.

(b) The commissioner shall have the broad administrative authority to administer, interpret and enforce this act, promulgate rules and regulations necessary to implement this act and set proportionate and equitable fees and costs associated with applications, examinations, investigations and other actions required to provide sufficient funds to meet the budget requirements of administering and enforcing the act for each fiscal year and to achieve the purposes of this act.

(c) This section shall take effect on and after January 1, 2025.

K.S.A. 9-558 Report confidentiality provisions and exemptions; authorization to disclose

(a) (1) Except as otherwise provided in subsection (b), all information or reports obtained by the commissioner from an applicant, licensee or authorized delegate and all information contained in or related to an examination, investigation, operating report or condition report prepared by, on behalf of or for the use of the commissioner or financial statements, balance sheets or authorized delegate information, are confidential and are not subject to disclosure under the Kansas open records act, K.S.A. 45-215 et seq., and amendments thereto.

(2) The provisions of this subsection providing for the confidentiality of public records shall expire on July 1, 2030, unless the legislature reviews and reenacts such provisions in accordance with K.S.A. 45-229, and amendments thereto, prior to July 1, 2030.

(b) The commissioner may disclose information not otherwise subject to disclosure under subsection (a) to representatives of state or federal agencies who promise in a record that such representatives will maintain the confidentiality of the information or where the commissioner finds that the release is reasonably necessary for the protection and interest of the public in accordance with the Kansas open records act.

(c) The following information contained in the records of the office of the state bank commissioner that is not confidential and may be made available to the public:

(1) The name, business address, telephone number and unique identifier of a licensee;

(2) the business address of a licensee's registered agent for service;

(3) the name, business address and telephone number of all authorized delegates;

(4) the terms of or a copy of any bond filed by a licensee, provided that confidential information, including, but not limited to, prices and fees for such bond is redacted; or

(5) copies of any orders of the office of the state bank commissioner relating to any violation of this act or regulations implementing this act.

(d) This section shall not be construed to prohibit the commissioner from disclosing to the public a list of all licensees or the aggregated financial or transactional data concerning those licensees.

(e) This section shall take effect on and after January 1, 2025.

K.S.A. 9-559 Commissioner powers; licensee obligations; payment of costs; release of records.

(a) The commissioner may conduct an examination or investigation of a licensee or authorized delegate or otherwise take independent action authorized by this act or by any rules and regulations adopted or an order issued under this act as reasonably necessary or appropriate to administer and enforce this act, regulations implementing this act and other applicable federal law. The commissioner may:

(1) Conduct an examination on-site or off-site as the commissioner may reasonably require;

(2) conduct an examination in conjunction with an examination conducted by representatives of other state agencies, agencies of another state or the federal government;

(3) accept the examination report of another state agency or an agency of another state or the federal government or a report prepared by an independent accounting firm, which, on being accepted, is considered for all purposes as an official report of the commissioner; and

(4) summon and examine under oath or subpoena a key individual or employee of a licensee or authorized delegate and require such individual or employee to produce records regarding any matter related to the condition and business of the licensee or authorized delegate.

(b) A licensee or authorized delegate shall provide the commissioner with full and complete access to all records the commissioner may reasonably require to conduct a complete examination. The records shall be provided at the location and in the format specified by the commissioner. The commissioner may utilize multistate record production standards and examination procedures when such standards will reasonably achieve the requirements of this section.

(c) Unless otherwise directed by the commissioner, a licensee shall pay all costs reasonably incurred in connection with an examination of the licensee or the licensee's authorized delegates.

(d) This section shall take effect on and after January 1, 2025.

K.S.A. 9-560 Commissioner powers to enforce provisions of act; investigation authority; sharing of information.

(a) To administer and enforce the provisions of this act and minimize the regulatory burden, the commissioner is hereby authorized to participate in multistate supervisory processes established between states and coordinated through the conference of state bank supervisors, money transmitter regulators associations and affiliates and successors

thereof for all licensees that hold licenses in Kansas or other states. As a participant in such established multistate supervisory processes, the commissioner may:

(1) Cooperate, coordinate and share information with other state and federal regulators in accordance with K.S.A. 9-559, and amendments thereto;

(2) enter into written cooperation, coordination or information- sharing contracts or agreements with organizations, the membership of which is made up of state or federal governmental agencies; and

(3) cooperate, coordinate and share information with organizations, the membership of which is made up of state or federal governmental agencies, if the organizations agree in writing to maintain the confidentiality and security of the shared information in accordance with K.S.A. 9-557, and amendments thereto.

(b) The commissioner shall not waive, and nothing in this section shall constitute a waiver of, the commissioner's authority to conduct an examination or investigation or otherwise take independent action authorized by this act or rules and regulations adopted or an order issued under this act to enforce compliance with applicable state or federal law.

(c) A joint examination or investigation or acceptance of an examination or investigation report shall not be construed to waive an examination assessment provided for in this act.

(d) This section shall take effect on and after January 1, 2025.

K.S.A. 9-561 Conflicts of provisions state and federal law.

(a) If the jurisdiction of state money transmission is conditioned on federal law, any inconsistencies between a provision of this act and such federal law governing money transmission shall be governed by the applicable federal law to the extent of such inconsistency.

(b) If there are any inconsistencies between this act and any federal law that governs pursuant to subsection (a), the commissioner may provide interpretive guidance that identifies the:

(1) Inconsistency; and

(2) appropriate means of compliance with federal law.

(c) This section shall take effect on and after January 1, 2025.

K.S.A. 9-562 License required; advertise and conduct money transmission activity; exemptions to licensing requirements.

(a) A person may not engage in the business of money transmission or advertise, solicit or hold itself out as providing money transmission unless the person is licensed under this act.

(b) Subsection (a) shall not apply to a person that is:

(1) An authorized delegate of a person licensed under this act acting within the scope of authority conferred by a written contract with the licensee; or

(2) exempt pursuant to K.S.A. 9-556, and amendments thereto, and does not engage in money transmission outside the scope of such exemption.

(c) A license issued pursuant to K.S.A. 9-557, and amendments thereto, shall not be transferable or assignable.

(d) This section shall take effect on and after January 1, 2025.

K.S.A. 9-563 Commissioner powers; establish consistent licensing practices; use of NMLS.

(a) To establish consistent licensing practices between Kansas and other states, the commissioner is hereby authorized to:

(1) Implement all licensing provisions of this act in a manner consistent with other states that have adopted this act or multistate licensing processes; and

(2) participate in nationwide protocols for licensing cooperation and coordination among state regulators, if such protocols are consistent with this act.

(b) The commissioner is authorized to establish relationships or contracts with the national multistate licensing system and registry or other entities designated by the national multistate licensing system and registry to:

(1) Collect and maintain records;

(2) coordinate multistate licensing processes and supervision processes;

(3) process fees; and

(4) facilitate communication between the commissioner and licensees or other persons subject to this act.

(c) The commissioner may utilize the nationwide multistate licensing system and registry for all aspects of licensing in accordance with this act, including, but not limited to, license applications, applications for acquisitions of control, surety bonds, reporting, criminal history background checks, credit checks, fee processing and examinations.

(d) The commissioner may utilize nationwide multistate licensing system and registry forms, processes and functionalities in accordance with this act. If the nationwide multistate licensing system and registry does not provide functionality, forms or processes for the provision of this act, the commissioner is authorized to implement the requirements in a manner that facilitates uniformity regarding the licensing, supervision, reporting and regulation of licensees that are licensed in multiple jurisdictions.

(e) The commissioner may establish new requirements or waive or modify, in whole or in part, any or all of the existing requirements as reasonably necessary to participate in the nationwide multistate licensing system and registry through the adoption of any rules and regulations adopted or an order issued or the issuance of an order.

(f) This section shall take effect on and after January 1, 2025.

K.S.A. 9-564 Application submission requirements; information and documentation.

(a) Applicants for a license shall submit a completed application in a form and manner as prescribed by the commissioner. Each such application shall contain content as set forth by rules and regulations, instruction or procedure of the commissioner and may be changed or updated by the commissioner in accordance with applicable law to carry out the purposes of this act and maintain consistency with nationwide multistate licensing system and registry licensing standards and practices. The application shall state or contain, as applicable:

(1) The legal name and any fictitious or trade name used by the applicant in conducting business and the residential and business addresses of the applicant;

(2) a list of any criminal convictions of the applicant and any material litigation in which the applicant was involved in the 10-year period immediately preceding the submission of the application;

(3) a description of any money transmission services previously provided by the applicant and the money transmission services the applicant seeks to provide in Kansas;

(4) a list of the applicant's proposed authorized delegates and the locations in Kansas where the applicant and the applicant's authorized delegates propose to engage in money transmission;

(5) a list of all other states where the applicant is licensed to engage in money transmission and any license revocations, suspensions or other disciplinary action taken against the applicant in other states;

(6) information concerning any bankruptcy or receivership proceedings affecting the licensee or a person in control of a licensee;

(7) a sample form of the contract for authorized delegates, if applicable;

(8) a sample form of the payment instrument or stored value, as applicable;

(9) the name and address of any federally insured depository financial institution through which the applicant plans to conduct money transmission; and

(10) any other information the commissioner or the nationwide multistate licensing system and registry reasonably requires regarding the applicant.

(b) If an applicant is a corporation, limited liability company, partnership or other legal entity, the applicant shall also provide:

(1) The date of the applicant's incorporation or formation and state or country of incorporation or formation;

(2) a certificate of good standing from the state or country where the applicant is incorporated or formed, if applicable;

(3) a brief description of the business structure or organization of the applicant, including any parents or subsidiaries of the applicant and whether any such parents or subsidiaries are publicly traded;

(4) the legal name, any fictitious or trade name, all business and residential addresses and the employment, as applicable, for the 10-year period immediately preceding the submission of the application for each key individual and person in control of the applicant;

(5) for any person in control of the applicant, a list of any felony convictions and for the 10-year period immediately preceding the submission of the application, a list of any criminal misdemeanor convictions of a crime of dishonesty, fraud or deceit and any material litigation in which the person involved is in control of an applicant that is not an individual;

(6) a copy of the applicant's audited financial statements for the most recent fiscal year and for the two-year period immediately preceding the most recent fiscal year or, if acceptable to the commissioner, certified unaudited financial statements for the most recent fiscal year or other period acceptable to the commissioner;

(7) a certified copy of the applicant's unaudited financial statements for the most recent fiscal quarter;

(8) if the applicant is a publicly traded corporation, a copy of the most recent report filed with the securities and exchange commission pursuant to 15 U.S.C. § 78m;

(9) if the applicant is a wholly owned subsidiary of:

(A) A corporation publicly traded in the United States, a copy of the parent corporation's audited financial statements for the most recent fiscal year or a copy of the parent corporation's most recent financial report filed with the securities and exchange commission pursuant to 15 U.S.C. § 78m; or

(B) a corporation publicly traded outside the United States, a copy of documentation similar to the requirements of paragraph (A) filed with the regulator of the parent corporation's domicile outside the United States;

(10) the name and address of the applicant's registered agent in Kansas; and

(11) any other information that the commissioner reasonably requires regarding the applicant.

(c) The commissioner shall set a nonrefundable new application fee each year pursuant to K.S.A. 9-557(b), and amendments thereto.

(d) The commissioner may waive one or more requirements of subsections (a) or (b) or permit an applicant to submit other information in lieu of the required information.

(e) This section shall take effect on and after January 1, 2025.

K.S.A. 9-565 New applicant information and documentation; submitted through the NMLS and registry; fingerprinting and criminal history check; requirements for search; commissioner authorization to use information for license approval or denial.

(a) As a part of any original application, any individual in control of a licensee, any applicant in control of a licensee and each key individual shall provide the commissioner with the following items through the nationwide multistate licensing system and registry:

(1) (A) The office of the state bank commissioner may require an individual to be fingerprinted and submit to a state and national criminal history record check. The fingerprints shall be used to identify the individual and to determine whether such individual has a record of criminal history in this state or other jurisdictions. The office of the state bank commissioner is authorized to submit the fingerprints to the Kansas bureau of investigation and the federal bureau of investigation for a state and national criminal history record check. The office of the state bank commissioner may use the information obtained from fingerprinting and the criminal history for purposes of verifying the identification of the individual and in the official determination of the qualifications and fitness of the individual to be issued or to maintain a license;

(B) Local and state law enforcement officers and agencies shall assist the office of the state bank commissioner in taking and processing of

fingerprints of applicants for and holders of any license, registration, permit or certificate;

(C) The Kansas bureau of investigation shall release all records of adult convictions and nonconvictions in Kansas and adult convictions, adjudications and nonconvictions of another state or country to the office of the state bank commissioner. Disclosure or use of any information received for any purpose other than provided in this section shall be a class A misdemeanor and shall constitute grounds for removal from office or termination of employment; and

(D) Any individual that currently resides and has continuously resided outside of the United States for the past 10 years shall not be required to comply with this subsection; and

(2) a description of the individual's personal history and experience provided in a form and manner prescribed by the commissioner to obtain the following:

(A) An independent credit report from a consumer reporting agency. This requirement shall be waived if the individual does not have a social security number;

(B) information related to any criminal convictions or pending charges; and

(C) information related to any regulatory or administrative action and any civil litigation involving claims of fraud, misrepresentation, conversion, mismanagement of funds, breach of fiduciary duty or breach of contract.

(b) (1) If the individual has resided outside of the United States at any time during the 10-year period immediately preceding the individual's application, the individual shall also provide an investigative background report prepared by an independent search firm.

(2) At a minimum, the search firm shall:

(A) Demonstrate that it has sufficient knowledge and resources and that such firm employs accepted and reasonable methodologies to conduct the research of the background report; and

(B) not be affiliated with or have an interest with the individual it is researching.

(3) The investigative background report shall be provided in English and, at a minimum, shall contain the following:

(A) A comprehensive credit report or any equivalent information obtained or generated by the independent search firm to accomplish such report,

including a search of the court data in the countries, provinces, states, cities, towns and contiguous areas where the individual resided and worked if such report is available in the individual's current jurisdiction of residency;

(B) criminal records information for the 10-year period immediately preceding the individual's application, including, but not limited to, felonies, misdemeanors or similar convictions for violations of law in the countries, provinces, states, cities, towns and contiguous areas where the individual resided and worked;

(C) employment history;

(D) media history including an electronic search of national and local publications, wire services and business applications; and

(E) financial services-related regulatory history, including, but not limited to, money transmission, securities, banking, insurance and mortgage-related industries.

(c) Any information required by this section may be used by the commissioner in making an official determination of the qualifications and fitness of the person in control or who seeks to gain control of the licensee.

(d) This section shall take effect on and after January 1, 2025.

K.S.A. 9-566 Controlling influence; power to vote; number of shares to control.

(a) A person is presumed to exercise a controlling influence when such person holds the power to vote, directly or indirectly, at least 10% of the outstanding voting shares or voting interests of a licensee or person in control of a licensee.

(b) A person presumed to exercise a controlling influence pursuant to this section may rebut the presumption of control if the person is a passive investor.

(c) For purposes of determining the percentage of a person controlled by any individual, the individual's interest shall be aggregated with the interest of any other immediate family member, including the individual's spouse, parents, children, siblings, mothers-in-law and fathers-in-law, sons-in-law and daughters-in-law, brothers-in-law and sisters-in-law and any other person who shares such individual's home.

(d) This section shall take effect on and after January 1, 2025.

K.S.A. 9-567 Complete application requirements; commissioner timeframe and requirements to approve or deny application..

(a) (1) When an application for an original license under this act appears to include all the items and addresses all of the matters that are required, the application shall

be deemed complete, and the commissioner shall promptly notify the applicant of the date the application is deemed complete. The commissioner shall approve or deny the application within 120 days after the completion date.

(2) If the application has not been approved or denied within 120 days after the completion date:

(A) The application shall be considered approved; and

(B) the license shall take effect as of the first business day after expiration of the 120-day period.

(3) The commissioner may extend the application period for good cause.

(b) A determination by the commissioner that an application is complete and accepted for processing means that the application, on its face, appears to include all of the items, including the criminal history background check response from the Kansas bureau of investigation and that such application addresses all of the matters that are required. A determination of completion by the commissioner shall not be deemed to be an assessment of the substance of the application or of the sufficiency of the information provided.

(c) When an application is filed and considered complete under this section, the commissioner shall investigate the applicant's financial condition and responsibility, financial and business experience, character and general fitness. The commissioner may conduct an on-site investigation of the applicant at the applicant's expense. The commissioner shall issue a license to an applicant under this section if the commissioner finds that the following conditions have been fulfilled:

(1) The applicant has complied with sections 10 and 11, and amendments thereto; and

(2) the financial condition and responsibility, financial and business experience, competence, character and general fitness of the applicant and key individuals and persons in control of the applicant indicate that it is in the interest of the public to permit the applicant to engage in money transmission.

(d) If an applicant avails itself or is otherwise subject to a multistate licensing process:

(1) The commissioner is hereby authorized to accept the investigation results of a lead investigative state to satisfy the requirements of subsection (c) if such lead investigative state has sufficient staffing, expertise and minimum standards; or

(2) if Kansas is the lead investigative state, the commissioner is hereby authorized to investigate the applicant pursuant to subsection (c) utilizing the timeframes established by agreement through the multistate licensing process. No such timeframes shall be considered noncompliant with the application period in subsection (a)(l).

(e) The commissioner shall issue a formal written notice of the denial of a license application within 14 days of the decision to deny the application. The commissioner shall state in the notice of denial the specific reasons for the denial of the application. An applicant whose application is denied by the commissioner under this subsection may appeal within 14 days of receiving the notice and request a hearing in accordance with the Kansas administrative procedure act, K.S.A. 77-501 et seq., and amendments thereto.

(f) The initial license term shall begin on the day the application is approved. The license shall expire on December 31 of the year in which the license term began, unless the initial license date is between November 1 and December 31, in which case the initial license term shall run through December 31 of the following year.

(g) This section shall take effect on and after January 1, 2025.

K.S.A. 9-568 License renewal time frame and requirements.

(a) (1) A license issued under this act shall be renewed annually.

(2) An annual renewal fee set by the commissioner shall be paid not more than 60 days before the license expiration.

(3) The renewal term shall be for a period of one year and shall begin on January 1 of each year after the initial license term and shall expire on December 31 of the year the renewal term begins.

(b) A licensee shall submit a complete renewal report with the renewal fee, in a form and manner determined by the commissioner. The renewal report shall contain a description of each material change in information submitted by the licensee in the licensee's original license application that has not been reported to the commissioner.

(c) Renewal applications received within 30 days of the expiration of the license and incomplete applications as of 30 days prior to the expiration of the license shall be subject to a late fee set by the commissioner.

(d) The commissioner may grant an extension of the renewal date for good cause.

(e) The commissioner is hereby authorized to utilize the nationwide multistate licensing system and registry to process license renewals, if such utilization satisfies the requirements of this section.

(f) Renewal applications submitted between November 1, 2024, and December 31, 2024, considered complete pursuant to K.S.A. 9-509, and amendments thereto, shall be considered complete under this section.

(g) This section shall take effect on and after January 1, 2025.

K.S.A. 9-569 Commissioner powers and procedures to revoke license.

(a) If a licensee does not continue to meet the qualifications or satisfy the requirements of an applicant for a new money transmission license, the commissioner may suspend or revoke the licensee's license in accordance with the procedures established by this act or other applicable state law for such suspension or revocation.

(b) An applicant for a money transmission license shall demonstrate that such applicant meets or will meet and a money transmission licensee shall at all times meet, the requirements of sections 32, 33 and 34, and amendments thereto.

(c) This section shall take effect on and after January 1, 2025.

K.S.A. 9-570 Commissioner discretion to determine completeness; compliance; and timeframe to complete application of file change of control.

(a) The commissioner shall have the discretion to determine the completeness of any application submitted pursuant to this act. In making such a determination, the commissioner shall consider the applicant's compliance with the requirements of the act and any other facts and circumstances that the commissioner deems appropriate.

(b) If an 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 deemed abandoned and the application fee shall be nonrefundable. An applicant whose application is abandoned under this section may reapply to obtain a new license.

(c) This section shall take effect on and after January 1, 2025.

K.S.A. 9-571 Approval requirements for change of control and requirements for same; timeframes; exemptions.

(a) When any person or group of persons acting in concert are seeking to acquire control of a licensee, the licensee shall obtain the written approval of the commissioner prior to the change of control. An individual is not deemed to acquire control of a licensee and is not subject to this section when that individual becomes a key individual in the ordinary course of business.

(b) A person or group of persons acting in concert that seeks to acquire control of a licensee in cooperation with such licensee shall submit an application in the form and manner prescribed by the commissioner. Such application shall be accompanied by a nonrefundable fee set by the commissioner.

(c) Upon request, the commissioner may permit a licensee, the person or group of person acting in concert to submit some or all information required by the commissioner pursuant to subsection (b) without using the nationwide multistate licensing system and registry.

(d) The application required by subsection (b) shall include all information required by section 11, and amendments thereto, for any new key individuals who have not previously completed the requirements of K.S.A. 9-565, and amendments thereto, for a licensee.

(e) (1) When an application for acquisition of control under this section appears to include all the items and addresses all of the matters that are required, the application shall be deemed complete and the commissioner shall promptly notify the applicant of the date on which the application was so deemed, and the commissioner shall approve or deny the application within 60 days after the completion date.

(2) If the application is not approved or denied within 60 days after the completion date:

(A) The application shall be deemed approved; and

(B) the person or group of persons acting in concert shall not be prohibited from acquiring control.

(3) The commissioner may extend the application period for good cause.

(f) A determination by the commissioner that an application is complete and is accepted for processing means only that the application, on its face, appears to include all of the items and addresses all of the matters that are required. A determination of completion by the commissioner shall not be deemed to be an assessment of the substance of the application or of the sufficiency of the information provided.

(g) When an application is filed and considered complete under subsection (e), the commissioner shall investigate the financial condition and responsibility, financial and business experience, character and general fitness of the person or group of persons acting in concert who seek to acquire control. The commissioner shall approve an acquisition of control pursuant to this section if the commissioner finds that all of the following conditions have been fulfilled:

(1) The requirements of subsections (b) and (d) have been met, as applicable; and

(2) the financial condition and responsibility, financial and business experience, competence, character and general fitness of the person or group of persons acting in concert seeking to acquire control and the key individuals and persons that would be in control of the licensee after the acquisition of control indicate that it is in the interest of the public to permit the person or group of persons acting in concert to control the licensee.

(h) If an applicant avails itself or is otherwise subject to a multistate licensing process:

(1) The commissioner shall be authorized to accept the investigation results of a lead investigative state for the purposes of subsection (g) if the lead investigative state has sufficient staffing, expertise and minimum standards; or

(2) if Kansas is a lead investigative state, the commissioner shall be authorized to investigate the applicant pursuant to subsection (g) and the timeframes established by agreement through the multistate licensing process.

(i) The commissioner shall issue a formal written notice of the denial of an application to acquire control within 30 days of the decision to deny the application. The commissioner shall state in the notice of denial the specific reasons for the denial of the application. An applicant whose application is denied by the commissioner under this subsection may appeal within 14 days and request a hearing in accordance with the Kansas administrative procedure act, K.S.A. 77-501 et seq., and amendments thereto.

(j) The requirements of subsections (a) and (b) shall not apply to any of the following:

(1) A person that acts as a proxy for the sole purpose of voting at a designated meeting of the shareholders or holders of voting shares or voting interests of a licensee or a person in control of a licensee;

(2) a person that acquires control of a licensee by devise or descent;

(3) a person that acquires control of a licensee as a personal representative, custodian, guardian, conservator or trustee or as an officer appointed by a court of competent jurisdiction or by operation of law;

(4) a person that is exempt under subsection (l);

(5) a person that the commissioner determines is not subject to subsection (a) based on the public interest;

(6) a public offering of securities of a licensee or a person in control of a licensee; or

(7) an internal reorganization of a person in control of the licensee if the ultimate person in control of the licensee remains the same.

(k) Persons meeting the requirements of subsections (j)(2), (j)(3), (j) (4), (j)(6) or (j)(7) in cooperation with the licensee shall notify the commissioner within 15 days after the acquisition of control.

(1) The requirements of subsections (a) and (b) shall not apply to a person that has complied with and received approval to engage in money transmission under this act or was identified as a person in control in a prior application filed with and approved by the

commissioner or by a money service business-accredited state pursuant to a multistate licensing process, if:

(A) The person has not had a license revoked or suspended or controlled a licensee that has had a license revoked or suspended while the person was in control of the licensee in the previous five years;

(B) the person is a licensee, such person is well managed and has received at least a satisfactory rating for compliance at such person's most recent examination by an money service business accredited state if such rating was given;

(C) the licensee to be acquired is expected to meet the requirements of sections 32, 33 and 34, and amendments thereto, after the acquisition of control is completed. If the person acquiring control is a licensee, such licensee shall also be expected to meet the requirements of sections 32, 33 and 34, and amendments thereto, after the acquisition of control is completed;

(D) the licensee to be acquired shall not implement any material changes to such licensee's business plan as a result of the acquisition of control. If the person acquiring control is a licensee, such licensee shall not implement any material changes to such licensee's business plan as a result of the acquisition of control; and

(E) the person provides notice of the acquisition in cooperation with the licensee and attests to the provisions of this subsection in a form and manner prescribed by the commissioner.

(2) If the notice is not disapproved within 30 days after the date on which the notice was determined to be complete, the notice shall be deemed approved.

(m) Before filing an application for approval to acquire control of a licensee, a person may request in writing a determination from the commissioner as to whether such person would be considered a person in control of a licensee upon consummation of a proposed transaction. If the commissioner determines that the person would not be a person in control of a licensee, the person and the proposed transaction shall not be subject to the requirements of subsections (a) and (b).

(n) If a multistate licensing process includes a determination pursuant to subsection (m) and an applicant avails itself or is otherwise subject to the multistate licensing process:

(1) The commissioner is hereby authorized to accept the control determination of a lead investigative state with sufficient staffing, expertise and minimum standards for the purpose of subsection (m); or

(2) if Kansas is a lead investigative state, the commissioner is hereby authorized to investigate the applicant pursuant to subsection (m) and the timeframes established by agreement through the multistate licensing process.

(o) This section shall take effect on and after January 1, 2025.

K.S.A. 9-572 Timeframes; add or replace a key individual; notices.

(a) A licensee adding or replacing a key individual shall provide:

(1) Notice in the manner prescribed by the commissioner within 15 days after the effective date of the appointment of the new key individual; and

(2) information as required by K.S.A. 9-564, and amendments thereto, within 45 days of the effective date of the appointment of the new key individual.

(b) Within 90 days of the date on which the notice provided pursuant to subsection (a)was determined to be complete, the commissioner may issue a notice of disapproval of a key individual if the competence, experience, character or integrity of the individual would not be in the best interests of the public or the customers of the licensee to permit the individual to be a key individual of such licensee.

(c) A notice of disapproval shall state the basis for disapproval and shall be sent to the licensee and the disapproved individual. A licensee may appeal a notice of disapproval pursuant to the Kansas administrative procedure act, K.S.A. 77-501 et seq., and amendments thereto, within 14 days.

(d) If the notice provided pursuant to subsection (a) is not disapproved within 90 days after the date when the notice was determined to be complete, the key individual shall be deemed approved.

(e) If a multistate licensing process includes a key individual notice review and disapproval process pursuant to this section and the licensee avails itself or is otherwise subject to the multistate licensing process:

(1) The commissioner is hereby authorized to accept the determination of another state if the investigating state has sufficient staffing, expertise and minimum standards for the purpose of this section; or

(2) if Kansas is a lead investigative state, the commissioner is authorized to investigate the applicant pursuant to subsection (b) and the timeframes established by agreement through the multistate licensing process.

(f) This section shall take effect on and after January 1, 2025.

K.S.A. 9-573 Licensee requirement; submit report of condition; requirements that report must contain; time requirements.

(a) Every licensee shall submit a report of condition within 45 days of the end of the calendar quarter or within any extended time as the commissioner may prescribe.

(b) The report of condition shall include:

(1) Financial information at the licensee level;

(2) nationwide and state-specific money transmission transaction information in every jurisdiction in the United States where the licensee is licensed to engage in money transmission;

(3) the permissible investments report;

(4) transaction destination country reporting for money received for transmission, if applicable; and

(5) any other information the commissioner reasonably requires regarding the licensee.

(c) The commissioner may utilize the nationwide multistate licensing system and registry for the submission of the report required by subsection (a) and is authorized to change or update as necessary the requirements of this section to carry out the purposes of this act and maintain consistency with nationwide multistate licensing system and registry reporting.

(d) The information required by subsection (b)(4) shall only be included in a report of condition submitted within 45 days of the end of the fourth calendar quarter.

(e) This section shall take effect on and after January 1, 2025.

K.S.A. 9-574 Filing and time requirements; audited financial statements; any other documents as commissioner may require.

(a) Within 90 days after the end of each fiscal year or within any extended time as the commissioner may prescribe through rules and regulations, every licensee shall file with the commissioner:

(1) An audited financial statement of the licensee for the fiscal year prepared in accordance with United States generally accepted accounting principles; and

(2) any other information as the commissioner may reasonably require.

(b) The audited financial statements shall be prepared by an independent certified public accountant or independent public accountant who has been deemed satisfactory by the commissioner.

(c) The audited financial statements shall include or be accompanied by a certificate of opinion of the independent certified public accountant or independent public accountant in a form and manner determined by the commissioner. If the certificate or opinion is qualified, the commissioner may order the licensee to take any action as the commissioner may find necessary to enable the independent certified public accountant or independent public accountant to remove the qualification.

(d) This section shall take effect on and after January 1, 2025.

K.S.A. 9-575 Submission of report of authorized delegates; time frame to submit; information report must contain.

(a) Each licensee shall submit a report of authorized delegates within 45 days of the end of each calendar quarter. The commissioner is authorized to utilize the nationwide multistate licensing system and registry for the submission of the report required by this subsection if such utilization is consistent with the requirements of this section.

(b) The authorized delegate report shall include, at a minimum, each authorized delegate's:

(1) Company legal name;

(2) taxpayer employer identification number;

(3) principal provider identifier;

(4) physical address;

(5) mailing address;

(6) any business conducted in other states;

(7) any fictitious or trade name;

(8) contact person's name, phone number and email;

(9) start date as the licensee's authorized delegate;

(10) end date acting as the licensee's authorized delegate, if applicable; and

(11) any other information the commissioner reasonably requires regarding the authorized delegate.

(c) This section shall take effect on and after January 1, 2025.

K.S.A. 9-576 Licensee duty to report information to commissioner; time frame; felony conviction or bankruptcy filing of a licensee

(a) A licensee shall file a report with the commissioner within one business day after the licensee has reason to know of the:

(1) Filing of a bankruptcy or reorganization petition by or against the licensee;

(2) filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for the licensee's dissolution or reorganization or the making of a general assignment for the benefit of the licensee's creditors; or

(3) commencement of a proceeding to revoke or suspend the licensee's license in a state or country where the licensee engages in business or is licensed.

(b) A licensee shall file a report with the commissioner within three business days after the licensee has reason to know of a felony conviction of:

(1) The licensee or a key individual or person in control of the licensee; or

(2) an authorized delegate.

(c) This section shall take effect on and after January 1, 2025.

K.S.A. 9-577 Licensee or authorized delegate requirement to file reports; as suspicious activity reporting.

(a) A licensee and an authorized delegate shall file all reports required by federal currency reporting, recordkeeping and suspicious activity reporting requirements as set forth in federal and state laws pertaining to money laundering. The timely filing of a complete and accurate report required under this section with the appropriate federal agency is deemed compliant with the requirements of this section.

(b) This section shall take effect on and after January 1, 2025.

K.S.A. 9-578 Record retention; time frame; type of records to retain; records open to inspection by commissioner.

(a) Every licensee shall maintain the following records for at least three years:

(1) A record of each outstanding money transmission obligation sold;

(2) a general ledger posted at least monthly containing all assets, liability, capital, income and expense accounts;

(3) bank statements and bank reconciliation records;

(4) records of all outstanding money transmission obligations;

(5) records of each outstanding money transmission obligation paid within the three-year period the records are maintained;

(6) a list of the last known names and addresses of all the licensee's authorized delegates; and

(7) any other records the commissioner reasonably requires in rules and regulations.

(b) Records specified in subsection (a) may be maintained:

(1) In any form of record; and

(2) outside this state, if such records are made accessible to the commissioner on seven business days' notice.

(c) All records maintained by the licensee as required in this section are open to inspection by the commissioner pursuant to K.S.A. 9-559(a), and amendments thereto.

K.S.A. 9-579 Requirements for licensee to conduct business through an authorized delegate; timeframe and procedure for notifying commissioner of termination of license and requirement to cease money transmission business.

(a) As used in this section, "remit" means to make direct payments of money to a licensee or the licensee's representative authorized to receive money or to deposit money in a bank in an account specified by the licensee.

(b) Before a licensee is authorized to conduct business through an authorized delegate or allows a person to act as the licensee's authorized delegate, the licensee shall:

(1) Adopt and update as necessary all written policies and procedures reasonably designed to ensure that the licensee's authorized delegates comply with applicable state and federal law;

(2) enter into a written contract that complies with subsection (d); and

(3) conduct a reasonable risk-based background investigation sufficient for the licensee to determine if the authorized delegate has complied and will likely comply with applicable state and federal law.

(c) An authorized delegate shall comply with this act.

(d) The written contract required by subsection (b) shall be signed by the licensee and the authorized delegate and, at a minimum, shall:

(1) Appoint the person signing the contract as the licensee's authorized delegate with the authority to conduct money transmission on behalf of the licensee;

(2) set forth the nature and scope of the relationship between the licensee and the authorized delegate and the respective rights and responsibilities of each party;

(3) require the authorized delegate to agree to fully comply with all applicable state and federal laws and rules and regulations pertaining to money transmission;

(4) require the authorized delegate to remit and handle money and any monetary value in accordance with the terms of the contract between the licensee and the authorized delegate;

(5) impose a trust on money and any monetary value net of fees received for money transmission for the benefit of the licensee;

(6) require the authorized delegate to prepare and maintain records as required by this act or rules and regulations adopted pursuant to this act or as reasonably required by the commissioner;

(7) acknowledge that the authorized delegate consents to examination or investigation by the commissioner;

(8) state that the licensee is subject to regulation by the commissioner and, as part of such regulation, the commissioner may suspend or revoke an authorized delegate designation or require the licensee to terminate an authorized delegate designation; and

(9) acknowledge receipt of the written policies and procedures required under subsection (b).

(e) Within five business days after the suspension, revocation, surrender or expiration of a licensee's license, the licensee shall provide documentation to the commissioner that the licensee has notified all applicable authorized delegates of the licensee whose names are in a record filed with the commissioner of the suspension, revocation, surrender or expiration of a license. Upon suspension, revocation, surrender or expiration of a license, all applicable authorized delegates shall immediately cease to provide money transmission as an authorized delegate of the licensee.

(f) An authorized delegate of a licensee holds in trust for the benefit of the licensee all money net of fees received from money transmission. If an authorized delegate commingles any funds received from money transmission with any other funds or property owned or controlled by the authorized delegate, all commingled funds and other property shall be considered held in trust in favor of the licensee in an amount equal to the amount of money net of fees received from money transmission.

(g) No authorized delegate shall use a subdelegate to conduct money transmission on behalf of a licensee.

(h) This section shall take effect on and after January 1, 2025.

K.S.A. 9-580 Engaging in the business of money transmission on behalf of a non-licensed or exempt individual is prohibited; liability for action.

(a) No person shall engage in the business of money transmission on behalf of a person who is not licensed or exempt from licensing under this act. If a person engages in such activity, such person shall be deemed to have provided money transmission to the same extent that such person were a licensee and shall be jointly and severally liable with the unlicensed or nonexempt person.

(b) This section shall take effect on and after January 1, 2025.

K.S.A. 9-581 Requirement of licensee to remit funds; exceptions to requirement; reporting requirements to notify sender.

(a) Every licensee shall forward all moneys received for transmission in accordance with the terms of the agreement between the licensee and the sender unless the licensee reasonably believes or has a reasonable basis to believe that the sender may be a victim of fraud or that a crime or violation of law or any rules and regulations has occurred, is occurring or may occur.

(b) If a licensee fails to forward money received for transmission in accordance with this section, the licensee shall respond to inquiries by the sender with the reason for the failure unless providing a response would violate a state or federal law or rules and regulations.

(c) This section shall take effect on and after January 1, 2025.

K.S.A. 9-582 Exemption to money received for transmission.

(a) This section does not apply to moneys received for transmission:

(1) Subject to 12 C.F.R. §§ 1005.30 through 1005.36; or

(2) pursuant to a written agreement between the licensee and payee to process payments for goods or services provided by the payee.

(b) Within 10 days of receipt of the sender's written request for a refund of all money received for transmission, the licensee shall refund such money to the sender, unless:

(1) The money has been forwarded within 10 days of the date when the money was received for transmission;

(2) instructions have been given committing an equivalent amount of money to the person designated by the sender within 10 days of the date when the money was received for transmission;

(3) the agreement between the licensee and the sender instructs the licensee to forward the money after 10 days of the date when the money was received for transmission. If funds have not yet been forwarded in accordance with the terms of the agreement between the licensee and the sender, the licensee shall issue a refund in accordance with this section; or

(4) the refund is requested for a transaction that the licensee has not completed based on a reasonable belief or a reasonable basis to believe that a crime or violation of law, rules and regulations has occurred, is occurring or may occur.

(c) The refund request shall not be construed to enable the licensee to identify the:

(1) Sender's name and address or telephone number; or

(2) particular transaction to be refunded if the sender has multiple outstanding transactions.

(d) This section shall take effect on and after January 1, 2025.

K.S.A. 9-583 Situations where this section does not apply; payments for goods and services; money received for commercial reasons; payroll processing.

(a) This section shall not apply to:

(1) Money received for transmission subject to 12 C.F.R. §§ 1005.30 through 1005.36;

(2) money received for transmission that is not primarily for personal, family or household purposes;

(3) money received for transmission pursuant to a written agreement between the licensee and payee to process payments for goods or services provided by the payee; or

(4) payroll processing services.

(b) As used in this section, "receipt" means a paper or electronic receipt.

(c) (1) For a transaction conducted in person, the receipt may be provided electronically if the sender requests or agrees to receive an electronic receipt.

(d) (2) For a transaction conducted electronically or by phone, a receipt may be provided electronically. All electronic receipts shall be provided in a retainable form.

(1) Every licensee or the licensee's authorized delegate shall provide the sender a receipt for money received for transmission.

(2) The receipt shall contain the:

(A) Name of the sender;

(B) name of the designated recipient;

(C) date of the transaction;

(D) unique transaction or identification number;

(E) name of the licensee, the licensee's nationwide multistate licensing system and registry unique identification number, the licensee's business address and the licensee's customer service telephone number;

(F) amount of the transaction in United States dollars;

(G) fee charged, if any, by the licensee to the sender for the transaction; and

(H) taxes collected, if any, by the licensee from the sender for the transaction.

(3) The receipt required by this section shall be written in English and in the language principally used by the licensee or authorized delegate to advertise, solicit or negotiate, either orally or in writing, for a transaction conducted in person, electronically or by phone, if other than English.

(e) This section shall take effect on and after January 1, 2025.

K.S.A. 9-584 Requirement of licensee to mention the OSBC Kansas for any questions or complaints re: money transmission services.

(a) Every licensee or authorized delegate shall include on a receipt or disclose on the licensee's website or mobile application the name of the office of the state bank commissioner and a statement that the licensee's Kansas customers can contact the office of the state bank commissioner with questions or complaints about the licensee's money transmission services.

(b) This section shall take effect on and after January 1, 2025.

K.S.A. 9-585 Obligations of licensee that provides payroll processing services; exemptions.

(a) A licensee that provides payroll processing services shall:

(1) Issue reports to clients detailing client payroll obligations in advance of the payroll funds being deducted from an account; and

(2) make available worker paystubs or an equivalent statement to workers.

(b) This section shall not apply to a licensee providing payroll processing services where the licensee's client designates the intended recipients to the licensee and is responsible for providing the disclosures.

(c) This section shall take effect on and after January 1, 2025.

K.S.A. 9-586 Licensee requirement to meet tangible net worth; conditions and amounts.

(a) Every licensee shall maintain at all times a tangible net worth of:

(1) The greater of $100,000 or 3% of such licensee's total assets up to $100,000,000;

(2) 2% of such licensee's additional assets of $100,000,000 to $1,000,000,000; and

(3) 0.5% of such licensee's additional assets of over $1,000,000,000.

(b) The licensee's tangible net worth shall be demonstrated at initial application by the applicant's most recent audited or unaudited financial statements pursuant to K.S.A. 9-564, and amendments thereto.

(c) Notwithstanding the provisions of this section, the commissioner shall have the authority to exempt any applicant or licensee, in part or in whole, from the requirements of this section.

(d) This section shall take effect on and after January 1, 2025.

K.S.A. 9-587 Requirement of licensee to maintain a security bond or deposit; commissioners' approval; amounts.

(a) An applicant for a money transmission license shall provide and a licensee at all times shall maintain security consisting of a surety bond in a form satisfactory to the commissioner or, with the commissioner's approval, a deposit instead of a bond in accordance with this section.

(b) The amount of the required security shall be:

(1) The greater of $200,000 or an amount equal to 100% of the licensee's average daily money transmission liability in Kansas calculated for the most recently completed three-month period, up to a maximum of $1,000,000; or

(2) $200,000, if the licensee's tangible net worth exceeds 10% of total assets.

(c) A licensee that maintains a bond in the maximum amount provided for in subsection (b) shall not be required to calculate its average daily money transmission liability in Kansas for purposes of this section.

(d) A licensee may exceed the maximum required bond amount pursuant to K.S.A. 9-589, and amendments thereto.

(e) This section shall take effect on and after January 1, 2025.

K.S.A.9-588 Requirement of licensee to maintain permissible investments; amount required; commissioners rights.

(a) A licensee shall maintain permissible investments that have a market value computed in accordance with United States generally accepted accounting principles of not less than the aggregate amount of the total of the licensee's outstanding money transmission obligations.

(b) Except for the permissible investments described in K.S.A. 9-589, and amendments thereto, the commissioner may by rules and regulations or order limit the extent to which a specific investment maintained by a licensee within a class of permissible investments may be considered a permissible investment, if the specific investment represents undue risk to customers not reflected in the market value of investments.

(c) Permissible investments, even if commingled with other assets of the licensee, shall be held in trust for the benefit of the purchasers and holders of the licensee's outstanding money transmission obligations in the event of insolvency, the filing of a petition by or against the licensee under 11 U.S.C. §§ 101 through 110 for bankruptcy or reorganization, the filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for such licensee's

dissolution or reorganization or in the event of an action by a creditor against the licensee who is not a beneficiary of this statutory trust. No permissible investments impressed with a trust pursuant to this subsection shall be subject to attachment, levy of execution or sequestration by order of any court, except for a beneficiary of this statutory trust.

(d) Upon the establishment of a statutory trust in accordance with subsection (c) or when any funds are drawn on a letter of credit pursuant to K.S.A. 9-589, and amendments thereto, the commissioner shall notify the applicable regulator of each state where the licensee is licensed to engage in money transmission, if any, of the establishment of the trust or the funds drawn on the letter of credit, as applicable. Notice shall be deemed satisfied if performed pursuant to a multistate agreement or through the nationwide multistate licensing system and registry. Funds drawn on a letter of credit and any other permissible investments held in trust for the benefit of the purchasers and holders of the licensee's outstanding money transmission obligations shall be deemed held in trust for the benefit of such purchasers and holders on a pro rata and equitable basis in accordance with statutes pursuant to which permissible investments are required to be held in Kansas and other states, as applicable. Any statutory trust established under this section shall be terminated upon extinguishment of all of the licensee's outstanding money transmission obligations.

(e) The commissioner by rules and regulations or by order may allow other types of investments that the commissioner determines are of sufficient liquidity and quality to be a permissible investment. The commissioner is hereby authorized to participate in efforts with other state regulators to determine which other types of investments are of sufficient liquidity and quality to be a permissible investment.

(f) This section shall take effect on and after January 1, 2025.

K.S.A. 9-589 Section listing permissible investments.

(a) The following investments are permissible under this section:

(1) Cash, including demand deposits, savings deposits and funds in accounts held for the benefit of the licensee's customers in a federally insured depository financial institution and cash equivalents including automated clearing house items in transit to the licensee and automated clearing house items or international wires in transit to a payee, cash in transit via armored car, cash in smart safes, cash in licensee-owned locations, debit card or credit card funded transmission receivables owed by any bank or money market mutual funds rated AAA by Standard & Poor or the equivalent from any eligible rating service;

(2) certificates of deposit or senior debt obligations of a federally insured depository institution;

(3) an obligation of the United States or a commission, agency or instrumentality thereof, an obligation that is guaranteed fully as to principal and interest by the

United States or an obligation of a state or a governmental subdivision, agency or instrumentality thereof;

(4) (A) the full drawable amount of an irrevocable standby letter of credit for which the stated beneficiary is the commissioner that stipulates that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds up to the letter of credit amount within seven days of presentation of the items required by subparagraph (D);

(B) the letter of credit shall:

(i) Be issued by a federally insured depository financial institution, a foreign bank that is authorized under federal law to maintain a federal agency or federal branch office in a state or states or a foreign bank that is authorized under state law to maintain a branch in a state that:

(a) Bears an eligible rating or whose parent company bears an eligible rating; and

(b) is regulated, supervised and examined by United States federal or state authorities having regulatory authority over banks, credit unions and trust companies;

(ii) be irrevocable, unconditional and indicate that such letter of credit is not subject to any condition or qualifications outside of such letter of credit;

(iii) contain no references to any other agreements, documents or entities or otherwise provide for a security interest in the licensee; and

(iv) contain an issue date and expiration date and expressly provide for automatic extension, without a written amendment, for an additional period of one year from the present or each future expiration date unless the issuer of the letter of credit notifies the commissioner in writing by certified or registered mail or courier mail or other receipted means at least 60 days prior to any expiration date, that the irrevocable letter of credit will not be extended;

(C) if any notice of expiration or non-extension of a letter of credit is issued under clause (a)(4)(B)(iv), the licensee shall be required to demonstrate to the satisfaction of the commissioner, 15 days prior to expiration, that

the licensee maintains and shall maintain permissible investments in accordance with K.S.A. 9-590(a), and amendments thereto, upon the expiration of the letter of credit. If the licensee is not able to do so, the commissioner may draw on the letter of credit in an amount up to the amount necessary to meet the licensee's requirements to maintain permissible investments in accordance with K.S.A. 9-588(a), and amendments thereto. Any such draw shall be offset against the licensee's outstanding money transmission obligations. The drawn funds shall be held in trust by the commissioner or the commissioner's designated agent, to the extent authorized by law, as agent for the benefit of the purchasers and holders of the licensee's outstanding money transmission obligations;

(D) the letter of credit shall provide that the issuer of such letter of credit shall honor, at sight, a presentation made of the following documents by the beneficiary to the issuer on or prior to the expiration date of the letter of credit:

(i) The original letter of credit, including any amendments; and

(ii) a written statement from the beneficiary stating that any of the following events have occurred:

(a) The filing of a bankruptcy or reorganization petition by or against the licensee;

(b) the filing of a petition by or against the licensee for receivership or the commencement of any other judicial or administrative proceeding for such licensee's dissolution or reorganization;

(c) the seizure of assets of a licensee by a commissioner pursuant to an emergency order issued in accordance with applicable law, on the basis of an action, violation or condition that has caused or is likely to cause the insolvency of the licensee; or

(d) the beneficiary has received notice of expiration or non-extension of a letter of credit and the licensee failed to demonstrate to the satisfaction of the beneficiary that the licensee will maintain permissible investments in accordance with K.S.A. 9-590(a), and amendments thereto, upon the expiration or non-extension of the letter of credit;

(E) the commissioner may designate an agent to serve on the commissioner's behalf as beneficiary to a letter of credit if the agent and letter of credit meet requirements established by the commissioner. The commissioner's agent may serve as agent for multiple licensing authorities for a single irrevocable letter of credit if the proceeds of the drawable amount for the purposes of subsection (a)(4) are assigned to the commissioner; and

(F) the commissioner is hereby authorized to participate in multistate processes designed to facilitate the issuance and administration of letters of credit, including, but not limited to, services provided by the nationwide multistate licensing system and registry and state regulatory registry, LLC; and

(5) 100% of the surety bond provided for under K.S.A. 9-587, and amendments thereto, that exceeds the average daily money transmission liability in Kansas.

(b) (1) Unless permitted by the commissioner by rules and regulations adopted or by order issued to exceed the limit as set forth herein, the following investments are permissible under K.S.A. 9-589, and amendments thereto, to the extent specified:

(A) Receivables payable to a licensee from the licensee's authorized delegates in the ordinary course of business that are less than seven days old up to 50% of the aggregate value of the licensee's total permissible investments; and

(B) of the receivables permissible under subparagraph (A), receivables payable to a licensee from a single authorized delegate in the ordinary course of business may not exceed 10% of the aggregate value of the licensee's total permissible investments.

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(2) The following investments are permissible up to 20% per category and up to 50% combined of the aggregate value of the licensee's total permissible investments:

(A) A short-term investment of up to six months, bearing an eligible rating;

(B) commercial paper bearing an eligible rating;

(C) a bill, note, bond or debenture bearing an eligible rating;

(D) United States tri-party repurchase agreements collateralized at 100% of more with United States government or agency securities, municipal bonds or other securities bearing an eligible rating;

(E) money market mutual funds rated less than AAA and equal to or higher than A- by Standard & Poor or the equivalent from any other eligible rating service; and

(F) a mutual fund or other investment fund composed solely and exclusively of one or more permissible investments listed in subsection (a) (1) through (3).

(3) Cash, including demand deposits, savings deposits and funds in such accounts held for the benefit of the licensee's customers, at foreign depository institutions are permissible up to 10% of the aggregate value of the licensee's total permissible investments if the licensee has received a satisfactory rating in the licensee's most recent examination and the foreign depository institution:

(A) Has an eligible rating;

(B) is registered under the foreign account tax compliance act;

(C) is not located in any country subject to sanctions from the office of foreign asset control; and

(D) is not located in a high-risk or non-cooperative jurisdiction as designated by the financial action task force.

(c) This section shall take effect on and after January 1, 2025.

K.S.A. 9-590 Commissioners power to revoke or suspend the designation of an authorized delegate; reasons.

(a) The commissioner may, after notice and an opportunity for a hearing conducted in accordance with the Kansas administrative procedure act, K.S.A. 77-501 et seq., and amendments thereto, suspend or revoke a license or order a licensee to revoke the designation of an authorized delegate if:

(1) The licensee violates this act or any rules and regulations adopted or an order issued under this act;

(2) the licensee does not cooperate with an examination or investigation by the commissioner;

(3) the licensee engages in fraud, intentional misrepresentation or gross negligence;

(4) an authorized delegate is convicted of a violation of a state or federal anti-money laundering statute or violates any rules or regulations adopted or an order issued under this act, as a result of the licensee's willful misconduct or willful blindness;

(5) the competence, experience, character or general fitness of the licensee, authorized delegate, person in control of a licensee, key individual or responsible person of the authorized delegate indicates that it is not in the public interest to permit the person to provide money transmission;

(6) the licensee engages in an unsafe or unsound practice as determined by the commissioner pursuant to subsection (b);

(7) the licensee is insolvent, suspends payment of the licensee's obligations or makes a general assignment for the benefit of the licensee's creditors;

(8) the licensee does not remove an authorized delegate after the commissioner issues and serves upon the licensee a final order that includes a finding that the authorized delegate has violated this act;

(9) a fact or condition exists that, if it had existed when the licensee applied for a license, would have been grounds for denying the application;

(10) the licensee's net worth becomes inadequate and the licensee, after 10 days, fails to take steps to remedy the deficiency;

(11) the licensee demonstrated a pattern of failing to promptly pay obligations;

(12) the licensee applied for adjudication, reorganization or other relief under bankruptcy; or

(13) the licensee lied or made false or misleading statements to any material fact or omitted any material fact.

(b) In determining whether a licensee is engaging in an unsafe or unsound practice, the commissioner may consider the size and condition of the licensee's money transmission, the magnitude of the loss, the gravity of the violation of this act and the previous conduct of the person involved.

(c) This section shall take effect on and after January 1, 2025.

K.S.A. 9-591 Commissioners' ability to order suspension or revocation of authorize delegate; reasons.

(a) The commissioner may issue an order suspending or revoking the designation of an authorized delegate, if the commissioner finds that the:

(1) Authorized delegate violated this act or any rules and regulations adopted or an order issued under this act;

(2) authorized delegate did not cooperate with an examination or investigation by the commissioner;

(3) authorized delegate engaged in fraud, intentional misrepresentation or gross negligence;

(4) authorized delegate is convicted of a violation of a state or federal anti-money laundering statute;

(5) the competence, experience, character or general fitness of the authorized delegate or a person in control of the authorized delegate indicates that it is not in the public interest to permit the authorized delegate to provide money transmission; or

(6) the authorized delegate is engaging in an unsafe or unsound practice as determined by the commissioner pursuant to subsection (b).

(b) In determining whether an authorized delegate is engaging in an unsafe or unsound practice, the commissioner may consider the size and condition of the authorized delegate's provision of money transmission, the magnitude of the loss, the gravity of the violation of this act or any rules and regulations adopted or an order issued under this act and the previous conduct of the authorized delegate.

(c) An authorized delegate may apply for relief from a suspension or revocation of designation as an authorized delegate according to procedures prescribed by the commissioner in rules and regulations.

(d) This section shall take effect on and after January 1, 2025.

K.S.A. 9-592 Commissioners' ability to order a cease and desist; reasons.

(a) If the commissioner determines that a violation of this act or of any rules and regulations adopted or an order issued under this act by a licensee, a person required to be licensed or authorized delegate is likely to cause immediate and irreparable harm to the licensee, the licensee's customers or the public as a result of the violation or cause insolvency or significant dissipation of assets of the licensee, the commissioner may issue an order requiring the licensee or authorized delegate to cease and desist from the violation. The order shall become effective upon service of the order on the licensee or authorized delegate.

(b) The commissioner may issue an order against a licensee to cease and desist from providing money transmission through an authorized delegate that is the subject of a separate order by the commissioner.

(c) An order to cease and desist shall remain effective and enforceable pending the completion of an administrative proceeding pursuant to the Kansas administrative procedure act, K.S.A. 77-501 et seq., and amendments thereto.

(d) An order to cease and desist shall be considered a final order unless the licensee or authorized delegate requests a hearing within 14 days after the cease and desist order is issued.

(e) This section shall take effect on and after January 1, 2025.

K.S.A. 9-593 Commissioners' ability to enter into a consent order.

(a) The commissioner may enter into a consent order at any time with a person to resolve a matter arising under this act or any rules and regulations adopted or order issued under this act. A consent order shall be signed by the person to whom such consent order is issued or by the person's authorized representative and shall indicate agreement with the terms contained in the order. A consent order may provide that such consent order does not constitute an admission by a person that this act or rules and regulations adopted or an order issued under this act has been violated.

(b) This section shall take effect on and after January 1, 2025.

K.S.A. 9-594 Intentional false statements or records filed; knowingly engaging in a violation of these acts; penalty.

(a) Any person that intentionally makes a false statement, misrepresentation or false certification in a record filed or required to be maintained under this act or that intentionally makes a false entry or omits a material entry in such a record is guilty of a severity level 9, nonperson felony.

(b) Any person that knowingly engages in an activity for which a license is required under this act without being licensed under this act and who receives more than $500 in compensation within a 30-day period from this activity is guilty of a severity level 9, nonperson felony.

(c) Any person that knowingly engages in an activity for which a license is required under this act without being licensed under this act and who receives not more than $500 in compensation within a 30-day period from this activity is guilty of a class A nonperson misdemeanor.

(d) This section shall take effect on and after January 1, 2025.

K.S.A. 9-595 Commissioner powers; when summary or consent order is issued; penalties; payment of restitution; informal agreements; revocation.

(a) As part of any summary order or consent order, the commissioner may:

(1) Assess a fine against any person who violates this act or any rules and regulations adopted hereunder in an amount not to exceed $5,000 per violation. The commissioner may designate any fine collected pursuant to this section be used for consumer education;

(2) assess the agency's operating costs and expenses for investigating and enforcing this act;

(3) require the person to pay restitution for any loss arising from the violation or requiring the person to reimburse any profits arising from the violation;

(4) prohibit the person from future application for licensure pursuant to the act; and

(5) require such affirmative action as determined by the commissioner to carry out the purposes of this act.

(b) (1) The commissioner may enter into an informal agreement at any time with a person to resolve a matter arising under this act, rules and regulations adopted hereunder or an order issued pursuant to this act.

(2) Any informal agreement authorized by this subsection shall be considered confidential examination material. The adoption of an informal agreement authorized by this subsection shall not be:

(A) Subject to the provisions of K.S.A. 77-501 et seq., and amendments thereto, or K.S.A. 77-601 et seq., and amendments thereto;

(B) considered an order or other agency action;

(C) subject to the Kansas open records act, K.S.A. 45-215 et seq., and amendments thereto; or

(D) discovery or be admissible in evidence in any private civil action.

(3) The provisions of this subsection providing for the confidentiality of public records shall expire on July 1, 2030, unless the legislature reviews and reenacts such provisions in accordance with the Kansas open records act, K.S.A. 45-229, and amendments thereto, prior to July 1, 2030.

(c) Through an examination finding, the commissioner may:

(1) Assess a fine against any licensee who violates this act or rules and regulations adopted thereto, in an amount not to exceed $5,000 per violation. The commissioner may designate any fine collected pursuant to this section be used for consumer education; or

(2) require the licensee to pay restitution for any loss arising from the violation or require the person to reimburse any profits arising from the violation.

(d) This section shall take effect on and after January 1, 2025.

K.S.A. 9-596 Severability of provisions of act.

(a) The provisions of this act are severable. If any portion of the act is declared unconstitutional or invalid, or the application of any portion of the act to any person or circumstance is held unconstitutional or invalid, the invalidity shall not affect other portions of the act that can be given effect without the invalid portion or application, and the applicability of such other portions of the act to any person or circumstance shall remain valid and enforceable.

(b) This section shall take effect on and after January 1, 2025.

KANSAS STATUTES

Chapter 9 – BANKS AND BANKING; TRUST COMPANIES

Article 22 – MORTGAGE BUSINESS

(K.S.A. 9-2201 through 9-2234)

9-2231	Negative amortization on covered transactions; restrictions.
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KANSAS STATUTES

Chapter 9 – BANKS AND BANKING; TRUST COMPANIES

Article 22 – MORTGAGE BUSINESS

(K.S.A. 9-2201 through 9-2234)

K.S.A. 9-2201. Mortgage business; definitions.

As used in this act:

(a) "Act" means the Kansas mortgage business act.

(b) "Amount financed" means the net amount of credit provided to the consumer or on the consumer's behalf. The amount financed shall be calculated as provided in rules and regulations adopted by the commissioner pursuant to K.S.A. 9-2209, and amendments thereto.

(c) "Annual percentage rate" shall have the same meaning, be interpreted in the same manner and be calculated using the same methodology as prescribed by 15 U.S.C. 1606.

(d) "Applicant" means a person who has submitted an application for a license to engage in mortgage business or a person who has submitted an application for registration to conduct mortgage business in this state as a loan originator.

(e) "Appraised value" means, with respect to any real estate at any time:

(1) 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;

(2) the fair market value of the real estate, as reflected in a written appraisal of the real estate performed by a Kansas licensed or certified appraiser within the past 12 months; or

(3) in the case of a nonpurchase-money real estate transaction, the estimated market value as determined through a method acceptable to the commissioner. In determining the acceptability of the method, the commissioner shall consider the reliability and impartiality of the method under the circumstances. The commissioner may consider industry standards or customs. A method shall not be acceptable if the resulting value is predetermined or when the fee to be paid to the method provider is contingent upon the property valuation reached or upon the consequences resulting from the property valuation reached.

(f) "Balloon payment" means any required payment that is more than twice as large as the average of all earlier scheduled payments.

(g) "Branch office" means a place of business, other than a principal place of business, where the mortgage company maintains a physical location for the purpose of conducting mortgage business with the public.

(h) "Closed-end covered transaction" means the same as in 12 C.F.R 1026.2(a)(10).

(i) "Closing costs" means:

(1) The actual fees paid to a public official or agency of the state or federal government for filing, recording or releasing any instrument related to the debt; and

(2) bona fide and reasonable expenses incurred by the mortgage company in connection with the making, closing, disbursing, extending, readjusting or renewing the debt that are payable to third parties not related to the mortgage company. Reasonable fees for an appraisal made by the mortgage company or related party are permissible.

(j) (1) "Code mortgage rate" means the greater of:

(A) 12%; or

(B) the sum of:

(i) The required net yield published by the federal national mortgage association for 60-day mandatory delivery whole loan commitments for 30 year fixed-rate mortgages with actual remittance on the first day for which required net yield was published in the previous month; and

(ii) 5%

(2) If the reference rate referred to in clause (j)(l)(B)(i) is discontinued, becomes impractical to use, or is otherwise not readily ascertainable for any reason, the commissioner may designate a comparable replacement reference rate and, upon publishing notice of the same, such replacement reference rate shall become the reference rate referred to in clause (j)(1)(B)(i).

(k) "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.

(l) "Consumer" means an individual to whom credit is offered or granted under this act.

(m) "Covered transaction" means a mortgage loan that:

(1) Is a subordinate mortgage;

(2) Has a loan-to value ratio at the time when made that exceeds 100%, except for any loan guaranteed by a federal government agency of the United States; or

(3) in the case of K.S.A. 9-2231, and amendments thereto, the annual percentage rate of the loan exceeds the code mortgage rate.

(n) "Finance charge" means all charges payable directly or indirectly by the consumer and imposed directly or indirectly by the mortgage company as an incident to or as a condition of the extension of credit. The finance charge shall be calculated as provided in rules and regulations adopted by the commissioner pursuant to K.S.A. 9-2209, and amendments thereto.

(o) "Individual" means a human being.

(p) "Insufficient payment method" means any instrument as defined in K.S.A. 84-3-104, and amendments thereto, drawn on any financial institution for the payment of money and delivered in payment, in whole or in part, of preexisting indebtedness of the drawer or maker, which is refused payment by the drawee because the drawer or maker does not have sufficient funds in or credits with the drawee to pay the amount of the instrument upon presentation.

(q) "Installment" means a periodic payment required or permitted by agreement in connection with a covered transaction.

(r) "License" means a license issued by the commissioner to engage in mortgage business as a mortgage company.

(s) "Licensed mortgage company" means a mortgage company that has been licensed as required by this act.

(t) "Licensee" means a person who is licensed by the commissioner as a mortgage company.

(u) "Loan originator" means an individual:

(1) Who engages in mortgage business on behalf of a single mortgage company;

(2) whose conduct of mortgage business is the responsibility of the licensee;

(3) who takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan for compensation or gain or in the expectation of compensation or gain; and

(4) whose job responsibilities include contact with borrowers during the loan origination process, which can include soliciting, negotiating, acquiring, arranging or making mortgage loans for others, obtaining personal or financial information, assisting with the preparation of mortgage loan applications or other documents, quoting loan rates or terms or providing required disclosures. It does not include any individual engaged solely as a loan processor or underwriter.

(v) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction and subject to the supervision and instruction of a person registered or exempt from registration under this act.

(1) For purposes of this subsection, the term "clerical or support duties" may include subsequent to the receipt of a mortgage loan application:

(A) The receipt, collection, distribution and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(B) communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms.

(2) An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists or other promotional items, that such individual can or will perform any of the activities of a loan originator.

(w) "Loan-to-value ratio" means a fraction expressed as a percentage at any time:

(1) The numerator of which is the aggregate unpaid principal balance of all loans secured by a mortgage; and

(2) The denominator of which is the appraised value of the real estate.

(x) "Mortgage business" means engaging in, or holding out to the public as willing to engage in, for compensation or gain, or in the expectation of compensation or gain, directly or indirectly, the business of making, originating, servicing, soliciting, placing, negotiating, acquiring, selling, arranging for others, or holding the rights to or offering to solicit, place, negotiate, acquire, sell or arrange for others, mortgage loans in the primary market.

(y) "Mortgage company" means a person engaged in mortgage business.

(z) "Mortgage loan" means a loan or agreement to extend credit made to one or more persons which is secured by a first or subordinate mortgage, deed of trust, contract for deed or other similar instrument or document representing a security interest or lien, except as provided

for in K.S.A. 60-1101 through 60-1110, and amendments thereto, upon any lot intended for residential purposes or a one-to-four family dwelling as defined in 15 U.S.C. § 1602(w), located in this state, occupied or intended to be occupied for residential purposes by the owner, including the renewal or refinancing of any such loan.

(aa) "Mortgage loan application" means the submission of a consumer's financial information, including, but not limited to, the consumer's name, income and social security number, to obtain a credit report, the property address, an estimate of the value of the property and the mortgage loan amount sought for the purpose of obtaining an extension of credit.

(bb) "Mortgage servicer" means any person engaged in mortgage servicing.

(cc) "Mortgage servicing" means collecting payment, remitting payment for another or the right to collect or remit payment of any of the following: Principal; interest; tax; insurance; or other payment under a mortgage loan.

(dd) "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 mortgage loan originators.

(ee) "Not-for-profit" means a business entity that is granted tax exempt status by the internal revenue service.

(ff) "Open-end covered transaction" means a covered transaction in which a mortgage company:

(1) Reasonably contemplates repeated transactions;

(2) may impose a finance charge from time to time on an outstanding unpaid balance; and

(3) extends an amount of credit to the consumer during the term of the mortgage loan, up to any set limit, that is generally made available to the extent that any outstanding balance is repaid.

(gg) "Person" means any individual, sole proprietorship, corporation, partnership, trust, association, joint venture, pool syndicate, unincorporated organization or other form of entity, however organized.

(hh) "Prepaid finance charge" means any finance charge paid separately before or at consummation of a transaction or withheld from the proceeds of the credit at any time.

(ii) "Principal" of a mortgage loan means the total of the amount financed and the prepaid finance charges, except that prepaid finance charges are not added to the amount financed to the extent such prepaid finance charges are paid separately by the consumer.

(jj) "Primary market" means the market wherein mortgage business is conducted including activities conducted by any person who assumes or accepts any mortgage business responsibilities of the original parties to the transaction.

(kk) "Principal place of business" means a place of business where mortgage business is conducted, which has been designated by a licensee as the primary headquarters from which all mortgage business and administrative activities are managed and directed.

(ll) "Promotional items" means pens, pencils, hats and other such novelty items.

(mm) "Registrant" means any individual who holds a valid registration to conduct mortgage business in this state as a loan originator.

(nn) "Related" with respect to a person means:

(1) A person directly or indirectly controlling, controlled by or under common control of another person;

(2) an officer or director employed by the person performing similar functions with another person;

(3) a relative by blood, adoption or marriage of a person within the fourth degree of relationship; or

(4) an individual who shares the same home with such person.

(oo) "Remote location" means a location other than the principal place of business or a branch office where a licensed mortgage company's employee or independent contractor is authorized by such company to engage in mortgage business. A remote location is not considered a branch office.

(pp) "Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry.

History: L. 1996, ch. 175, § 1; L. 1999, ch. 45, § 1; L. 2001, ch. 88, § 2; L. 2001, ch. 166, § 1; L. 2009, ch. 29, § 4; L. 2015, ch. 33, § 7; L. 2016, ch. 15, § 1; L. 2022, ch. 30, § 1; July 1.

K.S.A. 9-2202. Exempt from licensure.

The following are exempt from the licensing requirements of this act:

(a) Any bank, savings bank, trust company, savings and loan association, building and loan association, industrial loan company or credit union organized, chartered or authorized

under the laws of the United States or of any state which is authorized to make loans and to receive deposits;

(b) any entity directly or indirectly regulated by an agency of the United States or of any state which is a subsidiary of any entity listed in subsection (a) if 25% or more of such entity's common stock is directly owned by any entity listed in subsection (a);

(c) the United States of America, the state of Kansas, any other state, or any agency or instrumentality of any governmental entity;

(d) any individual who with their own funds for their own investment makes a purchase money mortgage or finances the sale of their own property, except that any individual who enters into more than five such investments or sales in any twelve-month period shall be subject to all provisions of this act;

(e) not-for-profit entities that provide mortgage loans in conjunction with a mission of building or rehabilitating affordable homes to low-income consumers; and

(f) business entities with no employees when a related, licensed mortgage company acts as a proxy for the entity by conducting all mortgage business on behalf of the entity and by including all such mortgage business in the proxy's reports to the commissioner, but the entity and the proxy are jointly and severally liable for violations of this act by the proxy.

History: L. 1996, ch. 175, § 2; L. 1999, ch. 45, § 2; L. 2001, ch. 88, § 3; L. 2009, ch. 29, § 5; L. 2016, ch. 15, § 2; July 1.

K.S.A. 9-2203. License required to conduct mortgage business; mortgage business at remote locations, requirements; registration required for a loan originator; penalty; statute of limitations for prosecution.

(a) Mortgage business shall only be conducted in this state by entities that are exempt from licensure pursuant to K.S.A. 9-2202, and amendments thereto, or a licensed mortgage company. A licensee shall be responsible for all mortgage business conducted on such licensee’s behalf by any person, including loan originators or independent contractors.

(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) A registrant shall only engage in mortgage business on behalf of one licensed mortgage company.

(d) Mortgage business may be conducted at a remote location, if:

(1) The licensed mortgage company's employees or independent contractors do not meet with the public at a personal residence.

(2) no physical business records are maintained at the remote location;

(3) the licensed mortgage company has written policies and procedures for working at a remote location and such company supervises and enforces such policies and procedures;

(4) the licensed mortgage company maintains the computer system and customer information in accordance with the company's information technology security plan and all state and federal laws;

(5) any device used to engage in mortgage business has appropriate security, encryption and device management controls to ensure the security and confidentiality of customer information as required by rules and regulations adopted by the commissioner;

(6) the licensed mortgage company's employees or independent contractors take reasonable precautions to protect confidential information in accordance with state and federal laws; and

(7) the licensed mortgage company annually reviews and certifies that the employees or independent contractors engaged in mortgage business at remote locations meet the requirements of this section. Upon request, a licensee shall provide written documentation of such licensee's review to the commissioner.

(e) 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.

(f) 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.

(g) 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.

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

History: L. 1996, ch. 175, § 3; L. 1999, ch. 45, § 3; L. 2001, ch. 88, § 4; L. 2005, ch. 144, § 1; L. 2009, ch. 29, § 6; L. 2016, ch. 15, § 3; L. 2017, ch. 52, § 8; L. 2022, ch. 30, § 2; July 1.

K.S.A. 9-2204. Application for license for mortgage company; application for registration for loan originator; content; incomplete application.

(a) Any person required to be licensed as a mortgage company pursuant to this act shall submit to the commissioner an application for mortgage company on forms prescribed and provided by the commissioner. The application 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 if:

(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.

History: L. 1996, ch. 175, § 4; L. 1999, ch. 45, § 4; L. 2000, ch. 17, § 1; L. 2001, ch. 88, § 5; L. 2017, ch. 52, § 9; L. 2022, ch. 30, § 3; July 1.

K.S.A. 9-2205. License or registration; renewal; fees, late fees; uses.

(a) A license or registration shall become effective as of the date specified in writing by the commissioner.

(b) Each license and registration shall expire on December 31 of each year. A license or registration shall be renewed by filing with the commissioner a complete renewal application and nonrefundable renewal fee by December 1 of each year.

(c) A registration shall be renewed annually by filing with the commissioner, at least 30 days prior to the expiration of the registration, a renewal application, containing information the commissioner requires to determine the existence of material changes from the information contained in the applicant's original registration application or prior renewal applications, including the completion of any continuing education requirements. Renewal applications received after December 1 of each year and incomplete renewal application as of December 1 of each year may be assessed a late fee.

(d) An expired license or registration may be reinstated through the last day of February of each year, with the same force and effect as if the license or registration had not expired and had at all times remained in full force and effect, by filing a reinstatement application and paying the appropriate application and late fees.

(e) Any renewal or reinstatement application received by the commissioner after the last day of February of each year shall be treated as an original application and shall be subject to all reporting and fee requirements contained in K.S.A. 9-2204, and amendments thereto.

(f) the commissioner may designate late fees paid under this section for consumer education to be expended for such purpose as directed by the commissioner.

History: L. 1996, ch. 175, § 5; L. 1999, ch. 45, § 5; L. 2001, ch. 88, § 6; L. 2005, ch. 144, § 2; L. 2009, ch. 29, § 7; L. 2016, ch. 15, § 4; L. 2022, ch. 30, § 4; July 1.

K.S.A. 9-2206. Application denied; application abandoned; appeal.

(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.

History: L. 1996, ch. 175, § 6; L. 1999, ch. 45, § 6; L. 2001, ch. 88, § 7; L. 2016, ch. 15, § 5; L. 2017, ch. 52, § 10; July 1.

K.S.A. 9-2207. Denial, suspension or revocation of license or registration; notice; disciplinary proceedings.

(a) The commissioner may deny, suspend, revoke, or refuse to renew a license or registration issued pursuant to this act, if the commissioner finds, after notice and opportunity for a hearing conducted in accordance with the provisions of the administrative procedures act, that:

(1) The applicant, licensee or registrant has repeatedly or willfully violated any section of this act or any rule and regulation or order lawfully made pursuant to this act;

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

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

(4) the applicant, licensee or registrant has been convicted of any crime involving fraud, dishonesty or deceit, except that no registration shall be granted to any loan originator who:

(A) Has had a mortgage loan originator license or registration revoked in any governmental jurisdiction; or

(B) has been convicted of or pled guilty or nolo contendere to a felony in a domestic, foreign or military court:

(i) During the seven-year period preceding the date of the application for licensing and registration; or

(ii) at any time preceding such date of application, if such felony involved an act of fraud, dishonesty, deceit, a breach of trust or money laundering;

(5) the applicant, licensee or registrant has engaged in or is engaging in deceptive business practices;

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

(7) a final judgment has been entered against the applicant, licensee or registrant in a civil action and the commissioner finds, based upon the conduct on which the judgment is based, that licensing or registration of such person would be contrary to the public interest;

(8) the applicant, licensee or registrant, or an employee of the applicant, licensee or registrant has been convicted of engaging in mortgage business activity without authorization pursuant to K.S.A. 9-2203, and amendments thereto, or a substantially similar offense in another state; or

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

(b) None of the following actions shall deprive the commissioner of any jurisdiction or right to institute or proceed with any disciplinary proceeding against such license or registration to render a decision suspending, revoking or refusing to renew such license or registration or to establish and make a record of the facts of any violation of law for any lawful purpose:

(1) The imposition of an administrative penalty;

(2) the lapse or suspension of any license or registration issued under this act by operation of law;

(3) the licensee's or registrant's failure to renew any license or registration issued under this act; or

(4) the licensee's or registrant's voluntary surrender of any license or registration issued under this act.

History: L. 1996, ch. 175, § 7; L. 1999, ch. 45, § 7; L. 2000, ch. 17, § 2; L. 2001, ch. 88, § 8; L. 2009, ch. 29, § 8; July 1.

K.S.A. 9-2208. Certificate of License; display; signed acknowledgment; contents; advertising or solicitation disclosure.

(a) Each licensee shall make available evidence of licensure in a way that reasonably assures recognition by consumers and members of the general public.

(b) The licensee shall provide each consumer a notice, containing such information as the commissioner may prescribe by rules and regulations, before the earliest of the following, as applicable:

(1) The time of entering into any contract with a consumer for the provision of services for a mortgage loan;

(2) the time of receiving any compensation or promise of compensation from or on behalf of a consumer for a mortgage loan; or

(3) 15 days after accepting a transfer of mortgage servicing.

(c) All solicitations and published advertisements concerning mortgage business directed at Kansas residents, including those on the internet or by other electronic means, shall contain the name and license number or unique identifier 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 the purpose of this subsection, "advertising" does not include business cards or promotional items.

(d) No solicitation or advertisement shall contain false, misleading or deceptive information, or indicate or imply that the interest rates or charges stated are "recommended," "approved," "set" or "established" by the state of Kansas.

(e) No licensee or registrant shall conduct mortgage business in this state using any name other than the name or names stated on their license or registration.

History: L. 1996, ch. 175, § 8; L. 1999, ch. 45, § 8; L. 2000, ch. 17, § 3; L. 2001, ch. 88, § 9; L. 2005, ch. 144, § 3; L. 2016, ch. 15, § 6; L. 2022, ch. 30, § 5; July 1.

K.S.A. 9-2209. State bank commissioner, powers and duties.

(a) The commissioner may exercise the following powers:

(1) Adopt rules and regulations as necessary to carry out the intent and purpose of this act and to implement the requirements of applicable federal law;

(2) make investigations and examinations of the licensee's or registrant's operations, books and records as the commissioner deems necessary for the protection of the public and control access to any documents and records of the licensee or registrant under examination or investigation;

(3) charge reasonable costs of investigation, examination and administration of this act, to be paid by the applicant, licensee or registrant. The commissioner shall establish such fees in such amounts as the commissioner may determine to be sufficient to meet the budget requirements of the commissioner for each fiscal year. Charges for administration of this act shall be based on the licensee's loan volume;

(4) order any licensee or registrant to cease any activity or practice that the commissioner deems to be deceptive, dishonest, violative of state or federal law or unduly harmful to the interests of the public;

(5) exchange any information regarding the administration of this act with any agency of the United States or any state that regulates the licensee or registrant or administers statutes, rules and regulations or programs related to mortgage business and to enter into information sharing arrangements with other governmental agencies or associations representing governmental agencies that are deemed necessary or beneficial to the administration of this act;

(6) disclose to any person or entity that an applicant's, licensee's or registrant's application, license or registration has been denied, suspended, revoked or refused renewal;

(7) 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, or any rule and regulation promulgated thereunder or any order issued pursuant to this act;

(8) 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;

(9) require that any applicant, registrant, licensee or other person successfully passes a standardized examination designed to establish such person's knowledge of mortgage business transactions and all applicable state and federal law. Such examinations shall be created and administered by the commissioner or the commissioner's designee, and may be made a condition of application approval or application renewal;

(10) require that any applicant, licensee, registrant or other person complete a minimum number of pre-licensing education hours and complete continuing education hours on an annual basis. Pre-licensing and continuing education courses shall be approved by the commissioner, or the commissioner's designee, and may be made a condition of application approval and renewal;

(11) require fingerprinting of any applicant, registrant, licensee in accordance with K.S.A. 22-4714 2024 Supp., and amendments thereto. For the 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;

(12) refer such evidence as may be available concerning any violation of this act or of any rule and regulation or order hereunder to the attorney general, or in consultation with the attorney general to the proper county or district attorney, who may in such prosecutor's discretion, with or without such a referral, institute the appropriate criminal proceedings under the laws of this state;

(13) issue and apply to enforce subpoenas in this state at the request of a comparable official of another state if the activities constituting an alleged violation for which the information is sought would be a violation of the Kansas mortgage business act if the activities had occurred in this state;

(14) use the nationwide mortgage licensing system and registry as a channeling agent for requesting and distributing any information regarding loan originator registration or mortgage company licensing to and from any source so directed by the commissioner;

(15) 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, registrants or other persons subject to this act and to take such other actions as may be reasonably necessary to participate in the nationwide mortgage licensing system and registry. The commissioner shall regularly report enforcement actions and other relevant information to the nationwide mortgage licensing system and registry;

(16) require any licensee or registrant to file reports with the nationwide mortgage licensing system and registry in the form prescribed by the commissioner or the commissioner's designee;

(17) receive and act on complaints, take action designed to obtain voluntary compliance with the provisions of the Kansas mortgage business act or commence proceedings on the commissioner's own initiative;

(18) provide guidance to persons and groups on their rights and duties under the Kansas mortgage business act;

(19) enter into any informal agreement with any mortgage company for a plan of action to address violations of law. The adoption of an informal agreement authorized by this paragraph shall not be subject to the provisions of K.S.A. 77-501 et seq., and amendments thereto, or K.S.A. 77-601 et seq., and amendments thereto. Any informal agreement authorized by this paragraph shall not be considered an order or other agency action, and shall be considered confidential examination material pursuant to K.S.A. 9-2217, and amendments thereto. All such examination material shall also be confidential by law and privileged, shall not be subject to the open records act, K.S.A. 45-215 et seq., and amendments thereto, shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private civil action; and

(20) issue, amend and revoke written administrative guidance documents in accordance with the applicable provisions of the rules and regulations filing act.

(b) For the purpose of any examination, investigation or proceeding under this act, the commissioner or any officer designated by the commissioner may administer oaths and affirmations, subpoena witnesses, compel such witnesses' attendance, adduce evidence and require the production of any matter that 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.

(c) In case of contumacy by, or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the commissioner, may issue to that person an order requiring the person to appear before the commissioner, or the officer designated by the commissioner, there, to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Any failure to obey the order of the court may be punished by the court as a contempt of court.

(d) No person is excused from attending and testifying or from producing any document or record before the commissioner or in obedience to the subpoena of the commissioner or any officer designated by the commissioner or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture. No individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which such person is compelled, after claiming privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(e) Except for refund of an excess charge, no liability is imposed under the Kansas mortgage business act for an act done or omitted in conformity with a rule and regulation or written administrative guidance document of the commissioner in effect at the time of the act or omission, notwithstanding that after the act or omission, the rule and regulation or written administrative interpretation may be determined by judicial or other authority to be invalid for any reason.

(f) The grant of powers to the commissioner in this article does not affect remedies available to consumers under K.S.A. 9-2201 et seq., and amendments thereto, or under other principals of law or equity.

History: L. 1996, ch. 175, § 9; L. 1999, ch. 45, § 9; L. 2000, ch. 17, § 4; L. 2001, ch. 88, § 10; L. 2005, ch. 144, § 4; L. 2009, ch. 29, § 9; L. 2016, ch. 15, § 7; L. 2017, ch. 81, § 4; L. 2021, ch. 82, § 3; July 1.

K.S.A. 9-2210. Fees; disposition.

All fees collected by the commissioner pursuant to this act shall be subject to the provisions of K.S.A. 75-1308, and amendments thereto.

History: L. 1996, ch. 175, § 10; Apr. 25.

K.S.A. 9-2211. Bonding requirements; positive net worth requirements.

(a) Each applicant or licensee shall 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 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, except 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 that 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 shall submit evidence that establishes, to the commissioner's satisfaction, that the applicant is solvent and shall at all times maintain a positive net worth. Evidence of solvency 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.

History: L. 1999, ch. 45, § 10; L. 2001, ch. 88, § 11; L. 2005, ch. 144, § 5; L. 2009, ch. 29, § 10; L. 2016, ch. 15, § 8; L. 2017, ch. 52, § 11; L. 2022, ch. 30, § 6; July 1.

K.S.A. 9-2212. Prohibited acts for persons licensed or registered under act.

No person required to be licensed or registered under this act shall directly or indirectly:

(a) Pay compensation to, contract with or employ in any manner, any person engaged in mortgage business who is not properly licensed or registered, unless such person is exempt pursuant to K.S.A. 9-2202, and amendments thereto;

(b) without the prior written approval of the commissioner employ any person who has:

(1) Had a license or registration denied, revoked, suspended or refused renewal; or

(2) been convicted of any crime involving fraud, dishonesty or deceit;

(c) delay closing of a mortgage loan for the purpose of increasing interest, costs, fees or charges payable by the borrower;

(d) misrepresent the material facts or make false promises intended to influence, persuade or induce an applicant for a mortgage loan or mortgagee to take a mortgage loan or cause or contribute to misrepresentation by any person acting on behalf of the person required to be licensed or registered;

(e) misrepresent to or conceal from an applicant for a mortgage loan a mortgagor or a lender, material facts, terms or conditions of a transaction to which the person required to be licensed or registered is a party;

(f) engage in any transaction, practice or business conduct that is not in good faith, or that operates a fraud upon any person in connection with conducting mortgage business;

(g) receive compensation for rendering mortgage business services where the licensee or registrant has otherwise acted as a real estate broker or agent in connection with the sale of the real estate which secures the mortgage transaction unless the person required to be licensed or registered has provided written disclosure to the person from whom

compensation is collected that the person is receiving compensation both for mortgage business services and for real estate broker or agent services;

(h) engage in any fraudulent residential mortgage brokerage or underwriting practices;

(i) advertise, display, distribute, broadcast or televise, or cause or permit to be advertised, displayed, distributed, broadcast or televised, in any manner, any false, misleading or deceptive statement or representation with regard to rates, terms or conditions for a mortgage loan;

(j) fail to disburse the proceeds of a mortgage loan upon the satisfaction of all conditions to the disbursement and the expiration of all applicable rescission, cooling-off or other waiting periods required by law, unless the parties otherwise agree in writing;

(k) record a mortgage if moneys are not available for the immediate disbursal to the mortgagor unless, before that recording, the person required to be licensed or registered informs the mortgagor in writing of a definite date by which payment shall be made and obtains the mortgagor's written permission for the delay;

(l) transfer, assign or attempt to transfer or assign, a license or registration to any other person, or assist or aide and abet any person who does not hold a valid license or registration under this act in engaging in the conduct of mortgage business who is not properly licensed or registered, unless such person is exempt under K.S.A. 9-2202, and amendments thereto;

(m) solicit or enter into a contract with a borrower that provides in substance that the person required to be licensed or registered may earn a fee or commission through best efforts to obtain a loan even though no loan is actually obtained for the borrower;

(n) solicit, advertise or enter into a contract for specific interest rates, points or other financing terms unless the terms are actually available at the time of soliciting, advertising or contracting;

(o) make any payment, threat or promise, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan or make any payment, threat or promise, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property or engage in any activity that would constitute a violation of K.S.A. 58-2344, and amendments thereto; or

(p) fail to comply with this act or rules and regulations promulgated under this act or fail to comply with any other state or federal law, including the rules and regulations thereunder, applicable to any business authorized or conducted under this act.

History: L. 1999, ch. 45, § 11; L. 2000, ch. 17, § 5; L. 2001, ch. 88, § 12; L. 2009, ch. 29, § 11; L. 2016, ch. 15, § 9; July 1.

K.S.A. 9-2213. Deposits of Money; Time limit for deposit of escrow funds; records required.

(a) Within three business days of receipt a licensee shall deposit all fees and money received from a borrower prior to the time a loan is consummated in an escrow account in a bank, savings bank, savings and loan association or credit union incorporated under the laws of this state, or organized under the laws of the United States or another state.

(b) For each borrower the licensee shall maintain a separate record of all money received for any service performed or to be performed, including any payment to a third party, setting forth:

(1) The date the money was received;

(2) the amount of money received;

(3) the date the money was deposited in the escrow account; and

(4) the date, description, and justification for each disbursement.

(c) Upon the request of a borrower, a copy of the record required by subsection (b) shall be provided to the borrower:

(1) Within five business days of consummation of the loan; or

(2) within five business days of receipt of written notice of the borrower's intention to withdraw from the loan transaction.

History: L. 1999, ch. 45, § 12; L. 2000, ch. 17, § 6; L. 2001, ch. 88, § 13; Nov. 1.

K.S.A. 9-2214. Ownership of documents.

All original documents provided to the licensee by the borrower or at the expense of the borrower, including any appraisals, are the property of the borrower and at the borrower's request, shall be returned to the borrower without further expense if the loan is not consummated.

History: L. 1999, ch. 45, § 13; L. 2001, ch. 88, § 14; Nov. 1.

K.S.A. 9-2215. Change in licensee's business; notice.

(a) A licensee shall provide written notice to the commissioner within 10 business days of the occurrence of any of the following events:

(1) The closing or relocation of the principal place of business or the addition or closing of any branch office;

(2) a change in the licensee's name or legal entity status; or

(3) the addition or loss of any loan originator, owner, officer, partner or director.

(b) The commissioner may request additional information concerning any written notice received pursuant to subsection (a) and charge a reasonable fee for any action required by the commissioner as a result of such notice and additional information.

History: L. 1999, ch. 45, § 14; L. 2001, ch. 88, § 15; L. 2022, ch. 30, § 7; July 1.

K.S.A. 9-2216. Retention of records; time period; inspection of records; security of records; preservation of records.

(a) A licensee shall keep copies of all documents or correspondence received or prepared by the licensee or registrant in connection with a loan or loan application and those records and documents required by the commissioner by rules and regulations adopted pursuant to K.S.A. 9-2209, and amendments thereto, for such time frames as are specified in the rules and regulations. If the loan is not serviced by a licensee, the retention period commences on the date the loan is closed or, if the loan is not closed, the date of the loan application. If the loan is serviced by a licensee, the retention period commences on the date the loan is paid in full or the date the licensee ceases to service the loan.

(b) All books, records and any other documents held by the licensee shall be made available for examination and inspection by the commissioner or the commissioner's designee. Certified copies of all records not kept within this state shall be delivered to the commissioner within three business days of the date such documents are requested.

(c) Each licensee shall maintain the following information:

(1) The name, address and telephone number of each loan applicant;

(2) the type of loan applied for and the date of the application; and

(3) the disposition of each loan application, including the date of loan funding, loan denial, withdrawal, name of lender if applicable, name of loan originator and any compensation or other fees received by the loan originator.

(d) Each licensee shall establish, maintain and enforce written policies and procedures regarding security of records which are reasonably designed to prevent the misuse of a consumer's personal or financial information.

(e) Before ceasing to conduct or discontinuing business, a licensee shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this act and applicable regulations for the remainder of each period specified.

(f) Any records required to be retained may be maintained and preserved by noneraseable, nonalterable electronic imaging or by photograph on film. If the records are produced or reproduced by photographic film, electronic imaging or computer storage medium the licensee shall meet the following criteria:

(1) Arrange the records and index the films, electronic image or computer storage media to permit immediate location of any particular record;

(2) be ready at all times to promptly provide a facsimile enlargement of film, a computer printout or a copy of the electronic images or computer storage medium that the commissioner may request; and

(3) with respect to electronic images and records stored on computer storage medium, maintain procedures for maintenance and preservation of, and access to, records in order to reasonably safeguard these records from loss, alteration or destruction.

(g) No person required to be licensed or registered under this act shall:

(1) Alter, destroy, shred, mutilate, conceal, cover up or falsify any record with the intent to impede, obstruct or influence any investigation by the commissioner or the commissioner's designee; or

(2) alter, destroy, shred, mutilate or conceal a record with the intent to impair the object's integrity or availability for use in a proceeding before the commissioner or a proceeding brought by the commissioner.

History: L. 1999, ch. 45, § 15; L. 2001, ch. 88, § 16; L. 2005, ch. 144, § 6; L. 2009, ch. 29, § 12; L. 2016, ch. 15, § 10; July 1.

K.S.A. 9-2216a. Annual written report; penalty; information confidential.

(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

commissioner may apply any funds received from late penalties under this section to a consumer education fund, to be expended for such purpose as directed by the commissioner. 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 providing for the confidentiality of public records shall expire on July 1, 2030, unless the legislature reviews and reenacts such provisions in accordance with K.S.A. 45-229, and amendments thereto, prior to July 1, 2030.

History: L. 2001, ch. 88, § 1; L. 2009, ch. 29, § 13; L. 2016, ch. 15, § 11; L. 2017, ch. 52, § 12; L. 2022, ch. 62, § 2; July 1.

K.S.A. 9-2217. Confidentiality of examination reports; exceptions.

Examination reports and correspondence regarding the reports made by the commissioner or the commissioner's examiners are confidential, except that the commissioner may release examination reports and correspondence regarding the reports in connection with a disciplinary proceeding 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 examiners.

History: L. 1999, ch. 45, § 16; Apr. 8.

K.S.A. 9-2218. Cease and desist orders; civil fines.

(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 or order hereunder, 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, in addition to any civil penalty otherwise provided by law, the commissioner may impose an additional penalty not to exceed $10,000 for each such violation;

(4) censure the person if the person is registered or licensed under this act;

(5) bar or suspend the person from applying for a license or registration under this act, or associating with a mortgage business or supervised lender licensed in this state;

(6) 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; or

(7) that the person take such affirmative action as in the judgment of the commissioner will carry out the purposes of 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 will remain in effect until it is modified or vacated by the commissioner.

History: L. 1999, ch. 45, § 17; L. 2000, ch. 17, § 7; L. 2005, ch. 144, § 7; July 1.

K.S.A. 9-2219. Injunction.

Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this act or any rule and regulation or order hereunder, the commissioner may bring an action in any court of competent jurisdiction to enjoin the acts or practices and to enforce compliance with this act or any rule and regulation or order hereunder. Upon a proper showing, a permanent or temporary injunction, restraining order,

restitution, writ of mandamus or other equitable relief shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner shall not be required to post a bond.

History: L. 1999, ch. 45, § 18; Apr. 8.

K.S.A. 9-2220. Citation of act; severability.

(a) The provisions of K.S.A. 9-2201 *et seq*., and amendments thereto, and K.S.A. 9-2221 through K.S.A. 9-2234, shall be known and may be cited as the Kansas mortgage business act.

(b) If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

History: L. 1999, ch. 45, § 19; L. 2001, ch. 88, § 17; L. 2009, ch. 29, § 14; July 1.

K.S.A. 9-2221. Calendar and holidays; definitions.

(a) Calendar days shall be used in computing any period of time. The day of the act, event or default from which the designated period of time begins to run shall not be included in such computation. Saturdays, Sundays and legal holidays shall be included in such computation. If the last day of the period so computed is a Saturday, Sunday or a legal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday or a legal holiday. "Legal holiday" shall include any day designated as a holiday by the federal reserve bank.

(b) This section shall be a part of and supplemental to the Kansas mortgage business act.

K.S.A. 9-2222. Consumer agreement to use electronic methods; receipt of documents.

(a) Any writing or signature required by this act may be provided or executed in an electronic form under K.S.A. 16-1601 *et seq*., and amendments thereto.

(b) If the consumer agrees in writing to the use of electronic methods instead of United States mail, any requirement under this act to mail a document may be satisfied by sending the document by electronic methods. When a document is sent by electronic methods, the time of sending and receipt is defined by K.S.A. 16-1615, and amendments thereto.

(c) This section shall be a part of and supplemental to the Kansas mortgage business act.

K.S.A. 9-2223. Application of sections.

(a) K.S.A 9-2223 through K.S.A. 9-2234, and amendments thereto, shall apply only to covered transactions, as defined in K.S.A. 9-2201, and amendments thereto.

(b) K.S.A. 9-2203 through 9-2209, and amendments thereto, shall apply to licensed mortgage companies, as defined in K.S.A. 9-2201, and amendments thereto.

(c) This section shall be a part of and supplemental to the Kansas mortgage business act.

K.S.A. 9-2224. Covered transaction limitation; amount.

(a) A mortgage company shall not make a covered transaction with an interest in land as security with an amount financed of $5,000 or less in which the annual percentage rate of the loan exceeds the code mortgage rate. A security interest taken in violation of this section shall be void.

(b) This section shall be a part of and supplemental to the Kansas mortgage business act.

K.S.A. 9-2225. Consumer inability to waive rights or benefits afforded; exceptions.

(a) A consumer shall not waive or agree to forego rights or benefits under K.S.A 9-2223 through K.S.A. 9-2234, and amendments thereto, relating to covered transactions except as follows:

(1) The following may be settled by agreement if disputed in good faith. Any claim:

(A) By a consumer against a mortgage company for any violation of K.S.A 9-2223 through K.S.A. 9-2234, and amendments thereto, including for a civil penalty; or

(B) against a consumer for default or for breach of a duty imposed by K.S.A 9-2223 through K.S.A. 9-2234, and amendments thereto.

(2) A claim against a consumer shall be settled for less value than the amount claimed.

(3) A settlement in which the consumer waives or agrees to forego rights or benefits under K.S.A 9-2223 through K.S.A. 9-2234, and amendments thereto, is invalid if the court, as a matter of law, finds the settlement to have been unconscionable at the time it was made. The competence of the consumer, any deception or coercion practiced upon the consumer, the nature and extent of the legal advice received by the consumer and the value of the consideration are relevant to the issue of unconscionability.

(b) A consumer may not authorize any person to confess judgment on a claim arising out of a covered transaction. An authorization in violation of this section shall be void.

(c) This section shall be a part of and supplemental to the Kansas mortgage business act.

K.S.A. 9-2226. Violations by mortgage company of covered transactions; consequences; consumer rights.

(a) Except as otherwise provided in K.S.A 9-2223 through K.S.A. 9-2234, and amendments thereto, if a mortgage company has violated any provision of K.S.A 9-2223 through K.S.A. 9-2234, and amendments thereto, relating to covered transactions, the consumer shall have a cause of action to recover from the mortgage company or person liable to the consumer actual damages and except for a class action, a penalty in an amount determined by the court not less than $750 but not more than $7,500.

(b) An action under this section based on closed-end covered transaction violations shall be brought within one year of the last scheduled payment due date stated in the agreement. An action under this section based on open-end covered transaction violations shall be brought within two years from the date of occurrence.

(c) If a person has violated K.S.A. 9-2203(a), and amendments thereto, in originating a covered transaction, such covered transaction shall be void. The consumer shall not be obligated to pay the amount financed or the finance charge and such consumer shall have a right to recover any finance charge paid from either the person violating this act or from the consumer's mortgage servicer.

(d) A consumer shall not be obligated to pay a charge on a covered transaction in excess of that allowed by K.S.A 9-2223 through K.S.A. 9-2234, and amendments thereto. A consumer shall have a right of refund for twice the excess charges from the person who made the excess charge or from the consumer's mortgage servicer. A consumer may request a refund payment check or application to the outstanding obligation. Following a reasonable time after demand, if the request is refused, the consumer may recover twice the excess charge from the person liable or the mortgage company and, except for a class action, an amount determined by the court not less than $750 but not more than $7,500.

(e) A mortgage company shall have no penalty liability as discussed in this section if within 60 days after discovering the error the mortgage company corrects the error through refund or adjustment and notifies the consumer of the error. This waiver shall not apply if an action has already been instituted or the consumer has provided written notice of the violation. If the violation is a prohibited agreement, providing a corrected copy of the writing containing the error shall be sufficient notification and correction.

(f) If the mortgage company establishes, by a preponderance of evidence, that a violation is unintentional or the result of a bona fide error of law or fact notwithstanding the maintenance of procedures reasonably adopted to avoid any such violation or error, no liability is imposed under this section.

(g) A mortgage company who in good faith complies with a written administrative guidance document shall not be subject to any penalties under this section for any act done or omitted in conformity with such written administrative guidance document.

(h) Except as otherwise provided, no violation of the provisions of K.S.A 9-2223 through K.S.A. 9-2234, and amendments thereto, shall impair rights on a debt.

(i) The mortgage company shall reimburse the consumer's reasonable attorney fees and cost of the action if the proceeding finds that the mortgage company has violated any provision of K.S.A 9-2223 through K.S.A. 9-2234, and amendments thereto. Reasonable attorney fees shall be determined by the value of the time expended by the attorney and not by the amount of the recovery on behalf of the consumer.

(j) This section shall not apply to attorneys or collection agencies that did not purchase the mortgage loan.

(k) This section shall be a part of and supplemental to the Kansas mortgage business act.

K.S.A. 9-2227. Consumers right to prepay without penalty.

(a) The consumer may prepay in full the unpaid balance of a covered transaction at any time without penalty.

(b) This section shall be a part of and supplemental to the Kansas mortgage business act.

K.S.A. 9-2228. Covered transaction max finance charge; exceptions

(a) The periodic finance charge for a covered transaction shall not exceed 18% per annum, subject to the limitations on prepaid finance charges set forth in this subsection. This subsection shall not apply to a:

(1) Loan secured by a first mortgage that constitutes a covered transaction by virtue of the loan-to-value ratio that exceeds 100% at the time the loan is made; or

(2) covered transaction where the finance charge is governed by K.S.A. 16-207(e)(4), and amendments thereto.

(b) If a loan secured by a first mortgage constitutes a covered transaction by virtue of the loan-to-value ratio exceeding 100% at the time the loan is made, then the periodic finance charge for the loan shall not exceed that authorized pursuant to K.S.A. 16-207(a), and amendments thereto, but the loan is subject to the limitations on prepaid finance charges set forth in this section. Such prepaid finance charges may be charged in addition to the finance charges permitted under K.S.A. 16-207(a), and amendments thereto.

(c) This section shall not be construed to limit or restrict the manner of calculating the finance charge, whether by way of add-on, discount or otherwise, provided the rate and the amount of the finance charge does not exceed that permitted by this section.

(d) Prepaid finance charges on covered transactions shall be limited to an amount not to exceed 8% of the amount financed, provided that the aggregate amount of prepaid finance charges

payable to the mortgage company or any person related to such company does not exceed 5% of the amount financed. Prepaid finance charges permitted under this subsection shall be in addition to finance charges permitted under subsection (a). Prepaid finance charges permitted under this subsection shall be fully earned when paid and such prepaid finance charges shall be nonrefundable unless the parties agree otherwise in writing.

(e) The finance charge limitations in subsection (a) shall not apply to a covered transaction for which the finance charge is governed pursuant to K.S.A. 16-207(e)(4), and amendments thereto.

(f) If, within 12 months after the date of the original covered transaction, a mortgage company or a person related to such company refinances a covered transaction, with respect to which a prepaid finance charge was payable to the same person then the aggregate amount of prepaid finance charges payable to the mortgage company or any person related to such company with respect to the new covered transaction shall not exceed 5% of the additional amount financed.

(g) For purposes of this section, "additional amount financed" means the difference between:

(1) The amount financed for the new covered transaction, less the amount of all closing costs incurred in connection with the new covered transaction that are not included in the prepaid finance charges for the new covered transaction; and

(2) the unpaid principal balance of the original covered transaction.

(h) This section shall be a part of and supplemental to the Kansas mortgage business act.

K.S.A. 9-2229. Additional charges mortgage company can receive; notice.

(a) In addition to the finance charge permitted by K.S.A 9-2223 through K.S.A. 9-2234, and amendments thereto, for covered transactions, a mortgage company may contract for and receive the following additional charges for such covered transactions:

(1) Closing costs incurred in connection with the covered transaction that are not included in the prepaid finance charges for the covered transaction;

(2) late fees permitted pursuant to K.S.A. 9-2230, and amendments thereto;

(3) charges for other benefits, including insurance, conferred on the consumer if the benefits are of value to the consumer, and if:

(A) The charges are reasonable in relation to the benefits;

(B) the benefits are of a type that is not for credit and are excluded as permissible additional charges from the finance charge by rules and regulations adopted by the commissioner; or

(4) a service charge for an insufficient payment method not to exceed $30 subject to the limitations contained in this subsection.

(A) Notice shall be given to a consumer providing an insufficient payment method either by:

(i) United States first class mail addressed to the consumer's last known address; or

(ii) a clear notice of the insufficient payment method charge on the consumer's regular monthly statement.

(B) If the consumer does not pay the amount of the insufficient payment plus the service charge to the payee within 14 days from the giving of notice, the payee may add the service charge to the outstanding balance of such indebtedness of the consumer to draw interest at the contract rate applicable to such indebtedness.

(b) With respect to an open-end covered transaction, a mortgage company may charge the following fees in an amount not to exceed that agreed to by the consumer:

(1) Fees on a monthly or annual basis;

(2) over-limit fees; and

(3) cash advance fees.

(c) the fees permitted under subsection (b) are in addition to any finance charges or any additional charges permitted by K.S.A 9-2223 through K.S.A. 9-2234, and amendments thereto.

(d) A mortgage company may charge a borrower up to $5 per payment when the borrower makes a single installment payment through electronic methods for a covered transaction, including by authorizing the mortgage company, verbally or in writing, to initiate the payment, subject to the following limitations. No charge shall be assessed:

(1) If a late fee is assessed on the same installment; or

(2) where the consumer has agreed in writing to make all scheduled payments through the use of electronic methods.

(e) This section shall be a part of and supplemental to the Kansas mortgage business act.

K.S.A. 9-2230. Late fee assessment; substitution of; limitations.

(a) The parties to a covered transaction may contract for a late fee on any installment not paid in full within 10 calendar days after its scheduled or deferred due date in an amount not to exceed 5% of the unpaid amount of the installment or $25, whichever is less.

(b) As an alternative to the late fee set forth in subsection (a), the parties to a covered transaction may contract for a late fee not to exceed $10 on any installment not paid in full within 10 calendar days after its scheduled or deferred due date, except that if the scheduled payment amount is $25 or less, the maximum late fee shall be $5.

(c) A late fee may be assessed only once on an installment regardless of the length of time such installment remains in default. A late fee may be collected at the time it is assessed or at any time thereafter.

(d) No late fee may be assessed when such a fee or charge is attributable solely to the failure of the consumer to pay a late fee on an earlier installment and the payment is otherwise a periodic payment received on the due date or within 10 calendar days after its scheduled or deferred installment due date.

(e) This section shall be a part of and supplemental to the Kansas mortgage business act.

K.S.A. 9-2231. Negative amortization on covered transactions; restrictions.

(a) A covered transaction shall not provide for the negative amortization of principal or a balloon payment when the loan-to-value ratio at the time such covered transaction was made exceeds 100% or when the annual percentage rate of the loan exceeds the code mort-gage rate unless such covered transaction is open-end, incurred to acquire or construct the consumer's principal residence or a reverse mortgage.

(b) This section shall be a part of and supplemental to the Kansas mortgage business act.

K.S.A. 9-2232. Requirement to obtain appraised value on covered transactions; refund of costs to consumer; 3-day notice.

(a) The provisions of this section shall not apply to a mortgage company that is exempt pursuant to K.S.A. 9-2202(a), and amendments thereto.

(b) Before making a covered transaction, a mortgage company shall obtain the appraised value of the real estate to be encumbered. If, based upon the appraisal, the loan-to-value ratio of the covered transaction exceeds 100%, then the mortgage company shall deliver to the consumer not less than three days before the loan is made a:

(1) Free copy of the appraisal; and

(2) written notice regarding high loan-to-value-mortgages and the availability of consumer credit counseling.

(c) If within three days after receiving the notice, the consumer elects not to enter into the covered transaction, then the mortgage company shall promptly refund to the consumer any application fees or other amounts paid by the consumer to such mortgage company except for the following:

(1) Bona fide out-of-pocket costs incurred before the consumer elected not to enter into the covered transaction, provided that such costs were paid or are payable to unrelated persons; and

(2) a bona fide appraisal fee paid or payable to the mortgage company or a related person.

(d) This section shall be a part of and supplemental to the Kansas mortgage business act.

K.S.A. 9-2233. Consumer default; conditions for enforcement.

(a) An agreement of the parties to a covered transaction with respect to default on the part of the consumer shall be enforceable only to the extent that the:

(1) Consumer fails to make a payment as required by agreement; or

(2) (A) prospect of payment, performance or realization of collateral is significantly impaired.

(B) For purposes of this paragraph, the burden of establishing the prospect of significant impairment shall be on the mortgage company.

(b) The provisions of this section shall be a part of and supplemental to the Kansas mortgage business act.

K.S.A. 9-2234. Consumer default; notice to consumer; method of notice; consumers right and time to cure default.

(a) After a consumer has been in default for 10 days for failure to make a required payment in a covered transaction payable in installments, a mortgage company may give the consumer the notice described in this section.

(1) A mortgage company provides notice to the consumer under this section when the mortgage company delivers the notice to the consumer or delivers or mails the notice to the consumer's residence.

(2) The notice shall be in writing and shall conspicuously state:

(A) The name, address and telephone number of the mortgage company to which payment is to be made;

(B) brief description of the covered transaction;

(C) the consumer's right to cure the default;

(D) the amount of payment and date by which payment must be made to cure the default; and

(E) the consumer's possible liability for the reasonable costs of collection including, but not limited to, court costs, either attorney fees or collection agency fees, and any other information required by the commissioner as set forth by rules and regulations or by administrative interpretation.

(b) With respect to a covered transaction payable in installments, after a default consisting only of the consumer's failure to make a required payment, a mortgage company may neither accelerate maturity of the unpaid balance of the obligation or take possession of collateral as a result of such default until 20 days after a notice of the consumer's right to cure is given. Within 20 days after the notice is given, the consumer may cure all defaults resulting from a failure to make the required payment by tendering the amount of all unpaid sums due at the time of the tender, without acceleration, plus any unpaid late fees. Such cure restores the consumer to the consumer's rights under the agreement as though the defaults had not occurred.

(c) With respect to defaults on the same obligation after a mortgage company has once given a notice of the consumer's right to cure, this section shall confer on the consumer no right to cure and imposes no limitation on the mortgage company's right to proceed against the consumer or the collateral.

(d) Unless the consumer voluntarily surrenders the collateral to the mortgage company, the mortgage company may take possession of the collateral without judicial process only if possession can be taken without entry into a dwelling and without the use of force or other breach of the peace.

(e) Nothing in this section shall be construed to prohibit a consumer from voluntarily surrendering the collateral of the covered transaction and shall not prohibit the mortgage company from thereafter enforcing the mortgage company's security interest in the collateral at any time after surrender.

(f) This section shall be a part of and supplemental to the Kansas mortgage business act.

KANSAS ADMINISTRATIVE REGULATIONS

Agency 17 – OFFICE OF THE STATE BANK COMMISSIONER

Article 24 – MORTGAGE BUSINESS

KANSAS ADMINISTRATIVE REGULATIONS

Agency 17 – OFFICE OF THE STATE BANK COMMISSIONER

Article 24 – MORTGAGE BUSINESS

K.A.R. 17-24-1. Signed acknowledgment; contents.

Before a licensee enters into any contract for the provision of services or receives any compensation or promise of compensation for a mortgage loan, the licensee shall acquire from the customer a signed acknowledgment containing only the following items:

(a) The name and address of the mortgage business;

(b) the name and position of the individual presenting the acknowledgment to the customer for a signature;

(c) a statement in at least 10-point boldface letters that reads as follows: "(name of licensee) is a mortgage business licensed with the Kansas Office of the State Bank Commissioner in accordance with the laws of the state of Kansas. This license does not represent an endorsement or recommendation of the licensee's products or services by the Office of the State Bank Commissioner. As a consumer, you may submit a complaint or inquiry about this mortgage business by delivering a written statement to the Office of the State Bank Commissioner, 700 Jackson, Suite 300, Topeka, Kansas 66603"; and

(d) the original signature of the customer or customers and the date on which the signature or signatures were attached.

(Authorized by K.S.A. 9-2208 and 9-2209; implementing K.S.A. 9-2208; effective, T-17-4-9-99, April 9, 1999; effective July 16, 1999; amended Oct. 3, 2003.)

K.A.R. 17-24-2. Mortgage business fees.

At the time of filing any application pursuant to the Kansas mortgage business act, K.S.A. 9-2201 et seq. and amendments thereto, each applicant, licensee, or registrant shall remit to the office of the state bank commissioner the following applicable nonrefundable fees:

(a) New or renewal application for each principal place of business.....$400

(b) New or renewal application for each branch office $300

(c) Application for new registration as a loan originator $100

(d) Renewal registration as a loan originator.....$50

(Authorized by K.S.A. 2019 Supp. 9-2209; implementing K.S.A. 9-2204, K.S.A. 2019 Supp. 9-2205 and K.S.A. 9-2215; effective, T-17-4-9-99, April 9, 1999; amended Dec. 21, 2001; amended Oct. 2, 2009; amended Sept. 26, 2014; amended Feb. 18, 2022.)

K.A.R. 17-24-3. Prelicensing and continuing education; requirements.

(a) Each individual required to register as a loan originator pursuant to the Kansas mortgage business act, K.S.A. 9-2201 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 loan originator pursuant to the Kansas mortgage business act, K.S.A. 9-2201 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 each CPE course shall first be approved by the office of the state bank commissioner (OSBC), or its 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 OSBC. A request for PPE or CPE course approval may be submitted by any person, as defined by K.S.A. 9-2201 and amendments thereto.

(g) Evidence of satisfactory completion of approved PPE or CPE courses shall be submitted in the manner prescribed by the commissioner. Each registrant shall ensure that PPE or CPE credit has been properly submitted to the OSBC 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) A 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 registrant who fails to renew the registrant's certificate of registration, in accordance with K.S.A. 9-2205 and amendments thereto, shall obtain all delinquent CPE before receiving a new certificate of registration.

(k) A 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. 2008 Supp. 9-2209, as amended by 2009 SB 240, § 9; effective March 1, 2002; amended Oct. 2, 2009.)

K.A.R. 17-24-4. Record retention.

(a) In any mortgage transaction in which the licensee does not close the mortgage loan in the licensee's name, the licensee shall retain the following documents, as applicable, for at least 36 months following the loan closing date, or if the loan is not closed, the loan application date:

(1) The application;

(2) the good faith estimate;

(3) the early truth-in-lending disclosure statement;

(4) any written agreements with the borrower that describe rates, fees, broker compensation, and any other similar fees;

(5) 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 acceptable automated valuation model, pursuant to K.S.A. 16a-1-301(6) and amendments thereto;

(6) the signed Kansas acknowledgment as required by K.S.A. 9-2208(b), and amendments thereto;

(7) the adjustable rate mortgage (ARM) disclosure;

(8) the home equity line of credit (HELOC) disclosure statement;

(9) the affiliated business arrangement disclosure;

(10) 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;

(11) the certificate of counseling for home equity conversion mortgages (HECMs);

(12) the loan cost disclosure statement for HECMs;

(13) the notice to the borrower for HECMs;

(14) phone log or any correspondence with associated notes detailing each contact with the consumer;

(15) 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;

(16) the settlement statement; and

(17) all paid invoices for appraisal, title work, credit report, and any other closing costs.

(b) In any mortgage transaction in which the licensee provides any money to fund the loan or closes the mortgage loan in the licensee's name, the licensee shall retain both the documents required in subsection (a) and the following documents, as applicable, for at least 36 months from the mortgage loan closing date:

(1) The high loan-to-value notice required by K.S.A.16a-3-207 and amendments thereto;

(2) the final truth-in-lending disclosure statement, including an itemization of the amount financed and an itemization of any prepaid finance charges;

(3) any credit insurance requests and insurance certificates;

(4) the note and any other applicable contract addendum or rider;

(5) a copy of the filed mortgage or deed;

(6) a copy of the title policy or search;

(7) the assignment of the mortgage and note;

(8) the initial escrow account statement or escrow account waiver;

(9) the notice of the right to rescind or waiver of the right to rescind, if applicable;

(10) the special home ownership and equity protection act disclosures required by regulation Z in 12 CFR 226.32(c) and 226.34(a)(2), as amended and in effect on October 1, 2009, if applicable;

(11) the mortgage servicing disclosure statement and applicant acknowledgement;

(12) the notice of transfer of mortgage servicing;

(13) any interest rate lock-in agreement or float agreement; and

(14) any other disclosures or statements required by law

(c) 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, the licensee shall retain the documents required in subsections (a) and (b) and the following documents, as applicable, for at least 36 months from the final entry to each account:

(1) A complete payment history, including the following:

(A) An explanation of transaction codes, if used;

(B) the principal balance;

(C) the payment amount;

(D) the payment date;

(E) the distribution of the payment amount to the following:

(i) Interest;

(ii) principal;

(iii) late fees or other fees; and

(iv) escrow; and

(F) any other amounts that have been added to, or deducted from, a consumer's account;

(2) any other statements, disclosures, invoices, or information for each account, including the following:

(A) 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, property inspections, property preservations, and broker price opinions;

(B) annual escrow account statements and related escrow account analyses;

(C) notice of shortage or deficiency in escrow account;

(D) loan modification agreements;

(E) forbearance or any other repayment agreements;

(F) subordination agreements;

(G) foreclosure notices;

(H) evidence of sale of foreclosed homes;

(I) surplus or deficiency balance statements;

(J) default-related correspondence or documents;

(K) the notice of the consumer's right to cure;

(L) any property insurance advance disclosure;

(M) force-placed property insurance;

(N) notice and evidence of credit insurance premium refunds;

(O) deferred interest;

(P) suspense accounts;

(Q) phone log or any correspondence with associated notes detailing each contact between the servicer and the consumer; and

(R) any other product or service agreements; and

(3) documents related to the general servicing activities of the licensee, including the following:

(A) Historical records for all adjustable rate mortgage indices used;

(B) a log of all accounts sold, transferred, or assigned that details to whom the accounts were sold, transferred, or assigned;

(C) a log of all accounts in which foreclosure activity has been initiated;

(D) a log of all credit insurance claims and accounts paid by credit insurance; and

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

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

(1) The business account check ledger or register;

(2) all financial statements, balance sheets, or statements of condition;

(3) all escrow account ledgers and related deposit statements as required by K.S.A. 9-2213, and amendments thereto;

(4) a journal of mortgage transactions as required by K.S.A. 9-2216a and amendments thereto;

(5) all lease agreements for Kansas locations; and

(6) a schedule of the licensee's fees and charges.

(Authorized by K.S.A. 9-2209, as amended by 2009 SB 240, § 9; implementing K.S.A. 2008 Supp. 9-2208, K.S.A. 9-2213, and K.S.A. 2008 Supp. 9-2216, as amended by 2009 SB 240, § 12; effective Oct. 31, 2003; amended Oct. 2, 2009.)

K.A.R. 17-24-5. Prelicensure testing.

(a) On and after July 31, 2010, each individual required to register as a loan originator pursuant to the Kansas mortgage business act, K.S.A. 9-2201 et seq. and amendments thereto, shall pass a qualified written test. For purposes of this regulation, the commissioner'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; and

(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 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. 2008 Supp. 9-2209, as amended by 2009 SB 240, § 9; effective Oct. 2, 2009.)

K.A.R. 17-24-6. Bond requirements.

Each applicant for a new or renewal Kansas mortgage business act license shall submit a bond in the following amounts:

(a) For any applicant who maintains a bona fide office, $50,000.00 or, if the applicant or licensee originated or made more than $50,000,000.00 in Kansas mortgage loans during the previous calendar year, $75,000.00; or

(b) for each applicant or licensee who does not maintain a bona fide office, $100,000.00 or, if the applicant or licensee originated more than $50,000,000.00 in Kansas mortgage loans during the previous calendar year, $125,000.00.

(Authorized by K.S.A. 2008 Supp. 9-2209, as amended by 2009 SB 240, § 9, and K.S.A. 2008 Supp. 9-2211, as amended by 2009 SB 240, § 10; implementing K.S.A. 2008 Supp. 9-2211, as amended by 2009 SB 240, § 10; effective Oct. 2, 2009.)

KANSAS STATUTES

Chapter 9-BANKS AND BANKING; TRUST COMPANIES

Article 24- Earned Wage Access Services Act

(K.S.A. 9-2401 through 9-2416)

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KANSAS STATUTES

Chapter 9-BANKS AND BANKING; TRUST COMPANIES

Article 24- Earned Wage Access Services Act

(K.S.A. 9-2401 through 9-2416)

K.S.A. 9-2401 Exemptions to act.

(a) K.S.A. 9-2401 through K.S.A. 9-2416, and any amendments thereto, shall be known and may be cited as the Kansas earned wage access services act.

(b) This act shall not apply to a:

(1) Bank holding company regulated by the federal reserve;

(2) Depository institution regulated by a federal banking agency; or

(3) A subsidiary of either paragraph (1) or (2) if such subsidiary directly owns 25% of the bank holding company or depository institution's common stock.

K.S.A. 9-2402 Definitions.

As used in K.S.A. 9-2401 through K.S.A. 9-2416, and amendments thereto:

(a) "Act" means the Kansas earned wage access services act.

(b) "Commissioner" means the state bank commissioner or the commissioner's designee, who shall be the deputy commissioner of the consumer and mortgage lending division of the office of the state bank commissioner.

(c) "Consumer" means an individual who is a resident of this state. A provider may use the mailing address provided by a consumer to determine such consumer's state of residence for purposes of this act.

(d) "Consumer-directed wage access services" means offering or providing earned wage access services directly to consumers based on the consumer's representations and the provider's reasonable determination of the consumer's earned but unpaid income.

(e) "Director" means a member of the registrant's or applicant's board of directors.

(f) "Earned but unpaid income" means salary, wages, compensation or other income that a consumer has represented, and that a provider has reasonably determined, to have been earned or to have accrued to the benefit of the consumer in exchange for the consumer's provision of services to an employer or on behalf of an employer, including on an hourly, project-based, piecework or other basis and including where the consumer is acting as an independent contractor of the employer, but, at the time of the payment of proceeds, have not been paid to the consumer by the employer.

(g) "Earned wage access services" means the business of providing consumer-directed wage access services or employer- integrated wage access services, or both.

(h) "Employer-integrated wage access services" means the business of delivering to consumers access to earned but unpaid income that is based on employment, income and attendance data obtained directly or indirectly from an employer.

(i) "Fee" means a fee imposed by a provider for delivery or expedited delivery of proceeds to a consumer or a subscription or membership fee imposed by a provider for a bona fide group of services that include earned wage access services. A voluntary tip, gratuity or donation shall not be deemed a fee.

(j) “Member" means someone who has the right to receive upon dissolution, or has contributed 10% or more of the capital, of a limited liability corporation or a limited liability partnership of the registrant or applicant.

(k) "Nationwide multistate licensing system and registry" or "registry" means a multistate licensing system developed by the conference of state bank supervisors and the American association of residential mortgage regulators and operated by the state regulatory agency, LLC, for the licensing and registration of non-depository financial service entities by participating state agencies or any successor to the nationwide multisystem licensing system and registry.

(l) "Non-mandatory payment" means the following:

(1) A charge imposed by a provider for delivery or expedited delivery of proceeds to a consumer so long as a provider offers the consumer at least one option to receive proceeds at no cost to the consumer;

(2) an amount paid by an obligor to a provider on a consumer's behalf that entitles the consumer to receive proceeds at no cost to the consumer;

(3) a subscription or membership charge imposed by a provider for a group of services that include earned wage access services so long as the provider offers the consumer at least one option to receive proceeds at no cost to the consumer; or

(4) a tip or gratuity paid by a consumer to a provider so long as the provider offers the consumer at least one option to receive proceeds at no cost to the consumer.

(m) "Nonrecourse" means a provider shall not compel or attempt to compel repayment by a consumer of outstanding proceeds or fees owed by such consumer to such provider through any of the following means:

(1) A civil suit against the consumer in a court of competent jurisdiction;

(2) use of a third party to pursue collection of outstanding proceeds or fees on the provider's behalf; or

(3) sale of outstanding amounts to a third-party collector or debt buyer.

(n) "Obligor" means an employer or other person who employs a consumer or any other person who is contractually obligated to pay a consumer earned but unpaid income in exchange for a consumer's provision of services to the employer or on behalf of the employer, including on an hourly, project-based, piecework or other basis, and including where the consumer is acting as an independent contractor.

(o) "Officer" means a person who participates or has authority to participate, other than in the capacity of a director, in major policymaking functions of the registrant or applicant, whether or not the person has an official title. "Officer" includes, but is not limited to, the chief executive officer, chief financial officer, chief operations officer, chief legal officer, chief credit officer, chief compliance officer and every vice president.

(p) “Outstanding proceeds” means proceeds remitted to a consumer by a provider that have not yet been repaid to such provider.

(q) "Owner" means an individual who holds, directly or indirectly, at least 10% or more of a class of voting securities or the power to direct the management or policies of a registrant or an applicant.

(r) "Partner" means a person that has the right to receive upon dissolution, or has contributed, 10% or more of the capital of a partnership of the registrant or applicant.

(s) "Person" means any individual, corporation, partnership, association or other commercial entity.

(t) "Principal" of a registrant means a person that oversees the daily operations of a registrant or applicant and is not an owner or key individual of such registrant or applicant.

(u) "Proceeds" means a payment to a consumer by a provider that is based on earned but unpaid income.

(v) "Provider" means a person who is in the business of offering and providing earned wage access services to consumers.

(w) "Registrant" means a person who is registered with the commissioner as an earned wage access services provider.

K.S.A. 9-2403 Requirement to submit application; register; time frames.

(a) No person shall engage in or hold such person out as willing to engage in any earned wage access services business with a consumer without registering with the commissioner. Any person required to be registered as an earned wage access services provider shall submit to the commissioner an application for registration on forms prescribed and provided by the commissioner. Such application for registration shall include:

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

(2) the name and address of each owner, officer, director, member, partner or principal 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 earned wage access services business; and

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

(b) Each application for registration shall be accompanied by a nonrefundable fee

(c) The commissioner shall approve an application and shall issue a nontransferable and nonassignable registration to the applicant when the commissioner:

(1) Receives the complete application and fee required by this section; and

(2) determines the financial responsibility, financial condition, character, qualifications and fitness 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 earned wage access services registration issued under this section shall expire on December 31 of each year. A registration shall be renewed by filing a complete renewal application with the commissioner at least 30 calendar days prior to the expiration of the registration. Such renewal application shall contain all information the commissioner requires to determine the existence and effect of any material change from the information contained in the applicant's original application, annual reports or prior renewal applications. Each renewal application shall be accompanied by a nonrefundable renewal fee.

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

(f) Not later than the first day of the sixth month beginning after the effective date of this act, the commissioner shall prescribe the form and content of an application for registration to provide earned wage access services pursuant to this act.

(g) Notwithstanding the provisions of subsection (a), a person who, as of January 1, 2024, was engaged in the business of providing earned wage access services in this state may, until the commissioner has processed the person's application for registration, continue to engage in the business of providing earned wage access services in this state without registering if the person has submitted an application for registration within three months after the commissioner has prescribed the form and content of an application pursuant to subsection (f) and otherwise complies with this act.

(h) The registration requirements of this act shall not apply to individuals acting as employees or independent contractors of business entities required to register.

K.S.A. 9-2404 Surety bond; expiration; amounts.

Each applicant or registrant shall file with the commissioner a surety bond in a form acceptable to the commissioner. Such 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 faithful performance of all duties and obligations of a registrant. 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 calendar days' prior written notice to the commissioner, that such termination shall not affect the surety's liability for violations of this 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, whichever occurs first;

(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 that are determined by the commissioner to have been incurred by any consumer as a result of the applicant's or registrant's failure to comply with the requirements of this act; and.

(e) be in the amount of $100,000.

K.S.A. 9-2405 Requirements; consumer disclosure; repayment; disbursement.

A provider that is registered in the state of Kansas shall be subject to the following requirements:

(a) The registrant shall provide all proceeds on a non-recourse basis and shall treat all fees and non-mandatory payments as non-recourse payment obligations.

(b) The registrant shall develop and implement policies and procedures to respond to questions raised by consumers and address complaints from consumers in an expedient manner.

(c) Before entering into an agreement with a consumer for the provision of earned wage access services, the registrant shall:

(1) Inform the consumer of their rights under the agreement;

(2) fully and clearly disclose all fees associated with the earned wage access services; and

(3) clearly and conspicuously describe how the consumer may obtain proceeds at no cost to such consumer.

(d) A registrant shall inform the consumer of any material changes to the terms and conditions of the earned wage access services before implementing such changes for such consumer.

(e) The registrant shall provide proceeds to a consumer via any means mutually agreed upon by the consumer and registrant.

(f) The registrant shall allow a consumer to cancel the use of the provider's earned wage access services at any time without incurring a cancellation fee or penalty imposed by the provider.

(g) The registrant shall comply with all applicable federal, state and local privacy and information security laws.

(h) If a registrant solicits, charges or receives a tip, gratuity or other donation from a consumer, the registrant shall disclose:

(1) To the consumer immediately prior to each transaction that a tip, gratuity or other donation amount may be zero and is voluntary; and

(2) In its agreement with the consumer and elsewhere that tips, gratuities or other donations are voluntary and that the offering of earned wage access services, including the amount of proceeds a consumer is eligible to request and the frequency with which proceeds are provided to a consumer, is not contingent on whether the consumer pays any tip, gratuity or donation or on the size of any tip, gratuity or other donation.

(i) If a registrant will seek repayment of outstanding proceeds or payment of fees or other amounts owed, including voluntary tips, gratuities or other donations, in connection with earned wage access services from a consumer's depository institution, including by means of electronic funds transfer, the registrant shall do all of the following:

(1) Inform the consumer when the provider will make each attempt to seek repayment of the proceeds from the consumer;

(2) comply with applicable provisions of the federal electronic fund transfer act, 15 U.S.C. § 1693 et seq., and any regulations adopted thereunder; and

(3) reimburse the consumer for the full amount of any overdraft or nonsufficient funds fees imposed on a consumer by the consumer's depository institution that were caused by the provider attempting to seek payment of any outstanding proceeds, fees or other payments in connection with earned wage access services, including voluntary tips, gratuities or other donations, on a date before, or in an incorrect amount from, the date or amount disclosed to the consumer. Notwithstanding the provisions of this paragraph, no provider shall be subject to the requirements of this paragraph with respect to payments of outstanding proceeds or fees incurred by a consumer through fraudulent or other unlawful means.

K.S.A. 9-2406 Prohibited actions by registrant under act.

No person required to be registered under this act shall:

(a) Compel or attempt to compel repayment by a consumer of outstanding proceeds or payments owed by such consumer to the registrant through any of the following means:

(1) A civil suit against the consumer in a court of competent jurisdiction;

(2) use of a third party to pursue collection of outstanding proceeds or payments on the provider's behalf;

(3) use of outbound telephone calls to attempt collection; or

(4) sale of outstanding amounts to a third-party debt collector or debt purchaser;

(b) charge a late fee, a deferral fee, interest or any other penalty or charge for failure to repay outstanding proceeds, fees, voluntary tips, gratuities or other donations;

(c) charge interest or finance charges:

(d) charge an unreasonable fee to provide expedited delivery of proceeds to a consumer;

(e) share with an employer a portion of any fees, voluntary tips, gratuities or other donations that were received from or charged to a consumer for earned wage access services;

(f) condition the amount of proceeds that a consumer is eligible to request or the frequency with which a consumer is eligible to request proceeds on whether such consumer pays fees, voluntary tips, gratuities or other donations or on the size of any fee, voluntary tip, gratuity or other donation that such consumer may make to such registrant in connection with the provision of earned wage access services;

(g) mislead or deceive consumers about the voluntary nature of tips, gratuities or other donations or make representations that tips, gratuities or other donations will benefit any specific individuals if the registrant solicits, charges or receives tips, gratuities or other donations from a consumer;

(h) charge a deferral fee or any other charge in connection with deferring the collection of any outstanding proceeds beyond the original scheduled repayment date;

(i) accept credit of any kind as payment from a consumer of outstanding proceeds or non-mandatory payments;

(j) report a consumer's payment or failed repayment of outstanding proceeds to a consumer credit reporting agency or a debt collector; or

(k) require a credit score to determine a consumer's eligibility for earned wage access services.

K.S.A. 9-2407 Services EWA is not considered or subject to; UCCC.

(a) For purposes of the laws of this state:

(1) Earned wage access services provided by a registrant in accordance with this chapter shall not be considered to be:

(A) A loan or other form of credit or the registrant a creditor or lender with respect thereto;

(B) in violation of or noncompliant with the laws of this state governing the sale or assignment of, or an order for, earned but unpaid income; or

(C) money transmission or the registrant a money transmitter with respect thereto.

(2) Fees, voluntary tips, gratuities or other donations paid to such a registrant in accordance with this chapter shall not be considered interest or finance charges.

(b) A registrant that provides proceeds to a consumer in accordance with this act shall not be subject to the provisions of the uniform consumer credit code in connection with such registrant's earned wage access services.

(c) If there is a conflict between the provisions of this act and any other state statute, the provisions of this act control.

K.S.A. 9-2408 Annual report filings; deadlines; requirements; fines.

(a) (1) On or before April 1 of each year, each registrant shall file with the commissioner an annual report relating to earned wage access services provided by the registrant in this state 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 shall not be subject to the open records act, K.S.A. 45- 215 et seq., and amendments thereto. The commissioner may publish aggregate annual report information for multiple registrants in composite form. The provisions of this paragraph shall expire on July 1, 2029, unless the legislature reviews and acts to continue such provisions pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2029.

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

(1) The filing for bankruptcy or reorganization by the registrant;

(2) the institution of a revocation, suspension or other proceeding against the registrant by a governmental authority that is related to the registrant's earned wage access services business in any state;

(3) the addition or loss of any owner, officer, partner, member, principal or director of the registrant;

(4) a felony conviction of the registrant or any of such registrant's owners, officers, members, principals, directors or partners;

(5) a change in the registrant's name or legal entity status; or

(6) the closing or relocation of the registrant's principal place of business.

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

K.S.A. 9-2409 Preservation of records; duration of; request by commissioner.

(a) Each registrant 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 three years.

(b) Each registrant shall maintain and preserve complete and adequate records of each earned wage access services contract during the term of the contract and for a period of five years from the date on which the registrant last provides proceeds to the consumer.

(c) The registrant shall provide the records to the commissioner within three business days of the commissioner's request 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 such records are maintained. The registrant may provide such records electronically to the commissioner in a manner prescribed by the commissioner.

K.S.A. 9-2410 Denial of renewal of registration; causes of action; reasons for.

The commissioner may deny, suspend, revoke or refuse to renew a registration issued pursuant to this act 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 has repeatedly or willfully violated any provision of this act, any rules and regulations adopted thereunder or any order lawfully issued by the commissioner pursuant to this act;

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

(c) the applicant or registrant is insolvent;

(d) the applicant or registrant 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 or any officer, director, member, owner, partner or principal of the applicant or registrant has been convicted of any crime;

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

(g) the applicant, registrant or an employee of the applicant or registrant 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 in a civil action and the commissioner finds that 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;

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

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

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

K.S.A. 9-2411 Powers of commissioner; amendments; investigations; collections; fingerprinting; criminal history check; NMLS registration.

(a) The commissioner shall administer the provisions of this act. In addition to other powers granted by this act, the commissioner, within the limitations provided by law, may exercise the following powers:

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

(2) make any investigation and examination of the operations, books and records of an earned wage access services provider as the commissioner deems necessary to aid in the enforcement of this act;

(3) have free and reasonable access to the offices, places of business and all records of the registrant that will enable the commissioner to determine whether the registrant is complying with the provisions of this act. 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;

(4) establish, charge and collect fees from applicants or registrants for reasonable costs of investigation, examination and administration of this act, 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;

(5) order any registrant or person to cease any activity or practice that the commissioner deems to be deceptive, dishonest, a violation of this act, or of any other state or federal law, or unduly harmful to the interests of the public;

(6) exchange any information regarding the administration of this act with any agency of the United States or any state that regulates the applicant or registrant or administers statutes, rules and regulations or programs related to earned wage access services laws with any attorney general or district attorney with jurisdiction to enforce criminal violations of this act;

(7) disclose to any person or entity that an applicant's or registrant's application or registration has been denied, suspended, revoked or refused renewal;

(8) 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 adopted thereunder or any order issued pursuant to this act;

(9) 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;

(10) 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 division of the office of the state bank commissioner;

(11) (A) require fingerprinting of any officer, partner, member, owner, principal or director of an applicant or registrant. Such 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 to be submitted to the office of the state bank commissioner. 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 jurisdictions. The office of the state bank 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 persons associated with the applicant. Whenever the office of the state bank commissioner requires fingerprinting, any associated costs shall be paid by the applicant or the parties to the application.

(B) The Kansas bureau of investigation shall release all records of adult convictions, adjudications, and juvenile adjudications in Kansas and of another state or country to the office of the state bank commissioner. The office of the state bank commissioner shall not disclose or use a state and national criminal history record check for any purpose except as provided for in this section. Unauthorized use of a state or national criminal history record check shall constitute a class A nonperson misdemeanor.

(C) Each state and national criminal history record check shall be confidential, not subject to the open records act, K.S.A. 45-215 et seq., and amendments thereto, and not be disclosed to any applicant or registrant. The provisions of this subparagraph shall expire on July 1, 2029, unless the legislature reviews and acts to continue such provisions pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2029;

(12) issue, amend and revoke written administrative guidance documents in accordance with the applicable provisions of the Kansas rules and regulations filing act;

(13) enter into any informal agreement with any person for a plan of action to address violations of this act; and

(14) require use of a nationwide multi-state licensing system and registry for processing applications, renewals, amendments, surrenders and any other activity that the commissioner deems appropriate. 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 and 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.

(b) Examination reports and correspondence regarding such reports made by the commissioner or the commissioner's designees shall be confidential and shall not be subject to the provisions of the open records act, K.S.A. 45-215 et seq., and amendments thereto. The commissioner may release examination reports and correspondence regarding the reports in connection with a disciplinary proceeding 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 subsection shall expire on July 1, 2029, unless the legislature reviews and acts to continue such provisions pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2029.

(c) 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, introduce evidence and require the production of any matter that 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.

(d) The adoption of an informal agreement authorized by this section 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. All such examination material shall be confidential by law and privileged, shall not be subject to the provisions of the open records act, K.S.A. 45-215 et seq., and amendments thereto, 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, 2029, unless the legislature reviews and acts to continue such provisions pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2029.

K.S.A. 9-2412 Violations; cease and desist; fines; license revocation; orders.

(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, any rules and regulations adopted or order issued thereunder, the commissioner may issue an order requiring 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 $5,000 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 $5,000 for each such violation, in addition to any civil penalty otherwise provided by law;

(4) that 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 action as in the judgment of the commissioner will carry out the purposes of this act; or

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

(b) (1) 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.

(2) Such emergency order, even if 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.

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

(4) If such person requests a hearing or, in the absence of any request, if the commissioner determines that a hearing should be held, the matter shall be set for a hearing that 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.

(5) 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.

(6) Fines and penalties collected pursuant to paragraphs (2) and (3) shall be designated for use by the commissioner for consumer education.

K.S.A. 9-2413 Subpoenas; exemptions to prosecution.

(a) In case of failure or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the commissioner, may issue an order requiring such person to appear before the commissioner, or the commissioner's designee, to produce documentary evidence if so ordered or to give evidence relating to the matter under investigation or in question. Any failure to obey the order of the court may be punished by the court as contempt of court.

(b) No person shall be excused from attending, testifying or producing any document or record before the commissioner or in obedience to the subpoena of the commissioner or the commissioner's designee, or in any proceeding instituted by the commissioner, on the ground that such testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture. No individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which such person is compelled, after claiming privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

K.S.A. 9-2414 Unlawful violation of act; exceptions to culpability.

It is unlawful for any person to violate the provisions of this act, any rules and regulations adopted or any order issued under this act. A conviction for an intentional violation is a class A nonperson misdemeanor. A second or subsequent conviction of this section is a severity level 7, nonperson felony. No person may be imprisoned for the violation of this section if such person proves that such person had no knowledge of the act, rules and regulations or order.

K.S.A. 9-2415 Legal action to enjoin any violation of act or rules and regulations.

The commissioner, attorney general or a county or district attorney may bring an action in a district court to enjoin any violation of this act, or any rules and regulations adopted thereunder.

K.S.A. 9-2416 Fees; collection; K.S.A. 75-1308 and amendments thereto

All fees collected by the commissioner pursuant to this act shall be subject to the provisions of K.S.A. 75-1308, and amendments thereto.

KANSAS STATUTES

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KANSAS STATUTES

Chapter 16 – CONTRACTS AND PROMISES

Article 1 – GENERAL PROVISIONS

K.S.A. 16-117. Credit agreements; definitions.

As used in this act:

(a) "Credit agreement" means an agreement by a financial institution to lend or delay repayment of money, goods or things in action, to otherwise extend credit or to make any other financial accommodation. For purposes of this act the term "credit agreement" does not include the following agreements: Open-end or closed-end promissory notes, real estate mortgages, security agreements, guaranty agreements, letters of credit, deposit account agreements, agreements in connection with deposit accounts for the payment of overdrafts, agreements in connection with student loans insured or guaranteed pursuant to the federal higher education act of 1965, and acts amendatory thereof and supplementary thereto, and agreements in connection with "lender credit cards" as defined in the uniform consumer credit code;

(b) "creditor" means a financial institution which extends credit or extends a financial accommodation under a credit agreement with a debtor;

(c) "debtor" means a person who obtains credit or receives a financial accommodation under a credit agreement with a financial institution; and

(d) "financial institution" means a bank, savings and loan association, savings bank or credit union.

History: L. 1988, ch. 55, § 1; L. 1989, ch. 70, § 1; L. 1998, ch. 56, § 1; July 1.

K.S.A. 16-118. Same; requirements; failure to comply.

(a) A debtor or a creditor may not maintain an action for legal or equitable relief or a defense, based in either case upon a failure to perform on an alleged credit agreement, unless the material terms and conditions of the agreement are in writing and signed by the creditor and the debtor.

(b) All credit agreements shall contain a clear, conspicuous and printed notice to the debtor that states that the written credit agreement is a final expression of the credit agreement between the creditor and debtor and such written credit agreement may not be contradicted by evidence of any prior oral credit agreement or of a contemporaneous oral credit agreement between the creditor and debtor. A written credit agreement shall contain a sufficient space for the placement of nonstandard terms, including the

reduction to writing of a previous oral credit agreement and an affirmation, signed or initialed by the debtor and the creditor, that no unwritten oral credit agreement between the parties exists.

(c) Failure to comply with provisions of subsections (a) and (b) shall preclude an action or defense based on any of the following legal or equitable theories:

(1) An implied agreement based on course of dealing or performance or on a fiduciary relationship;

(2) promissory or equitable estoppel;

(3) part performance; or

(4) negligent representation.

History: L. 1988, ch. 55, § 2; L. 1989, ch. 70, § 2; L. 1998, ch. 56, § 2; July 1.

Article 2 – INTEREST AND CHARGES

K.S.A. 16-201. Legal rate of interest.

(a) Except and provided in subsection (b), creditors shall be allowed to receive interest at the rate of 10% per annum, when no other rate of interest is agreed upon, for any money after it becomes due; for money lent or money due on settlement of account, from the day of liquidating the account and ascertaining the balance; for money received for the use of another and retained without the owner's knowledge of the receipt; for money due and withheld by an unreasonable and vexatious delay of payment or settlement of accounts; for all other money due and to become due for the forbearance of payment whereof an express promise to pay interest has been made; and for money due from corporations and individuals to their daily or monthly employees, from and after the end of each month, unless paid within 15 days thereafter.

(b) In all civil tort actions filed on or after July 1, 2023, under chapter 60 of the Kansas Statutes Annotated, and amendments thereto, in which the court determines that prejudgment interest shall be awarded, the judgment creditor shall be allowed to receive interest at the rate per annum of two percentage points below the rate per annum specified in K.S.A. 16-204(e)(1), and amendments thereto

History: L. 1889, ch. 164, § 1; L. 1980, ch. 74, § 1; H.B. 2395, 2023 Leg., (Kan. 2023); July 1.

Source or Prior Law: L. 1863, ch. 33, § 1; G.S. 1868, ch. 51, § 1; L. 1871, ch. 95,§ 1; K.S.A. 41-101.

K.S.A. 16-204. Interest on judgments.

Except as otherwise provided in accordance with law, and including any judgment rendered on or after July 1, 1973, against the state or any agency or political subdivision of the state:

(a) Any judgment rendered by a court of this state before July 1, 1980, shall bear interest as follows:

(1) On and after the day on which the judgment is rendered and before July 1, 1980, at the rate of 8% per annum;

(2) on and after July 1, 1980, and before July 1, 1982, at the rate of 12% per annum;

(3) on and after July 1, 1982, and before July 1, 1986, at the rate of 15% per annum; and

(4) on and after July 1, 1986, at the rate provided by subsection (e).

(b) Any judgment rendered by a court of this state on or after July 1, 1980, and before July 1, 1982, shall bear interest as follows:

(1) On and after the day on which the judgment is rendered and before July 1, 1982, at the rate of 12% per annum;

(2) on and after July 1, 1982, and before July 1, 1986, at the rate of 15% per annum; and

(3) on and after July 1, 1986, at the rate provided by subsection (e).

(c) Any judgment rendered by a court of this state on or after July 1, 1982, and before July 1, 1986, shall bear interest as follows:

(1) On and after the day on which the judgment is rendered and before July 1, 1986, at the rate of 15% per annum; and

(2) on and after July 1, 1986, at the rate provided by subsection (e).

(d) Any judgment rendered by a court of this state on or after July 1, 1986, shall bear interest on and after the day on which the judgment is rendered at the rate provided by subsection (e).

(e) (1) Except as otherwise provided in this subsection, on and after July 1, 1996, the rate of interest on judgments rendered by courts of this state pursuant to the code of civil procedure shall be at a rate per annum:

(A) Which shall change effective July 1 of each year for both judgments rendered prior to such July 1 and judgments rendered during the twelve-month period beginning such July 1; and

(B) which is equal to an amount that is four percentage points above the discount rate (the charge on loans to depository institutions by the New York federal reserve bank as reported in the money rates column of the Wall Street Journal) as of July 1 preceding the date the judgment was rendered. The secretary of state shall publish notice of the interest rate provided by this subsection (e) (1) not later than the second issue of the Kansas register published in July of each year.

(2) On and after the effective date of this act, the rate of interest on judgments rendered by courts of this state pursuant to the code of civil procedure for limited actions shall be 12% per annum.

(3) On and after July 1, 1996, it shall be presumed that applying interest at the rate of 10% per annum will result in the correct total of interest accrued on any judgments, regardless of when the judgments accrued, arising from a person's duty to support another person. The burden of proving that a different amount is the correct total shall lie with any person contesting the presumed amount.

History: L. 1889, ch. 164, § 4; R.S. 1923, 41-104; L. 1969, ch. 114, § 1; L. 1973, ch. 84, § 1; L. 1980, ch. 74, § 2; L. 1982, ch. 88, § 1; L. 1986, ch. 89, § 1; L. 1996, ch. 229, § 160; July 1.

Source or Prior Law: L. 1863, ch. 33, § 4; G.S. 1868, ch. 51, § 5; K.S.A. 41-104.

K.S.A. 16-205. Interest rates or charges; contract rates continue until payment in full; judgments; excess rates and charges void.

(a) When a rate of interest or charges is specified in any contract, that rate shall continue until full payment is made, and any judgment rendered on any such contract shall bear the same rate of interest or charges mentioned in the contract, which rate shall be specified in the judgment; but in no case shall such rate or charges exceed the maximum rate or amount authorized by law, and any bond, note, bill, or other contract for the payment of money, which in effect provides that any interest or charges or any higher rate of interest or charges shall accrue as a penalty for any default, shall be void as to any such provision.

(b) Judgments taken in accordance with the provisions of subsection (a) shall be expressed as follows:

(1) Judgments upon interest-bearing contracts shall provide

(i) the unpaid principal balance,

(ii) the date to which interest is paid,

(iii) the contract rate of interest and

(iv) that the unpaid principal balance shall draw the contract rate of interest from the date to which interest is paid until payment in full.

(2) Judgments upon precomputed interest-bearing contracts shall provide:

(i) The unpaid principal balance shall be ascertained by deducting from the remaining total of payments owed on the contract that portion of the precomputed finance charges that are unearned as of the date of acceleration of the maturity of the contract, as provided in K.S.A. 16a-2-510 for computing the unearned portion of precomputed finance charges in the event of prepayment in full. Any delinquency or deferral charges added to the unpaid balance subsequent to the date of acceleration shall be first deducted from the unpaid balance prior to any such acceleration. The contract shall be accelerated as of the date provided for in the provisions of the contract, or if the contract does not provide for the date on which the contract shall be accelerated, it shall be accelerated as of the actual date of any such acceleration;

(ii) the date to which interest is paid, which date shall be the maturity date of the next installment due after the date of acceleration, except those contracts which are accelerated on an installment due date which shall be the date of acceleration; the date to which interest is paid for those contracts that have matured prior to judgment shall be calculated from maturity date of the contract;

(iii) the contract rate of interest; and

(iv) that the unpaid principal balance shall draw the contract rate of interest from the date to which interest is paid until payment in full.

(3) Judgments upon contracts where the finance charges are computed in dollars per hundred and added on to the original balance to be financed shall provide:

(i) The unpaid principal balance shall be ascertained by deducting from the remaining total of payments owed on the contract that portion of the precomputed finance charges that are unearned as of the date of acceleration of the maturity of the contract as provided in K.S.A. 16a-2-510 for computing the unearned portion of precomputed finance charges in the event of prepayment in full. Any delinquency or deferral charges added to the unpaid balance subsequent to the date of acceleration shall be first deducted from the unpaid balance prior to any such acceleration. The contract shall be accelerated as of the date provided for in the provisions of the contract, or if the contract does not provide for the date on which the contract shall be accelerated, it shall be accelerated as of the actual date of any acceleration;

(ii) the date to which interest is paid, which date shall be the maturity date of the next installment due after the date of acceleration, except those contracts which are accelerated on an installment due date which shall be the date of acceleration; the date to which interest is paid for those contracts that have matured prior to judgment shall be calculated from the maturity date of the contract;

(iii) the contract rate of interest expressed as an annual percentage figure, which may be taken from the contract if it discloses the annual percentage rate, or it shall be ascertained in accordance with the constant ratio method which is mathematically expressed as follows:

$$R = \frac{2mc}{p(n+1)} \text{ where}$$

R = rate of change
m = number of payment periods in one year
n = number of payments to discharge the debt
c = charge in dollars

p = principal or cash advanced

and

(iv) that the unpaid principal balance shall draw the contract rate of interest as determined herein from the date to which interest is paid until payment in full.

History: L. 1889, ch. 164, § 5; R.S. 1923, 41-105; L. 1955, ch. 135, § 27; L. 1974, ch. 90, § 1; L. 1976, ch. 96, § 1; July 1.

Source or Prior Law: G.S. 1868, ch. 51, § 6; K.S.A. 41-105.

K.S.A. 16-207. Contract rate; penalties for prepayment of certain loans, recording fees; contracting for interest in excess of limitation, penalties, attorney fees; loans excluded.

(a) Subject to the following provision, the parties to any bond, bill, promissory note or other instrument of writing for the payment or forbearance of money may stipulate therein for interest receivable upon the amount of such bond, bill, note or other instrument of writing, at a rate not to exceed 15% per annum unless otherwise specifically authorized by law.

(b) No penalty shall be assessed against any party for prepayment of any home loan evidenced by a note secured by a real estate mortgage where such prepayment is made more than six months after execution of such note.

(c) The lender may collect from the borrower:

(1) The actual fees paid a public official or agency of the state, or federal government, for filing, recording or releasing any instrument relating to a loan subject to the provisions of this section; and

(2) reasonable expenses incurred by the lender in connection with the making, closing, disbursing, extending, readjusting or renewing of loans subject to the provisions of this section.

(d) Any person so contracting for a greater rate of interest than that authorized by this section shall forfeit all interest so contracted for in excess of the amount authorized under this section; and in addition thereto shall forfeit a sum of money, to be deducted from the amount due for principal and lawful interest, equal to the amount of interest contracted for in excess of the amount authorized by this section and such amounts may be set up as a defense or counterclaim in any action to enforce the collection of such obligation and the borrower shall also recover a reasonable attorney fee.

(e) Subsection (a) shall not apply to:

(1) A covered transaction subject to the usury provisions of the Kansas mortgage business act, K.S.A. 9-2201 *et.seq*., and amendments thereto;

(2) A consumer credit transaction subject to the usury provisions of the uniform consumer credit code, K.S.A. 16a-1-101 *et seq*., and amendments thereto;

(3) loans made by a qualified plan, as defined by the internal revenue code, to an individual participant in such plan or to a member of the family of such individual participant;

(4) a note secured by a real estate mortgage or a contract for deed to real estate when the note or contract for deed permits adjustment of the interest rate, the term of the loan or the amortization schedule; or

(5) a business or agricultural transaction. For the purpose of this section, a "business or agricultural transaction" means a loan, including a note secured by a contract for deed to real estate or a credit sale, which is made primarily for purposes other than personal, family or household purposes.

(f) Subsections (b), (c), and (d) shall not apply to:

(1) A covered transaction under the Kansas mortgage business act, K.S.A. 9-2201 *et seq*., and amendments thereto; or

(2) a consumer credit transaction under the uniform consumer credit code, K.S.A. 16a-1-101 *et seq*., and amendments thereto.

History: L. 1969, ch. 112, § 36; L. 1973, ch. 85, § 132; L. 1975, ch. 125, § 1; L. 1978, ch. 72, § 1; L. 1980, ch. 75, § 1; L. 1980, ch. 76, § 2; L. 1981, ch. 88, § 1; L. 1982, ch. 89, § 1; L. 1983, ch. 74, § 1; L. 1999, ch. 107, § 5; L. 2013, ch. 103, § 1; July 1.

Revisor's Note: Section was also amended by L. 2013, ch. 29, § 1, but that version was repealed by L. 2013, ch. 129, § 2.

K.S.A. 16-207a. State override of federal preemption.

The provisions of section 501(a)(1) of title V of public law 96-221 shall not apply with respect to loans, mortgages, credit sales and advances made in this state on and after the effective date of this act.

History: L. 1980, ch. 76, § 1; May 17.

K.S.A. 16-207b. Contract rate; exceptions.

The provisions of this act shall not apply to loans made under the provisions of article 52 of chapter 12 of the Kansas Statutes Annotated.

History: L. 1980, ch. 75, § 3; L. 1980, ch. 76, § 3; May 17.

K.S.A. 16-207d. Rules and regulations; loans secured by real estate; adjustable loans.

The state bank commissioner and credit union administrator shall jointly adopt rules and regulations for the purpose of governing loans made primarily for personal, family or household purposes and made under the provisions of K.S.A. 16-207(e)(4), and amendments thereto. Such rules and regulations shall be published in only one place in the Kansas administrative regulations as directed by the state rules and regulations board.

History: L. 1982, ch. 94, § 2; L. 1983, ch. 75, § 1; July 1.

Revisor's Note: Amendments to 16a-2-401 in 1993 resulted in the renumbering of subsection (8) as subsection (7).

K.S.A. 16-214. Interest rate on advance made for purchase or carrying of securities; advance not subject to uniform consumer credit code.

Whenever advances of money, repayable on demand, are made upon any securities, as defined in K.S.A. 84-8-102(1)(a), and amendments thereto, pledged as collateral for repayment of such advances and in which such advances are used by the borrower only for the purpose of the purchasing or the carrying of such securities, it shall be lawful for a broker-dealer, as defined by K.S.A. 17-12a102, and amendments thereto, to charge, receive or contract to receive and collect, as compensation for making such advances, a rate of interest not to exceed the higher of 10% per annum, or the rate of interest last obtained from a commercial lender by the broker-dealer plus an annual percentage rate of not to exceed 1 1/2%, which rate shall be established by written notification to the borrower. Any such advances shall not be subject to any of the provisions of articles 1 through 9, inclusive, of chapter 16a of the Kansas Statutes Annotated, and amendments thereto.

History: L. 1977, ch. 69, § 1; L. 2004, ch. 154, § 56; July 1, 2005.

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Chapter 16a – CONSUMER CREDIT CODE

Revisor's Note:

The numbering of the sections in this chapter retains the numbering system of the Uniform Consumer Credit Code by prefixing "16a-" at the beginning of each section number. Sections of the Kansas code which correspond to the uniform act are designated by the letters "UCCC" in parentheses after the section number.

The Kansas Comments following sections of this uniform code were originally prepared in 1973 by Barkley Clark, who at that time was the Associate Dean and Professor of Law at the University of Kansas School of Law and who also served as consultant to the committees considering the proposed legislation. Some of the Comments, which are in the nature of Revisor's Notes, are based, in part, on comments promulgated by the National Conference of Commissioners on Uniform State Laws in their 1968 Official Text version of the Code. They have also been edited by the office of Revisor of Statutes, primarily to reflect current Kansas statutory references. The Kansas Comments were revised and updated in 1990 by Paul B. Rasor, former Professor of Law at Washburn University School of Law. The 1995 version of the Kansas Comments were prepared by Barkley Clark and Mark Hargrave, both of whom practice with the law firm Shook, Hardy & Bacon P.C. in Kansas City, Missouri. From 1996 to 2000, the Kansas Comments were revised and updated annually by Shook, Hardy & Bacon L.L.P. In 2010 the Kansas Comments were revised and updated by the Office of the State Bank Commissioner.

The Kansas Comments have not been submitted to or approved by the Kansas Legislature and should not be construed as expressing legislative intent.

Attorney General's Opinions:

- Interest and charges; usury. 79-252.
- Finance charge for consumer loans; supervised lenders. 79-286.
- Consumer loans; finance charge; exemption of adjustable rate loans from maximum finance charge limits. 82-128.
- Limitations on consumer's liability; balloon payments; denial of right to refinance. 82-143.

Article 1 – GENERAL PROVISIONS AND DEFINITIONS

Part 1

SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

K.S.A. 16a-1-101. (UCCC) Short title.

K.S.A. 16a-1-101 *et seq*., and amendments thereto, shall be known and may be cited as the uniform consumer credit code.

History: L. 1973, ch. 85, § 1; Jan. 1, 1974.

KANSAS COMMENT, 2010:

The Kansas uniform consumer credit code (K.S.A. 16a-1-101 et seq.) is referred to in these comments as the U3C. The Kansas uniform commercial code (K.S.A. 84-1-101 et seq.) is referred to as the UCC. The Kansas consumer protection act (K.S.A. 50-623 et seq.) is referred to as the KCPA. The federal truth in lending act (15 U.S.C.A. § 1601 et seq.) is the TILA. "Regulation Z," when used in these comments, refers to the Federal Reserve Board's truth in lending regulations, 12 C.F.R. Part 226.

The scope and application of the U3C are determined by K.S.A. 16a-1-201 and by the various definitions in K.S.A. 16a-1-301.

These comments take into account all amendments through the 2009 Session Laws of Kansas. They should be read with caution, however, as future amendments are inevitable.

Additional guidance on the U3C may be found in Administrative Regulations, K.A.R. 75-6-1 et seq., and Administrative Interpretations, No. 1001 et seq. which can be found online at http://www.osbckansas.org. The U3C is administered by the Office of State Bank Commissioner — deputy commissioner of the division of consumer and mortgage lending. Recent Kansas legislative bills and supplemental notes can be accessed at http://www.kslegislature.org.

Some states' versions of the uniform act have been held not to be an unconstitutional burden on interstate commerce nor violative of the due process rights of the creditor. See Quik Payday, Inc. v. Stork, 509 F.Supp.2d 974 (D. Kan. 2007), aff'd 549 F.3d 1302 (10th Cir. 2008), cert. denied 129 S.Ct. 2062; and Aldens, Inc. v. Miller, 466 F.Supp. 379 (S.D. Iowa 1979), aff'd 610 F.2d 538, cert. denied 446 U.S. 919; Aldens, Inc. v. Ryan, 571 F.2d 1159 (10th Cir. 1978), cert. denied 99 S.Ct. 180.

Attorney General's Opinions:

- Finance charges; additional charges not included therein. 81-209.
- Disclosure; discounts for cash purchases. 86-115.
- Consumer credit insurance; property and liability insurance. 87-3.

K.S.A. 16a-1-102. (UCCC) Purposes; rules of construction.

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

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

(a) To simplify, clarify and modernize the law governing consumer credit transactions;

(b) to protect consumers against unfair practices and;

(c) to facilitate sound consumer credit practices; and

(3) A reference to a requirement imposed by K.S.A. 16a-1-101*et seq*., and amendments thereto, includes reference to a rule and regulation adopted by the administrator pursuant to this act.

History: L. 1973, ch. 85, § 2; L. 1981, ch. 93, § 2; L. 1988, ch. 85, § 1; July 1.

KANSAS COMMENT, 2000:

One of the primary purposes of the U3C is to provide a unified, functional framework for the entire subject of consumer credit. To this end, the U3C places all aspects of consumer credit under a single statutory umbrella. It replaces widely scattered pieces of legislation which were enacted by different Kansas legislatures, at different times, for different reasons: the 1955 consumer loan act, those portions of the 1958 sales finance act dealing with motor vehicles and those dealing with non-motor vehicles, the 1969 truth in lending act, part of the 1929 credit union law, various installment loan provisions, and part of the 1968 buyer protection act. In addition, the U3C alters several provisions in the UCC for transactions involving consumers. For a more detailed listing of statutes affected by the enactment of the U3C in Kansas, see the Kansas comment to K.S.A. 16a-9-101.

Attorney General's Opinions:

- Interest and charges; usury. 79-252.
- Limitations on consumer's liability; balloon payments; denial of right to refinance. 82-143.
- Consumer loans; finance charge; exemption of adjustable rate loans from maximum finance charge limits. 82-227.
- Property insurance; damage to property unrelated to credit transaction. 86-42.
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- Authority of legislature to transfer money from special revenue funds into state general fund. 2002-45.

K.S.A. 16a-1-103. (UCCC) Supplementary general principles of law applicable.

The uniform consumer credit code, K.S.A. 16a-1-101 *et seq*., and amendments thereto, takes precedence in consumer credit transactions, the uniform commercial code and the principles of law and equity, including the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy or other validating or invalidating cause supplement its provisions.

History: L. 1973, ch. 85, § 3; Jan. 1, 1974.

KANSAS COMMENT, 2010:

Many transactions are subject both to the U3C and to other bodies of law, particularly the UCC. In the event of conflict, the U3C controls. See K.S.A. 84-9-201. In other cases, the U3C is supplemented by the UCC and other principles. For example, a consumer credit contract would be subject in appropriate cases to the UCC's general duty of good faith in the performance or enforcement of a contract or duty within the UCC. See K.S.A. 84-1-302(b). In general, such

principles have not been repeated in the U3C. In addition, many consumer credit agreements will also be subject to the KCPA, and that act should be consulted in appropriate cases. Finally, consumer remedies under the UCC, the KCPA, and other laws generally supplement those that are available under the U3C. See the Kansas comment to K.S.A. 16a-6-115.

K.S.A. 16a-1-104. (UCCC) Construction against implicit repeal.

K.S.A. 16a-1-101 *et seq*., and amendments thereto, being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be implicitly repealed by subsequent legislation if such construction can reasonably be avoided.

History: L. 1973, ch. 85, § 4; Jan. 1, 1974.

K.S.A. 16a-1-105. (UCCC) Severability.

If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

History: L. 1973, ch. 85, § 5; Jan. 1, 1974.

K.S.A. 16a-1-107. (UCCC) Waiver; agreement to forego rights; settlement of claims.

(1) Except as otherwise provided in K.S.A. 16a-1-101 *et seq*., and amendments thereto, a consumer may not waive or agree to forego rights or benefits under this act.

(2) A claim by a consumer against a creditor for any violation of K.S.A. 16a-1-101 *et seq*., and amendments thereto, or civil penalty, a claim against a consumer for default or breach of a duty imposed by this act, if disputed in good faith, may be settled by agreement.

(3) A claim against a consumer may be settled for less value than the amount claimed.

(4) A settlement in which the consumer waives or agrees to forego rights or benefits under K.S.A. 16a-1-101 *et seq*., and amendments thereto, is invalid if the court as a matter of law finds the settlement to have been unconscionable at the time it was made. The competence of the consumer, any deception or coercion practiced upon the consumer, the nature and extent of the legal advice received by the consumer, and the value of the consideration are relevant to the issue of unconscionability.

History: L. 1973, ch. 85, § 6; Jan. 1, 1974.

KANSAS COMMENT, 2010:

Unlike the UCC, which broadly permits variation by agreement (K.S.A. 84-1-302(a)), the U3C starts from the premise that a consumer generally may not waive or agree to forego rights or benefits under the U3C. This provision is typical of consumer protection legislation; a similar section is contained in the KCPA. See K.S.A. 50-625; compare K.S.A. 84-9-602. In the absence of a provision of the U3C specifically authorizing a waiver, any waiver or agreement to forego must be part of a settlement, and settlements are subject to review as provided in this section.

Attorney General's Opinions:

- Limitations on consumer's liability; balloon payments; denial of right to refinance. 82-143.

K.S.A. 16a-1-108. (UCCC) Effect of act on powers of organization.

(1) K.S.A. 16a-1-101 *et seq.*, and amendments thereto, prescribes maximum charges for all creditors, except lessors and those excluded by K.S.A. 16a-1-202, and amendments thereto, extends consumer credit including consumer credit sales and consumer loans, and displaces existing limitations on the powers of those creditors based on maximum charges.

(2) With respect to sellers of goods or services, licensed lenders, consumer and sales finance companies, industrial banks, loan companies, commercial banks and trust companies, this act displaces existing limitations on their powers based solely on amount or duration of credit.

(3) Except as provided in subsection (1) and K.S.A. 16a-1-101 *et seq*., and amendments thereto, does not displace limitations on powers of credit unions, savings banks, savings and loan associations or other thrift institutions.

(4) Except as provided in K.S.A. 16a-1-101 *et seq*., and amendments thereto, does not displace:

(a) Limitations on powers of supervised financial organizations with respect to the amount of a loan to a borrower or other similar restrictions designed to protect deposits or

(b) limitations on powers an organization is authorized to exercise under the laws of this state or the United States.

History: L. 1973, ch. 85, § 7; L. 1981, ch. 93, § 3; L. 1993, ch. 200, § 2; L. 1999, ch. 107, § 6; July 1.

KANSAS COMMENT, 2000:

1. This section states the policy of the U3C regarding the displacement of laws regulating suppliers of consumer credit. The U3C displaces many existing usury laws; in addition, subsection (1) displaces existing limitations on maximum charges for all suppliers of consumer credit except

lessors and those excluded under K.S.A. 16a-1-202. In other respects, the U3C differentiates among creditors depending on their status as either being sellers or lenders; and among lenders as either being or not being supervised financial organizations as defined in K.S.A. 16a-1-301(44); and finally among supervised financial organizations depending on whether they are

(1) commercial or industrial banks or trust companies, or

(2) thrift institutions such as credit unions, savings banks and savings and loan associations whether mutual or not.

2. Subsection (2) frees commercial and industrial banks and trust companies and all creditors other than thrift institutions from existing limitations on their powers based solely on the amount or duration of credit they may extend.

3. Subsection (3) retains all existing limitations on powers of thrift institutions, other than those based on maximum charges, on the theory that those limitations may be required for the protection of their depositors or shareholders. Similarly, subsection (4) retains limits on the powers of supervised financial organizations such as loans-to-one-borrower limits, maximum loan-to-value ratios and the like that are designed to protect deposits.

K.S.A. 16a-1-109. (UCCC) Transactions subject to act by agreement.

The parties to a sale, lease or loan or modification thereof that is not a consumer credit transaction may agree in a writing signed by the parties that the transaction is subject to the provisions of K.S.A. 16a-1-101 *et seq*., and amendments thereto. If the parties so agree the transaction is a consumer credit transaction for the purposes of K.S.A. 16a-1-101 *et seq*., and amendments thereto.

History: L. 1973, ch. 85, § 8; Jan. 1, 1974.

KANSAS COMMENT, 2010:

The consumer purpose test is the basic standard for determining the coverage of the U3C. This section permits creditors, by inserting an appropriate clause in the contract, to be certain that the transaction is a consumer credit sale, lease or loan for the purposes of the U3C. See K.A.R. 75-6-1. Creditors often contract into the U3C in order to charge the higher rates of finance charges it permits. Of course, contracting into the U3C to take advantage of its higher rate ceilings makes the creditor subject to all of the U3C's restrictions. Thus, the creditor must weigh the costs of complying with the U3C, such as its limits on additional charges (including strict limits on the recovery of attorneys' fees) and its consumer protective default and right to cure provisions against the benefits of the higher finance charge rates it authorizes.

Since the general reform of Kansas usury laws in the early 1980's, there have been no interest rate ceilings on business and agricultural loans. See K.S.A. 16-207(f). In some cases, business creditors have inadvertently subjected themselves to the restrictions of the U3C by using forms designed primarily for consumer loans which contained language bringing the transactions within the U3C. See, e.g., United Kansas Bank & Trust Co. v. Rixner, 4 Kan. App. 2d 662, 610 P.2d 116 (1980), aff'd 228 Kan. 633, 619 P.2d 1156; Farmers State Bank v. Haflich, 10 Kan. App. 2d 333, 699 P.2d 533 (1985). Compare Farmers State Bank v. Cooper, 227 Kan. 547, 608 P.2d 929 (1980), where the printed form was ambiguous because the parties had typed in the words "business loan," and the court allowed the intent of the parties to control.

Creditors might want to contract into the U3C to justify charging a higher rate — in the case of first mortgage loans, purchase money or "margin" loans for securities and transactions that otherwise would be governed by the U3C but for the fact that the amount financed exceeds $25,000. First mortgage loans are generally exempt from the U3C (see K.S.A. 16a-1-301(17)(b) and the Kansas comment to that section), and are subject to their own floating interest rate ceilings. K.S.A. 16-207(b). In addition, while certain high loan-to-value first mortgage loans are covered by the U3C, those loans remain subject to the floating interest rate ceilings of K.S.A. 16-207(b), rather than the U3C's rate ceilings. See K.S.A. 16-207(i)(1) and 16a-2-401(8). If the rates permitted by the floating rate ceilings of K.S.A. 16-207(b) are lower than the rates allowed by the U3C, and the lender wants to charge the higher U3C rates, it can do so by inserting a clause in the agreement making the transaction subject to the U3C. See also the Kansas comment to K.S.A. 16a-2-401.

Similarly, advances by a broker-dealer used by the borrower to buy or carry securities pledged to secure those advances are subject to a floating rate ceiling based on the broker-dealer's own bank loans, although those loans may carry rates up to 10% in any case. K.S.A. 16-214. Those loans are expressly exempted by that section from all aspects of the U3C. Again, however, a broker-dealer can charge the higher U3C rates by contracting into the U3C.

Along the same line, a credit sale or a loan in which the amount financed exceeds $25,000 (and which, in the case of a loan, is not secured by an interest in land) is not covered by the U3C, even if all the other elements of a consumer credit transaction are present. See the definitions of "consumer credit sale" and "consumer loan" in K.S.A. 16a-1-301(14) and 16a-1-301(17) and the Kansas comments to those sections. This dollar limit excludes a growing number of traditional consumer credit transactions from the scope of the U3C as items such as automobiles, boats, and recreational vehicles continue to increase in price. Because they are not covered by the U3C, the general 15% interest rate ceiling in K.S.A. 16-207(a) would be applicable to those high-dollar transactions. Just as with first mortgage loans and margin loans, however, the creditor presumably can take advantage of the higher U3C rates by contracting into the U3C under this section.

Attorney General's Opinions:

- Interest and charges; usury. 79-252.

Part 2

SCOPE AND JURISDICTION

K.S.A. 16a-1-201. (UCCC) Territorial application.

(1) Except as otherwise provided in this section, K.S.A. 16a-1-101 *et seq*., and amendments thereto, apply to consumer credit transactions made in Kansas. For purposes of such sections of this act, a consumer credit transaction is made in Kansas if:

(a) A written agreement executed by electronic or physical signature evidencing the obligation or offer of the consumer is received by the creditor from a consumer in Kansas; or

(b) the creditor induces the consumer who is a resident of Kansas to enter into the transaction by solicitation in Kansas by any means, including but not limited to:

Mail, telephone, radio, television, electronic mail, internet or any other electronic means.

(2) Except as provided in subsection (5), a consumer credit transaction made in a state outside of Kansas to a person who was not a resident of Kansas when the sale, lease, loan or modification was made is valid and enforceable in Kansas according to its terms to the extent that it is valid and enforceable under the laws of the state applicable to the transaction.

(3) Notwithstanding other provisions of this section, except as provided in subsection (5), K.S.A. 16a-1-101 *et seq*., and amendments thereto, do not apply if the consumer is not a resident of Kansas at the time of a consumer credit transaction and the parties have agreed that the law of the consumer's residence applies.

(4) With respect to consumer credit transactions entered into pursuant to open-end credit, this act shall apply if the consumer's communication or indication of intention to establish the agreement is received by the creditor conducting business in Kansas. If no communication or indication of intention is given by the consumer before the first transaction, this act applies if the creditor's communication notifying the consumer of the privilege of using open-end credit is provided to the consumer in Kansas.

(5) The part addressing limitations on creditors' remedies of the article on remedies and penalties applies to actions or other proceedings brought in this state to enforce rights arising from consumer credit, transactions or extortionate extensions of credit, wherever made.

(6) For the purposes of K.S.A. 16a-1-101 *et seq.*, and amendments thereto, the residence of a consumer is the address provided by the consumer as the consumer's residence in any written agreement signed by the consumer in connection with a credit transaction. Until the consumer notifies the creditor of a new or different address, the address provided by the consumer shall be presumed to be unchanged.

(7) Except as provided in subsection (3) the following agreements by a buyer, lessee, or debtor are invalid with respect to a consumer credit transaction to which K.S.A. 16a-1-101 *et seq*., and amendments thereto, apply:

(a) That the law of another state shall apply;

(b) that the consumer consents to the jurisdiction of another state; and

(c) that fixes venue.

History: L. 1973, ch. 85, § 9; L. 1977, ch. 70, § 1; L. 1981, ch. 93, § 4; L. 1993, ch. 200, § 3; L. 1999, ch. 107, § 7; July 1.

KANSAS COMMENT, 2010:

1. This section enables Kansas to apply the U3C for the protection of its own consumer residents in multi-state transactions.

2. Under the original version of subsections (1) and (2) of this section, the issue of whether a transaction was deemed to have been made in Kansas (thus triggering application of the entire U3C) was dependent on the place at which the executed contract was received by the creditor and whether any face-to-face solicitations occurred in Kansas.

   Subsection (1)(b) was amended, however, in the 1999 legislative session to remove the "face-to-face" qualifier from the solicitation test. This amendment was driven primarily by a concern over the growing use of the internet as a means of soliciting Kansas consumers to enter into credit transactions with out-of-state creditors.

   Under amended subsection (1)(b), the applicability of the U3C to a multi-state transaction turns on whether there is "solicitation in this state." The Court of Appeals for the 10th Circuit affirmed the constitutionality of subsection (1)(b) in the case Quik Payday v. Stork, et al., 549 F.3d 1302, (2008), cert. denied 129 S.Ct. 2062. In that case, the court held that the administrator did not act unconstitutionally when the administrator applied the U3C to an internet payday lender located in Utah. In Quik Payday, an out-of-state payday lender made supervised loans to Kansas consumers via the internet. The lender had no agents or offices in Kansas. However, subsection (1)(b) brought these internet payday loan transactions under the U3C. Additional guidance regarding when a solicitation is deemed to have been made in Kansas may be found in Watkins v. Roach Cadillac, Inc., 7 Kan. App. 2d 8, 637 P.2d 458 (1981), the court held that out-of-state radio and newspaper advertisements which reached a Kansas consumer were "solicitations" sufficiently "within this state" to bring the transaction within the scope of the KCPA. Another example of a case construing a similar phrase is Norton v. Local Loan, 251 N.W.2d 520 (Iowa 1977), the court held that a long distance phone call from the creditor's out-of-state agent to the consumer was "conduct in this state" within the meaning of that phrase in the Iowa U3C.

   It seems quite unlikely that a Kansas resident will locate an out-of-state creditor, travel to the creditor's state and consummate a consumer credit transaction with that creditor unless the creditor has "solicited" the consumer by the use of targeted telephone, mail or other direct marketing or general radio, television, or other non-individualized advertisements received or seen by the consumer in Kansas. Thus, as a practical matter, nearly all consumer credit extended by out-of-state creditors to Kansas residents would be deemed to have been made in Kansas. The entire U3C (including its licensing requirements, its disclosure requirements and its substantive limitations) would apply to those transactions.

3. Under subsections (7) and (8), choice of law agreements have been invalidated except where the law chosen is that of the state of the consumer's residence. This eliminates the danger that creditors could induce consumers to agree that the applicable law would be that of a creditor's haven that had no effective credit protection.

4. As noted in Kansas comment 2 to this section, virtually all supervised loans extended to Kansas residents would be deemed to have been made in Kansas and, as a result, out-of-state creditors extending those loans would need a Kansas supervised lender's license. Note, however, that

   (a) an out-of-state supervised financial organization does not need a supervised lender's license to make supervised loans in Kansas and

   (b) federally-insured financial institutions may "export" to Kansas the interest rates and related charges permitted by the law of their home states as a matter of federal law.

   See Smiley v. Citibank (South Dakota), N.A., 116 S.Ct. 1730 (1996).

Attorney General's Opinions:
- Finance charge for consumer loans; supervised lenders. 79-286.
- Scope and jurisdiction of UCCC; territorial application. 90-38.

K.S.A. 16a-1-202. (UCCC) Exclusions.

K.S.A. 16a-1-101 through 16a-6-414 do not apply to:

(1) Extensions of credit to government or governmental agencies or instrumentalities;

(2) the sale of insurance by an insurer if the insured is not obligated to pay installments of the premium and the insurance may terminate or be cancelled after nonpayment of an installment of the premium, except as otherwise provided in article 4 of chapter 40 of the Kansas Statutes Annotated, and amendments thereto.

(3) transactions under public utility or common carrier tariffs if a subdivision or agency of this state or of the United States regulates the charges for the services involved, the charges for delayed payment, and any discount allowed for early payment;

(4) pawnbrokers licensed and regulated pursuant to statutes of this state, except with respect to disclosure;

(5) transactions covered by the Kansas insurance premium finance company act K.S.A. 40-2601 *et seq.,* and amendments thereto.

History: L. 1973, ch. 85, § 10; Jan. 1, 1974.

KANSAS COMMENT, 2010:

Nonconsumer credit transactions are of course outside the scope of the U3C. In addition, several classes of transactions are expressly excluded in this section even though they might otherwise fall within the ambit of the U3C. Subsections (1) and (3) are derived from TILA 15 U.S.C.A. § 1603, which exempts government agencies and public utilities from truth in lending requirements. With respect to subsection (2), article 4 of the U3C covers the insurance aspects of consumer credit transactions, but the sale of insurance itself is excluded insofar as no installment obligation arises and cancellation may take place at any time. With respect to subsection (4), pawnbroker transactions are exempted from the U3C except for disclosure; they are regulated as to charges, licensing and other matters by K.S.A. 16-706 et seq. With respect to subsection (5), insurance premium financing is excluded from the U3C because of its uniqueness and its unusual rate structure, which is comprehensively covered by K.S.A. 40-2601 et seq.

Other transactions are inferentially excluded for failure to qualify under the definitions of the three key transactions covered by the U3C, "consumer credit sale," "consumer lease," and "consumer loan," or by one of the specific exclusions listed in those definitions. See K.S.A. 16a-1-301(14), (16), and (17), and the corresponding Kansas comments. One of the major categories of consumer transactions excluded from coverage under the U3C for failure to so qualify is the lease-purchase

agreement or rent-to-own contract. Those agreements are now comprehensively regulated by the Kansas consumer lease-purchase agreement act, K.S.A. 50-680 et seq.

Part 3

DEFINITIONS

K.S.A. 16a-1-301. General definitions.

As used in K.S.A. 16a-1-101 *et seq*., and amendments thereto:

(1) "Actuarial method" means the method of allocating payments made on a debt between the principal and the finance charge pursuant to which a payment is applied, assuming no late fees or other additional charges are then due, first to the accumulated finance charge and then to the unpaid principal balance. When a finance charge is calculated in accordance with the actuarial method, the contract rate is applied to the unpaid principal balance for the number of days the principal balance is unpaid. At the end of each computational period or fractional computational period, the unpaid principal balance is increased by the amount of the finance charge earned during that period and is decreased by the total payment, if any, made during the period after the deduction of any late fees or other additional charges due during the period.

(2) "Administrator" means the deputy commissioner of the consumer and mortgage lending division appointed by the bank commissioner pursuant to K.S.A. 75-3135, and amendments thereto.

(3) "Agent" means a person authorized through express or implied authority to act on behalf of a licensee or applicant.

(4) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance.

(5) "Amount financed" means the net amount of credit provided to the consumer or on the consumer's behalf. The amount financed shall be calculated as provided in rules and regulations adopted by the administrator pursuant to K.S.A. 16a-6-117, and amendments thereto.

(6) "Annual percentage rate" means the same and shall be interpreted in the same manner and be calculated using the same methodology as prescribed in 15 U.S.C. § 1606.

(7) “Applicant” means a person who applies to become licensed pursuant to K.S.A. 16a-2-302, and amendments thereto.

(8) "Assignment" means the act by which one person transfers to another person or causes to vest in that other person, any kind of property or valuable interests and includes any temporary or permanent transfer of servicing rights in the property or valuable interest.

(9) "Balloon payment" means any scheduled payment that is more than twice as large as the average of earlier scheduled payments.

(10) "Billing cycle" means the same and shall be interpreted in the same manner as prescribed in 12 C.F.R.1026.2(a)(4).

(11) "Cash price" of goods, services or an interest in land means the price at which they are offered for sale by the seller to cash buyers in the ordinary course of business and may include:

(a) the cash price of accessories or services related to the sale, such as delivery, installation, alterations, modifications, and improvements, and

(b) taxes to the extent imposed on a cash sale of the goods, services, or interest in land.

(c) The cash price stated by the seller to the buyer in a disclosure statement is presumed to be the cash price.

(12) "Closed-end credit" means the same and shall be interpreted in the same manner as prescribed in 12 C.F.R. 1026.2(a)(10).

(13) "Closing costs" with respect to a debt secured by an interest in land includes:

(a) 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

(b) bona fide and reasonable expenses incurred by the lender in connection with the making, closing, disbursing, extending, readjusting or renewing the debt which are payable to third parties not related to the lender, except that reasonable fees for an appraisal made by the lender or related party are permissible.

(14) "Conspicuous" means a term or clause that is so written so a reasonable person against whom it is to operate ought to have noticed it. Whether a term or clause is conspicuous or not is for decision by the trier of fact.

(15) "Consumer" means the buyer, lessee or debtor to whom credit is granted in a consumer credit transaction.

(16) "Consumer credit filer" means a person who is required to file a notice with the administrator pursuant to K.S.A. 16a-6-201 et seq., and amendments thereto.

(17) "Consumer credit insurance" means insurance, other than insurance on property, by which the satisfaction of debt in whole or in part is a benefit provided, but does not include insurance that:

(a) Is provided in relation to a consumer credit transaction in which a payment is scheduled more than 15 years after the extension of credit;

(b) is issued as an isolated transaction on the part of the insurer not related to an agreement or plan for insuring consumers of the creditor; or

(c) indemnifies the creditor against loss due to the consumer's default.

(18) "Consumer credit sale" means:

(a) Except as provided in paragraph (b), a sale of goods or services, in which:

(i) Credit is granted either by a seller who regularly engages as a seller in credit transactions of the same kind or pursuant to a credit card other than a lender credit card;

(ii) the buyer is a person other than an organization;

(iii) the goods or services are purchased primarily for a personal, family or household purpose;

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

(v) with respect to a sale of goods or services, the amount financed does not exceed the threshold amount.

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

(i) A sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card; or

(ii) a sale of an interest in land

(19) "Consumer credit transaction" means a consumer credit sale, consumer lease, or consumer loan or a modification thereof including a refinancing, consolidation, or deferral.

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

(a) That a lessor regularly engaged in the business of leasing makes to a person, other than an organization, who takes under the lease primarily for a personal, family or household purpose;

(b) in which the amount payable under the lease does not exceed the threshold amount;

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

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

(21) "Consumer loan":

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

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

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

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

(iv) the amount financed does not exceed the threshold amount.

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

(i) A loan secured by a mortgage; or

(ii) a loan made by a qualified plan, as defined in section 401 of the internal revenue code, to an individual participant in such plan or to a member of the family of such individual participant.

(22) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(23) "Credit card" means any card, or other single credit device that may be used from time to time to obtain credit. Since this involves the possibility of repeated use of a single device, checks and similar instruments that can be used only once to obtain a single credit extension are not credit cards.

(24) "Creditor" means a person who regularly engages directly or indirectly in extending credit in a consumer credit transaction or, except as otherwise provided, an assignee of a creditor's right to payment. The term assignee does not in itself impose on an assignee

any obligation of its assignor. In the case of credit extended pursuant to a credit card, the creditor is the card issuer and not another person honoring the credit card.

(25) "Director" means a member of a licensee's or applicant's board of directors.

(26) "Earnings" means compensation payable to an individual for personal services rendered or to be rendered by such individual, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension, retirement or disability program.

(27) "Finance charge" means all charges payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit. The finance charge shall be calculated as provided in rules and regulations adopted by the administrator pursuant to K.S.A. 16a-6-104, and amendments thereto.

(28) "Goods" includes goods not in existence at the time the transaction is entered into and merchandise certificates, but excludes money, chattel paper, documents of title, and instruments.

(29) “Installment” means a periodic payment required or permitted by agreement in connection with a consumer credit transaction.

(30) "Lender" includes an assignee of the lender's right to payment, but use of the term does not in itself impose on an assignee any obligation of the lender with respect to events occurring before the assignment.

(31) "Lender credit card" means a credit card issued by a supervised lender.

(32) “License” means the authorization allowing a person to make supervised loans pursuant to the provisions on authority to make supervised loans.

(33) “Licensee” means a person that is licensed by the administrator to engage in supervised loan activity.

(34) “Licensing” includes the administrator’s process respecting the grant, denial, revocation, suspension, annulment, withdrawal or amendment of a license.

(35) (a) “Loan”: Except as provided in paragraph (b), a "loan" includes:

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

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

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

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

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

(36) "Member" means, for the following business organizations:

(a) A co-partnership, a limited or general partner;

(b) an association that is a corporation, an owner;

(c) an association that is a member-managed limited liability company, the named managing partner; and

(d) an association that is a limited liability company managed by elected or appointed managers, all elected or appointed managers.

(37) "Merchandise certificate" means a writing or electronic instrument issued by a seller not redeemable in cash and usable in its face amount in lieu of cash in exchange for goods or services.

(38) "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.

(39) "Officer" means a person who participates or has the authority to participate, other than in the capacity of a director, in major policymaking functions of the licensee or applicant, whether or not the person has an official title, including the chief executive officer, chief financial officer, chief operations officer, chief legal officer, chief credit officer, chief compliance officer and every vice president.

(40) "Official fees" means:

(a) Taxes and fees prescribed by law that actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest related to a consumer credit transaction; or

(b) premiums payable for insurance in lieu of perfecting a security interest otherwise required by the creditor in connection with the sale, lease, or loan, if the premium does not exceed the fees and charges described in paragraph (a) which would otherwise be payable.

(41) "Open-end credit" means an arrangement pursuant to which:

(a) A creditor may permit a consumer, from time to time, to purchase goods or services on credit from the creditor or pursuant to a credit card, or to obtain loans from the creditor or pursuant to a credit card;

(b) the unpaid balance of amounts financed and the finance and other appropriate charges are debited to an account;

(c) the finance charge, if made, is computed on the outstanding unpaid balances of the consumer's account from time to time; and

(d) the consumer has the privilege of paying the balances in installments.

(42) "Organization" means a corporation, limited liability company, government or governmental subdivision or agency, trust, estate, partnership, cooperative, association or any other legally recognized business entity.

(43) "Person" includes a natural person or an individual, and an organization.

(44) (a) "Person related to" with respect to an individual means

(i) the spouse of the individual;

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

(iii) an ancestor or lineal descendant of the individual or the individual's spouse ;or

(iv) any other relative, by blood, adoption or marriage, of the individual or such individual's spouse.

(b) "Person related to" with respect to an organization means

(i) a person directly or indirectly controlling, controlled by or under common control with the organization;

(ii) an officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization;

(iii) the spouse of a person related to the organization; or

(iv) a relative by blood, adoption or marriage of a person related to the organization.

(45) "Prepaid finance charge" means any finance charge paid separately in cash or by check before or at consummation of a transaction or withheld from the proceeds of the credit at any time.

(46) "Principal" means the total of the amount financed and the prepaid finance charges, except that prepaid finance charges are not added to the amount financed to the extent such prepaid finance charges are paid separately in cash or by check by the consumer.

(47) "Regularly engaged" means a person that extends credit directly or through assignment more than 25 times in any state during the preceding calendar year.

(48) "Sale of goods" includes any agreement in the form of a bailment or lease of goods if the bailee or lessee agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the goods upon full compliance with such bailee's or lessee's obligations under the agreements.

(49) "Sale of services" means furnishing or agreeing to furnish services and includes making arrangements to have services furnished by another.

(50) "Seller" includes an assignee of the seller's right to payment, but use of the term does not in itself impose on an assignee any obligation of the seller with respect to events occurring before the assignment.

(51) "Services" includes:

(a) work, labor, and other personal services;

(b) privileges with respect to transportation, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations, and the like; and

(c) insurance.

(52) "Supervised financial organization" means a person, other than an insurance company or other organization primarily engaged in an insurance business:

(a) Organized, chartered or holding an authorization certificate under the laws of any state or of the United States which authorize the person to make loans and to receive deposits, including a savings, share, certificate or deposit account; and

(b) subject to supervision by an official or agency of such state or of the United States.

(53) "Supervised lender" means a person authorized to make or take assignments of supervised loans, either under a license issued by the administrator or as a supervised financial organization .

(54) "Supervised loan" means a consumer loan, including a loan made pursuant to open-end credit, with respect to which the annual percentage rate exceeds 12%.

(55) "Threshold amount" means an amount equal to at least $69,500 as of July 1, 2024, and adjusted effective January 1 of each subsequent year by any annual percentage increase in the consumer price index for urban wage earners and clerical workers that was in effect on June 1 of the preceding year. Any increase or decrease in the threshold amount shall be rounded up or down to the nearest increment of $100. If the consumer price index for urban wage earners and clerical workers in effect on June 1 does not increase from the consumer price index for urban wage earners and clerical workers in effect on June 1 of the preceding year, the threshold amount effective the following January 1 through December 31 shall not change from the preceding year.

(56) "Written agreement" means an agreement such as a promissory note, contract or lease that is evidence of or relates to the indebtedness. A letter that merely confirms an oral agreement does not constitute a written agreement for purposes of this subsection unless signed by the person against whom enforcement is sought.

(57) "Written administrative interpretation" means any written official interpretation by the administrator regarding the uniform consumer credit code and rules and regulations pertaining thereto.

History: L. 1973, ch. 85, § 11; L. 1980, ch. 75, § 4; L. 1980, ch. 76, § 5; L. 1981, ch. 93, § 5; L. 1982, ch. 89, § 2; L. 1984, ch. 83, § 1; L. 1988, ch. 85, § 2; L. 1992, ch. 80, § 1; L. 1993, ch. 200, § 4; L. 1993, ch. 200, § 5; L. 1996, ch. 166, § 2; L. 1998, ch. 106, § 1; L. 1999, ch. 107, § 8; L. 1999, ch. 166, § 8; L. 2000, ch. 27, § 1; L. 2006, ch. 97, § 1; July 1.

Revisor's Note: Section was also amended by L. 2000, ch. 64, § 1, but that version was repealed by L. 2000, ch. 159, § 14.

KANSAS COMMENT, 2010:

Subsection (1):

The definition of "actuarial method" is derived from TILA 15 U.S.C.A. § 1606(a)(1)(A). The assumption underlying the actuarial method is that a periodic payment is applied first to accumulated

unpaid finance charges (assuming there are no delinquency charges or other additional charges that take priority over finance charges). If the payment exceeds the unpaid accumulated finance charges, the remainder of the payment is applied to reduce the unpaid principal balance. The application of the actuarial method is really quite simple. First, the annualized stated interest rate is multiplied by the actual outstanding principal balance of the obligation. Next, the product of that calculation is multiplied by the actual number of days in the period in question (or by the assumed number of days in the period in a "360/360" transaction). Finally, the product of that calculation is divided by 365 (or, if agreed to by the parties, by 360). The result is the finance charge for the period in question. The consumer's payment is first allocated to the payment of the calculated finance charge (after deducting any delinquency charges or other additional charges due during the period) and the remainder, if any, is applied to reduce the unpaid principal balance of the obligation.

Subsection (2):

The administrator of the U3C is the deputy commissioner of the consumer and mortgage lending division of the Office of the State Bank Commissioner. Note, however, that the Kansas commissioner of insurance also issues rules and may participate in enforcement of article 4 of the U3C relating to consumer credit insurance. See K.S.A. 16a-4-111 and 16a-4-112. As mentioned in the comments to K.S.A. 16a-1-101, on-line versions of the U3C, these comments and administrative regulations and interpretations can be found at the administrator's web page, http://www.osbckansas.org. Similarly, recent Kansas legislative bills and supplemental notes affecting Kansas consumer credit matters can be accessed at http://www.kslegislature.org.

Subsection (3):

The definition of "agreement" is derived from the UCC. K.S.A. 84-1-201(3). The terms "course of dealing," "usage of trade," and "course of performance" should be given the same meanings under the U3C as under the UCC. See K.S.A. 84-1-303. Allowance should be made for the different context, e.g., consumer compared to commercial, and "course of performance" should apply to lessors and lenders as well as to sellers.

Subsection (4):

The "amount financed" is a key concept with respect to both rate ceilings and disclosures, as it determines the amount on which the finance charge is imposed and serves as a baseline for computing other allowable charges. The "amount financed" focuses on the amount of credit extended to the consumer (or on the consumer's behalf) and includes not only the cash price in a sale or the amount advanced under a loan, but also other amounts (such as official fees, insurance charges, and other additional charges (K.S.A. 16a-2-501)) that are not part of the finance charge (subsection (22)) to the extent payment of those amounts is deferred. The calculation of the amount financed is governed by a regulation adopted by the administrator (K.A.R. 75-6-26) which, under K.S.A. 16a-6-117, tracks the requirements of Regulation Z. Thus, the amount financed for a particular transaction will generally be disclosed in the truth in lending disclosure statement that the creditor prepares for that transaction under Regulation Z (at least for those transactions that are subject to Regulation Z).

Subsection (5):

The definition of "annual percentage rate" is a key term and determines the applicability of several restrictions and requirements under the U3C, such as limits on negative amortization and the need for a supervised lender's license. The annual percentage rate is designed to reflect in one number the annual cost of credit expressed as a percentage. The calculation of the annual percentage rate is governed by a regulation adopted by the administrator (K.A.R. 75-6-26) which, under K.S.A. 16a-6-117, tracks the requirements of Regulation Z. Thus, the annual percentage rate for a particular transaction will generally be disclosed in the truth in lending disclosure statement that the creditor

prepares for that transaction under Regulation Z (at least for those transactions that are subject to Regulation Z).

Subsection (6):

The definition of "appraised value" relates to mortgage loans and is critical for determining whether such loans are governed by the U3C generally (in the case of certain high loan-to-value first mortgage loans) or to certain of its substantive restrictions (in the case of certain high-rate first or second mortgage loans). The creditor may determine the appraised value by looking to

(1) the appraised value of the real estate as reflected in the records of the tax assessor of the relevant county,

(2) the fair market value of the real estate as reflected in a separate written appraisal that meets the statutory requirements, or,

(3) in the case of a nonpurchase money real estate transaction, the estimated value as determined through use of an automated valuation model.

The U3C does not require a creditor to obtain a separate written appraisal — the creditor may always choose to simply rely on the tax assessor's records. However, the creditor may want to obtain a separate written appraisal if, for example, it believes the value reflected in the tax assessor's records is below the fair market value that would be reflected in a separate written appraisal and that the fair market value would be great enough to avoid application of the U3C's restrictions on certain high loan-to-value mortgage loans. In such a case, the creditor may rely on the written appraisal even though the tax assessor's records reflect a lower value. In 2006, the U3C was amended to allow the use of an automated valuation model. Automated valuation models must be validated by an independent credit rating agency and acceptable to the administrator.

Subsection (7):

The concept of the "billing cycle" becomes important with respect to the provisions of the U3C regulating finance charges in open end credit transactions, including credit card transactions. See K.S.A. 16a-2-202 and 16a-2-402.

Subsection (8):

For either rate ceilings or disclosures to be meaningful in credit sales, the amount financed on which finance charges are imposed must include a true cash price. This definition essentially conforms to the definition in Regulation Z, 12 C.F.R. § 226.2(a)(9). The consumer or administrator can rebut the presumption that the cash price disclosed is the true cash price by showing that the cash price disclosed is not offered to cash buyers in the ordinary course of business. If a seller sells an item in ordinary course for $97 for cash but sells the same item for $100 to buyers wishing to pay installments, the $3 difference is not part of a true cash price but is a disguised finance charge imposed by the seller. See subsection (22). If the cash price disclosed is not a true cash price (i.e., if in the example above the seller discloses $100 as the cash price), the seller may be liable for a violation of the disclosure provisions (see K.S.A. 16a-5-203) and, if the finance charge would have been excessive had the true cash price been used, for an excess charge (see K.S.A. 16a-5-201(3) and (4)).

Nothing in this definition prevents sellers from selling both for cash and on credit for the same price. For purposes of this definition it does not matter whether the charges enumerated in paragraphs (a) and (b) are included in the cash price or separately stated, since they will be included in the amount financed in either case. See subsection (4).

Subsection (9):

The definition of "closed end credit" is residual in that it works by exclusion. In other words, if a consumer loan or consumer credit sale does not qualify as open end credit (see subsection (31)), then by definition it must be closed end credit.

Subsection (10):

The definition of "closing costs" was originally derived from TILA U.S.C.A. § 1605(e). However, the U3C definition was amended in 1996 to move away from the "laundry list" approach of permissible closing costs used by the TILA. As amended, the U3C definition authorizes two broad categories of charges for transactions secured by an interest in land:

(1) actual filing and recording fees, and

(2) all other expenses incurred by the lender in connection with making the loan.

Fees that typically qualify as closing costs include closing agent fees, appraisal fees, recording fees, title examination or insurance fees, document preparation fees, notary fees, pest inspection fees, application fees (if they are charged to all borrowers), courier fees, flood insurance determination fees (but only in connection with the initial decision to extend credit), credit report fees and tax service fees (but only in connection with the initial decision to extend credit). For additional guidance on the types of fees that are permitted, reference should be made to Regulation Z, 12 C.F.R. § 226.4(c)(7), K.A.R. 75-6-9 and to Administrative Interpretation No. 1009. Note that, except for appraisal fees, however, these expenses are considered closing costs only if paid to an unrelated third party. This is more restrictive than Regulation Z, which generally permits fees relating to services provided by a creditor's employees to be excluded from the finance charge. Moreover, all closing costs must be "bona fide and reasonable" and may not exceed the amount actually paid to the third party. This means that so-called "upcharges" of third-party fees are not permitted.

The significance of the definition is that closing costs are not included in the finance charge for purposes of rate ceilings and disclosure. See the Kansas comments to subsection (22) and K.S.A. 16a-2-501. Note that this definition is limited to transactions secured by an interest in land. Comparable costs charged to the consumer in non-real estate transactions would have to be included in the finance charge. This corresponds to the federal rule under truth in lending. Most first mortgage loans are excluded from the coverage of the U3C (see the Kansas comment to subsection (17)); as a result, this definition primarily applies to second mortgage loans.

Subsection (11):

The definition of "code mortgage rate" is used to determine whether certain high-rate first and second mortgage loans are subject to the U3C's restrictions on balloon payments and negative amortization. See subsection (17)(b)(i)(B). The definition uses a floating benchmark that is tied to the same index as the general usury rate for first mortgage loans (K.S.A. 16-207(b)), although the "margin" is 5% under the U3C instead of 1 1/2% under the general usury statute. Because the code mortgage rate uses a greater margin, it will always exceed the general usury limit for first mortgage loans. Thus, the parties would generally need to contract into the U3C to have a rate of finance charges on a first mortgage loan that exceeds the code mortgage rate. See K.S.A. 16a-1-109. That would make the transaction subject to the entire U3C and, at first blush, would seem to make this definition meaningless. There are at least two points to be made on this issue. First, adjustable mortgages subject to K.S.A. 16-207(h) are not subject to any rate ceiling. Thus, it would be possible to exceed the code mortgage rate on an adjustable mortgage without contracting into U3C. Second, even if a mortgage loan is otherwise subject to the entire U3C, its special restrictions on balloon

payments and negative amortization only apply if the interest rate on the loan exceeds the code mortgage rate or if the loan-to-value ratio of the loan exceeds 100%. See K.S.A. 16a-3-308a.

Subsection (12):

The definition of "conspicuous" is derived from the UCC, K.S.A. 84-1-201(10), but the specific examples set out in the UCC provision are omitted. Here, as under the UCC, the issue is whether attention can reasonably be expected to be called to a term. In the UCC, and in the official text of the uniform act, this issue was made a question of law. In this subsection, however, the Kansas legislature made the issue of conspicuousness a question of fact in consumer credit transactions. A similar variation was made in the section on unconscionability. See the Kansas comment to K.S.A. 16a-5-108.

Subsection (14):

Since most of the operative provisions of the U3C apply to consumer credit sales, consumer leases, or consumer loans, the definitions of these terms are the key scope definitions of the U3C. Under the definition of "consumer credit sale" in this subsection, the U3C applies to the same sales transactions as does the TILA. The requirement that a sale either be payable in more than four installments or subject to a finance charge excludes a great mass of transactions, e.g., the 30-day retail charge account and the short term credit furnished by professional people and artisans on a one-payment basis in connection with sales of their services for which no charge for credit is made. On the other hand, the U3C applies to merchants who sell on installments but make no identifiable charge for credit.

Sales or leases pursuant to a lender credit card give rise to loans as between the card issuer and cardholder, not to credit sales. See the Kansas comment to subsection (27). As originally adopted, the U3C covered consumer credit sales of land only if the rate of finance charge was above 12%. As a result of a non-uniform amendment in subparagraph (b)(ii), however, installment land sales are excluded from the U3C. Those transactions are instead regulated by K.S.A. 16-207(b) or (h) unless made subject to the U3C by agreement of the parties. See the Kansas comment to subsection (17) for a more complete discussion of the U3C's scope and policy with regard to land transactions.

Subsection (15):

Like the term "consumer," the term "consumer credit transaction" is all-embracing but takes meaning only from the more specific definitions of "consumer credit sale," "consumer loan," and "consumer lease." When the term "consumer credit transaction" is used, the intent is to make clear that the provision applies to all forms of consumer transactions. When a particular provision of the U3C is meant to apply only to consumer sales, or consumer lease, or consumer loans, those terms are used.

Subsection (16):

Leasing has become a popular alternative to credit sales as a means of distributing goods to consumers and merits inclusion in a comprehensive consumer credit code. The four month term requirement in paragraph (c) conforms to the federal Consumer Leasing Act, TILA 15 U.S.C.A. § 1667. It excludes from the U3C the innumerable hourly, daily, or weekly rental or hire agreements typically involving automobiles, trailers, home repair tools, sick room equipment, and the like. It also excludes the popular rent-to-own contracts for furniture, appliances, and electronic entertainment equipment, which typically obligate consumers only one week or month at a time. On the other hand, if the transaction, though in form a lease, is in substance a sale, it is treated as a sale for all purposes in the U3C and the provisions on consumer leases are inapplicable. See the definition of "sale of goods," subsection (38).

For those consumer leases which are covered, the U3C requires disclosure of the elements of the transaction (K.S.A. 16a-3-201 and K.A.R. 75-6-26); contains a number of contract limitations on agreements and practices (part 3 of article 3, notably K.S.A. 16a-3-301(2)) and on the lessee's liability (part 4 of article 3, notably K.S.A. 16a-3-401); regulates insurance provided in relation to consumer lease transactions (article 4); makes provisions for remedies and penalties in consumer lease transactions (article 5); and gives the administrator powers over consumer lease transactions (article 6). Since a finance charge is not made in the usual consumer lease transaction, the rate ceiling provisions of the U3C are inapplicable.

Subsection (17):

The primary definition of "consumer loan" in paragraph (a) generally parallels that of "consumer credit sale" in subsection (14)(a). It includes all loans under $25,000 made by a person regularly engaged in the business of making loans to individuals for personal, family or household purposes, as long as they are repayable in more than four installments or a finance charge is imposed. See the Kansas comment to subsection (27).

Changes in the first mortgage market have resulted in the availability of certain types of high-rate and high loan-to-value first mortgages that some view as raising the same consumer protection issues that historically existed only for second mortgage loans. As a result, the exclusion of first mortgages in subsection (b)(i) was narrowed in the 1999 legislative session so that certain first mortgage loans are subject to all or part of the U3C. Specifically, if the loan-to-value ratio (subsection (28)) of a first mortgage loan exceeds 100%, then the loan is subject to the entire U3C other than its rate ceilings — the permissible rate of interest on such a high loan-to-value first mortgage loan continues to be governed by K.S.A. 16-207(b), although the U3C's limits on prepaid finance charges apply to the transaction. See K.S.A. 16a-2-401(8). On the other hand, if the annual percentage rate on a first mortgage loan exceeds the code mortgage rate (subsection (11)), then the loan is subject to the U3C's restrictions on negative amortization and balloon payments. See K.S.A. 16a-3-308a. However, unless the transaction is otherwise subject to the U3C (because, for example, the parties contracted into the U3C or the transaction is a high loan-to-value loan), none of the other provisions of the U3C apply to the transaction. See also the Kansas comment to subsection (11). Another "scope" change made during the 1999 legislative session removed the long-standing exclusion from the U3C of a second mortgage held by the same creditor that holds the first mortgage. Second mortgage loans are now subject to the U3C, regardless of who holds the first mortgage.

Subparagraph (b)(ii), excluding certain pension plan loans, is not part of the uniform act. Pension plan loans are also exempt from the general usury laws. See K.S.A. 16-207(g). Discretionary overdrafts that are covered by a financial institution without a prearranged agreement to create or allow overdrafts are not "consumer loans" for purposes of the U3C. See Administrative Interpretation No. 1003.

Subsection (18):

The definition of "credit" emphasizes the fact that the U3C does not cover cash transactions. Credit is extended either when one who owes a debt is allowed to defer payment of the obligation or when one is given the right to incur an obligation in the future and to defer its payment. A commitment by a creditor to advance funds on request, as in the case of a letter of credit, is an example of the latter case.

Subsection (19):

The definition of "credit card" includes both seller and lender credit cards. The term encompasses the varied arrangements under which creditors equip consumers with a card or other form of access that enables them to obtain credit from the issuing creditor or others. The current definition has been brought in line with that under Regulation Z, 12 C.F.R.§ 226.2(a)(15).

Subsection (20):

The U3C uses the term "creditor" as a short-hand way to refer inclusively to sellers, lenders and lessors. The current definition of "creditor" was taken from TILA 15 U.S.C.A. § 1602(f) and Regulation Z, 12 C.F.R.§ 226.2(a)(17), which includes the "more than four installments" language found in this subsection. Many provisions of the U3C apply directly to assignees (e.g., K.S.A. 16a-2-301, 16a-2-304 and 16a-3-404). In the case of a lender credit card, the bank that issued the card, and not the merchant that honors it, is the "creditor."

Subsection (21):

The definition of "earnings" is derived in part from TILA 15 U.S.C.A.§ 1672(a). The language is broad enough to include sums owed to independent contractors.

Subsection (22):

The definition of "finance charge" is designed to pick up all charges "incident to or as a condition of the extension of credit" (whatever the parties call them), if they are imposed by the creditor on the consumer. Finance charges may be charges that are paid over the life of the transaction (such as the stated interest rate) or may be "prepaid" at or before the closing of the transaction (such as "points," which are charges to reduce the stated interest rate). The calculation of the finance charge is governed by a regulation adopted by the administrator (K.A.R. 75-6-26) which, under K.S.A. 16a-6-117, generally tracks the requirements of Regulation Z. Thus, the finance charge for a particular transaction under the U3C will generally be the same as that disclosed in the truth in lending disclosure statement that the creditor prepares for that transaction under Regulation Z (at least for those transactions that are subject to Regulation Z). One area of difference, however, is closing costs for real estate transactions that are not paid to an unrelated third party. Generally speaking, if a fee qualifies as a closing cost, it is excluded from the finance charge; if it fails to so qualify, it is normally included in the finance charge. Other than appraisal fees, the U3C limits closing costs in real estate transactions to fees that are paid to an unrelated third party. Regulation Z, on the other hand, allows closing costs to be paid to the creditor or a related party. See the Kansas comment to subsection (10) and Administrative Interpretation No. 1009. Thus, in a real estate transaction, the finance charge will be smaller under Regulation Z than under the U3C if there are closing costs (other than appraisal fees) that are payable to the creditor or a related party.

The definition of finance charge used in Regulation Z was amended in 1996 to deal specifically with charges imposed on the consumer by a third party. Generally, those charges must be included in the finance charge if the creditor requires the use of a third party as a condition of or an incident to the extension of credit (even if the consumer can choose the third party) or if the creditor retains a portion of the charge (but only to the extent of the portion retained). 12 C.F.R. § 226.4(a)(1). There are special rules for fees charged by a closing agent and fees charged by a mortgage broker. Closing agent fees must be included in the finance charge only if the creditor requires the particular services for which the consumer is charged, requires the charge to be imposed, or retains a portion of the charge (but only to the extent of the portion retained). 12 C.F.R. § 226.4(a)(2). Mortgage broker fees (whether paid by the consumer directly to the broker or indirectly through the creditor) must be included in the finance charge, even if the creditor does not require the use of a mortgage broker and even if the creditor does not retain any portion of the charge. 12 C.F.R. § 226.4(a)(3).

Charges imposed by financial institutions for covering discretionary overdrafts in the absence of a prearranged agreement to create or allow overdrafts are not "finance charges" for purposes of the U3C. See Administrative Interpretation No. 1003. This is consistent with the treatment of such charges under Regulation Z. See 12 C.F.R. § 226.4(c)(3) and the Official Staff Commentary to that section.

Subsection (23):

The definition of "first mortgage" conforms to the common understanding of that term and includes a mortgage that has a higher priority than any other mortgage or similar consensual lien on the real estate in question. The existence of a UCC fixture filing on personal property which is or becomes attached to the real estate would not preclude a mortgage from otherwise being a first mortgage, even if the fixture filing has priority under the UCC as to the fixture.

Subsection (24):

The definition of "goods," substantially conforms to that found in the UCC. Intangible property and commercial instruments are distinguished from "goods" both in the U3C and in the UCC. See K.S.A. 84-2-105(l) and 84-9-102(44).

Subsection (25):

Assignees take all rights conferred by the U3C on lenders. Various provisions of the U3C apply specifically to assignees. See also the Kansas comment to subsection (20).

Subsection (26):

As used in the U3C, "lender credit card" is limited to a card issued by a supervised lender (subsection (45)). The lender credit card arrangement is one under which the card issuer agrees to pay to third parties for purchases of goods and services by the cardholder. A bank credit card such as VISA or MasterCard is the most common example; however, licensed lenders (K.S.A. 16a-2-301) and other supervised financial organizations can also issue lender credit cards. See also the Kansas comments to subsections (19) and (27). "Credit card banks" are popular with retailers. Rather than issuing a seller credit card itself, the retailer establishes a bank that issues credit cards that can only be used at the retailer's stores. The cards issued by such a limited purpose entity are lender credit cards, and it is the special purpose entity, not the retailer, that is the creditor.

Subsection (27):

The distinction between loans and sales is basic to the applicability of the rate ceiling provisions (parts 2 and 4 of article 2), the licensing provisions (part 3 of article 2), and other provisions of the U3C. The traditional concept of a loan as an advance of money or a commitment to advance money is continued in paragraph (a). Under the U3C, forbearance of debt is characterized on the basis of the nature of the original debt. Thus, forbearance of debt arising from sales or leases is not a loan transaction for U3C purposes.

Seller credit cards, such as credit cards issued by retailers, are issued primarily for the purpose of enabling cardholders to purchase property or services from the card issuer or closely related persons such as franchisees. If seller credit card issuers allow their cardholders to obtain nominal cash advances pursuant to their credit cards, then such advances are loan transactions under paragraph (a)(ii), and if a finance charge exceeding 12% is imposed, the transaction becomes a supervised loan (see subsection (46)) and the licensing provisions of part 3 of article 2 apply.

There are companies which will contract to exchange cash to consumers for personal living expenses in exchange for a security interest in the consumer's potential settlement, judgment or verdict resulting from a personal injury claim. Such contracts may not require the consumer to repay the cash advance if the consumer does not receive a successful settlement, judgment or verdict in the civil case; however, if the consumer is successful then the consumer is obligated to repay the principal amount plus a finance charge. These contracts to advance plaintiff's funds are similar to the loan receipt transactions in the insurance industry which have been held to constitute loans even though the obligation to repay is contingent. See Hiebert v. Millers' Mutual Insurance Association of Illinois, 212 Kan. 249, 510 P.2d 1203 (1973). The Kansas Supreme Court has held agreements to

advance realtors cash for living expenses pending repayment from future anticipated commissions are not the sale of a business receivable discounted for commercial purposes, but rather the agreements constitute consumer loans. See Decision Point, Inc. v. Reece & Nichols Realtors, Inc., 282 Kan. 381, 144 P.3d 706 (2006).

Subsection (28):

The definition of "loan-to-value ratio" is critical in determining whether and to what extent the U3C regulates certain mortgage loans. The U3C was amended during the 1999 legislative session to extend many of the U3C's protections to these high loan-to-value loans. The key factor in determining whether the U3C applies is the loan-to-value ratio. If the unpaid principal balance of all loans secured by a first mortgage or a subordinate mortgage on the real estate in question exceeds the real estate's appraised value (subsection (6)), then the transaction is governed by the entire U3C (except for its interest rate ceilings in the case of a first mortgage loan). Of course, if a loan is made at a time when the loan-to-value ratio is less than 100% but that ratio later exceeds 100% because subsequent second mortgage loans are made or the value of the real estate declines, the existing loan is not viewed as a high loan-to-value loan. When dealing with an open-end mortgage loan (such as a home equity line of credit), the loan-to-value ratio should be determined by reference to the total amount of the line of credit rather than the amount that has been advanced as of any particular date.

Subsection (29):

"Merchandise certificate" primarily means the kind of scrip used by merchants to facilitate the purchase on credit of a number of relatively small items so that a separate contract or agreement is not required for each item purchased; it does not include a trading stamp redeemable only at a stamp redemption center.

Subsection (30):

The definition of "official fees" is derived from TILA 15 U.S.C.A. § 1605.

Subsection (31):

The definition of "open end credit" is intended to cover both revolving charge accounts offered by retailers and lines of credit under bank credit cards, overdraft protection plans and the like. The term should be contrasted with closed end installment contracts where the amount financed and the total finance charge can normally be calculated in advance.

The treatment of a transaction in which a seller credit card issuer allows a cardholder to make purchases and add them to an account payable at a fixed time after billing with no right to defer payment further and with a charge imposed for late payment will depend on the way in which the creditor deals with late payments. The ordinary 30-day "open account," for example, in which the consumer gets a bill at the end of the month and is expected to pay in full within 30 days, with no finance charge imposed, is not "open end credit" within the definition of this subsection. As long as any late charge is a "true" late charge, the transaction is not a "consumer credit sale" for purposes of the U3C because there is neither a finance charge nor the privilege of paying in installments. See subsection (14). On the other hand, if the late charge is in reality a disguised finance charge, then the transaction is a consumer credit sale involving open end credit and the entire U3C applies to it. The test is whether the charge is made for actual unanticipated late payment or other delinquency. For example, assume an oil company extends 30-day credit with no right to defer payment further and imposes a charge for late payment, but does not require surrender of the credit card if full payment is not made when billed. Instead, the consumer is permitted to continue to have purchases or other debts charged to the account in the ordinary course of business after imposition of the charge. In this case the transaction is a consumer credit sale made under open end credit and the entire U3C applies to it. Each case must be decided on its own facts.

Subsection (32):

The term "organization" includes virtually any legal entity except a natural person.

Subsection (33):

The term "person" is all-inclusive. Compare the definition of "organization" in subsection (32).

Subsection (34):

The term "person related to" finds use where the question is the relationship between a lender and a seller, lessor or other creditor.

Subsection (35):

The definition of "prepaid finance charge" is based on Regulation Z, 12 C.F.R.§ 226.2(a)(23). Common examples of prepaid finance charges include buyer's points, service fees, loan fees, finder's fees, loan guarantee insurance premiums and credit investigation fees. Additional guidance can be found in Administrative Interpretation No. 1009. Classification of items as prepaid finance charges is significant because the U3C imposes separate caps on the amount of prepaid finance charges that may be imposed in connection with a consumer credit transaction. Generally, the cap for non-real estate transactions is 2% of the amount financed or $100 (whichever if less), and the cap for real estate transactions (including those relating to certain manufactured homes) is 8% of the amount financed, although the amount payable to the lender or a related party may not exceed 5% of the amount financed. See K.S.A. 16a-2-201(3) and 16a-2-401(6). The amount of prepaid finance charges is calculated in accordance with TILA and Regulation Z. See K.A.R. 75-6-26. Thus, the prepaid finance charges for a particular transaction under the U3C will generally be the same as that disclosed in the truth in lending disclosure statement that the creditor prepares for that transaction under Regulation Z. See, however, the Kansas comments to subsections (10) and (22) as they relate to differences in closing costs and finance charges for real estate transactions under Regulation Z and the U3C.

Subsection (36):

The term "presumption" means a rebuttable presumption. See K.S.A. 60-414 on the effect of presumptions.

Subsection (37):

The definition of "principal" was added by legislation adopted in 1993 that prohibited use of the precomputed method of determining finance charges on transactions originated on or after January 1, 1994. However, legislation adopted in 1998 and 1999 reinstated the permissibility of precomputed finance charges for closed end consumer credit sales. K.S.A. 16a-2-201.

Subsection (38):

The term "sale of goods" is derived from TILA 16 U.S.C.A. § 103(g). It includes sales disguised as leases. See, e.g., Gulf Homes, Inc. v. Gonzales, 676 P.2d 635 (Ariz. App. 1983), holding that a lease/purchase option agreement for a mobile home was in reality a sales transaction subject to the state retail installment sales act. For a discussion of the special issues relating to so-called "rent-to-own" contracts, see the Kansas comment to subsection (16).

Subsection (39):

The term "sale of an interest in land" includes lease-option arrangements and is not limited to situations where the option price is nominal.

Subsection (40):

The term "sale of services" underscores the fact that the U3C applies to more than goods or real estate. For example, it covers installment contracts to provide dance lessons or "health salon" activities, or even the sale of legal services. See Ault v. General Property Management Co., 683 P.2d 988 (Okla. App. 1984). See also subsection (43). The KCPA also applies to the sale of services.

Subsection (41):

The definition of "second mortgage" refers to any mortgage or similar consensual lien on real estate other than a first mortgage.

Subsection (42):

With respect to the definition of "seller," see the Kansas comment to the definition of "lender" in subsection (25).

Subsection (43):

The U3C makes no exclusion for services furnished by members of professions— physicians, dentists, attorneys and the like. See also subsection (40). On the other hand, the definition of "consumer credit sale" in subsection (14) excludes the usual arrangement that professional people use in selling their services, since they usually do not enter into installment contracts with their patients or clients and do not impose finance charges. However, the U3C does apply if the professional agrees with his or her client to accept payment for services on an installment basis (with or without provision for a finance charge).

Subsection (44):

This subsection defines the class of lenders that may engage in the business of making supervised loans or taking assignments of such loans for collection without first being licensed under the U3C by the administrator (K.S.A. 16a-2-301). If a lender of this class is subject to supervision by an official or agency other than the administrator, the powers of examination, investigation and enforcement under the U3C may be exercised by that official or agency (K.S.A. 16a-6-105). This class of lenders typically includes persons authorized to make loans and receive deposits or their equivalent, such as banks, savings and loan associations and credit unions.

Subsection (45):

The term "supervised lender" includes any lender authorized to make loans with annual percentage rates in excess of 12%, including supervised financial organizations (such as banks).

Subsection (46):

The term "supervised loan" is defined according to the annual percentage rate. Although all persons making consumer loans are regulated by the U3C, those making loans with an annual percentage rate in excess of 12% must either be specifically licensed by the administrator or be supervised financial organizations.

Subsection (47):

The definition of "written agreement" is not part of the official text of the U3C; it was added to the Kansas U3C in 1984. The term is used primarily in the definitions of "consumer credit sale" and "creditor," which require a written agreement for certain installment contracts which do not impose a finance charge. Under this definition, the writing merely must be sufficient to be "evidence of" the agreement, it need not contain all the terms of the contract. However, a mere confirmatory letter is not sufficient under this subsection unless it is signed by the person against whom the agreement contained in the letter is enforced.

Subsection (48):

The definition of "written administrative interpretation" was added by legislation adopted in 1992. That legislation, among other things, insulates creditors from liability for penalties where they have relied in good faith on the administrator's official interpretations of the U3C. See K.S.A. 16a-5-201(9) and 16a-6-104(4).

Attorney General's Opinions:

- Interest charges; usury. 79-252.
- Finance charge for consumer loans; supervised lenders. 79-286.
- "Supervised financial organization". 80-80.
- Supervised lender; examination of national banks. 80-94.
- Interest and charges; business and agricultural loans. 81-200.
- Finance charges; additional charges not included therein. 81-209.
- Kansas liquor control act; cereal malt beverages; retail sales involving electronic fund transfers. 81-266.
- Consumer loans; finance charge; exemption of adjustable-rate loans from maximum finance charge limits. 82-128.
- Consumer credit transactions; prohibition on prepayment penalties; preemption as to national banks. 83-132.
- Consumer loans; maximum finance charges; loans secured by mortgage on real estate; charging of nonrefundable origination fee. 84-2.
- Definitions; supervised lender; supervised financial organization. 84-11.
- Attorney fees; national direct student loans. 86-113.
- Property and liability insurance. 87-47.
- Consumer credit insurance; amount of insurance. 88-13.
- Cable television company; late payment charges; "interest" and "finance charge". 88-30.
- Fair credit reporting act—permissible uses of credit reports. 88-89.
- Sale of intoxicating liquors on credit prohibited. 88-137.
- Investment certificates of investment companies' restrictions on investments. 88-166.
- Consumer credit transaction; blanket single interest insurance programs. 89-54.
- Interest rates applicable to certain real estate mortgages; loan agreements applying consumer credit code (UCCC) rates. 97-99.
- Casino and its employees, contractors and legal affiliates are prohibited from loaning money or extending credit to casino patrons. 2011-19.

Article 2 – FINANCE CHARGES AND RELATED PROVISIONS

Part 1

GENERAL PROVISIONS

K.S.A. 16a-2-103. Computation of finance charges.

(1) The provisions of this section shall apply to all consumer loans and all consumer credit sales.

(2) The finance charge on a consumer loan or consumer credit sale shall be computed in accordance with the actuarial method using either the 365/365 method or, if the consumer agrees in writing, the 360/360 method:

(a) The 365/365 method means a method of calculating the finance charge whereby the contract rate is divided by 365 and the resulting daily rate is multiplied by the outstanding principal amount and the actual number of days in the computational period.

(b) The 360/360 method means a method of calculating the finance charge whereby the contract rate is divided by 360 and the resulting daily rate is multiplied by the outstanding principal amount and the number of assumed days in the computational period. For the purposes of this subsection, a creditor may assume that a month has 30 days, regardless of the actual number of days in the month.

(c) If the documentation evidencing a consumer credit contract is silent regarding whether the 365/365 method or the 360/360 method applies, then the 365/365 method shall apply.

(3) The finance charge on a consumer loan or consumer credit sale may not be computed in accordance with the 365/360 method, whereby the contract rate is divided by 360 and the resulting daily rate is multiplied by the outstanding principal amount and the actual number of days in the computational period.

(4) Creditors may ignore the effect of a leap year in computing the finance charge.

(5) (a) Except for any portion of a loan made pursuant to a lender credit card which does not represent a cash advance, interest or other periodic finance charges on a consumer loan may accrue only on that portion of the principal which has been disbursed to or for the benefit of the consumer.

(b) On a consumer credit sale, interest or other periodic finance charges may accrue only on that portion of the principal which relates to goods or services that have been shipped, delivered, furnished or otherwise made available to or for the

benefit of the consumer or have been disbursed to or for the benefit of the consumer.

History: L. 1993, ch. 200, § 1; L. 1999, ch. 107, § 9; L. 2005, ch. 144, § 8; July 1.

KANSAS COMMENT, 2010:

1. This section was added to the U3C by legislation adopted in 1993 and was substantially rewritten by legislation adopted in 1999. Except for certain precomputed closed end consumers credit sales (K.S.A. 16a-2-201(4)), the finance charge on all consumer credit transactions must be computed in accordance with the actuarial method (K.S.A. 16a-1-301(1)). In making that computation, the creditor must generally use the so-called "365/365" method under which the contract rate of the finance charge is divided by 365 and then multiplied by the actual number of days in the relevant period. If the consumer agrees in writing, however, the creditor may use the so-called "360/360" method under which the contract rate of the finance charge is divided by 360 and then multiplied by the number of assumed days in the relevant period. In that regard, every month is assumed to have 30 days. Thus, for example, if payments are received on December 31 and January 31, the creditor would calculate the finance charge for the period between the payments by dividing the contract rate of finance charge by 360 and multiplying it by 30 (because January is assumed to have 30 days, the extra day is ignored). Similarly, if payments are received on January 31 and February 28, the creditor would still divide the contract rate of finance charge by 360 and multiply it by 30 (because February is assumed to have 30 days, two extra days are added). On the other hand, however, if payments are received on January 31 and February 27, the creditor would divide the contract rate of finance charge by 360 and multiply it by 27. Creditors may ignore the effect of a leap year in computing the finance charge.
2. Subsection (3) of this section states that when computing monthly interest on a consumer loan secured by a first or second lien real estate mortgage, computation is in a 30 day month and a 360 day year. The monthly interest is always to be computed based on scheduled due dates, regardless of the actual date the payment was received by the creditor.
3. Creditors may not under any circumstance compute the finance charge on any consumer credit transaction by using the so-called "365/360" method under which the contract rate of the finance charge is divided by 360 and multiplied by the actual number of days in the relevant period. That method results in a higher effective rate of finance charge and is often viewed as inappropriate in the consumer credit context.
4. Subsection (5) of this section prohibits the accrual of interest or other periodic finance charges except to the extent that the creditor has disbursed the proceeds of the transaction to or for the benefit of the consumer. An exception is made for loans (other than cash advances) under lender credit cards, on the theory that there may be a delay between the time the consumer uses the card (and receives the related goods or services) and the time the lender settles the transaction with the merchant.

K.S.A. 16a-2-104. (UCCC) Payment credit date.

(1) A creditor shall credit a payment to the consumer's account on the date of receipt, except when a delay in crediting does not result in a finance charge or other charge.

(2) Notwithstanding subsection (1), if a creditor specifies, in a writing delivered to the consumer, reasonable requirements for the consumer to follow in making payments but accepts a payment that does not conform to those requirements, then the creditor shall credit the payment within five days after receipt.

History: L. 1999, ch. 107, § 4; July 1.

KANSAS COMMENT, 2010:

1. This section, which was added by legislation adopted in 1999, is based on Regulation Z, 12 C.F.R. § 226.10. That provision requires prompt crediting of payments for open end accounts, and this section extends that requirement for all consumer credit transactions.
2. Subsection (2) of this section also follows Regulation Z's model and allows a creditor to establish reasonable requirements for payments such as sending them to a specific address or establishing a reasonable "cut-off" hour for payments. For additional guidance, see Administrative Interpretation No. 1010.

Part 2

CONSUMER CREDIT SALES: MAXIMUM FINANCE CHARGES

K.S.A. 16a-2-201. Finance charge for closed end consumer credit sales.

(1) This section applies only to a closed-end consumer credit sale.

(2) A seller may charge a finance charge at any rate agreed to by the parties, subject, however, to the limitations on prepaid finance charges set forth in subsection (3).

(3) A seller may charge a prepaid finance charge:

(a) For any consumer credit sale, an amount not to exceed the lesser of 2% of the amount financed or $300.

(b) A prepaid finance charge permitted under this subsection is in addition to finance charges permitted under subsection (2). A prepaid finance charge permitted under this subsection is fully earned when paid and is nonrefundable, unless the parties agree otherwise in writing.

History: L. 1973, ch. 85, § 16; L. 1980, ch. 77, § 1; L. 1981, ch. 94, § 1; L. 1982, ch. 93, § 1; L. 1983, ch. 79, § 1; L. 1985, ch. 82, § 1; L. 1988, ch. 85, § 3; L. 1988, ch. 86, § 1; L. 1988, ch. 87, § 1; L. 1993, ch. 200, § 6; L. 1995, ch. 54, § 1; L. 1997, ch. 90, § 1; L. 1998, ch. 107, § 1; L. 1999, ch. 107, § 10; L. 2000, ch. 28, § 1; July 1.

KANSAS COMMENT, 2010:

1. Subsection (2) of this section allows a seller in a closed end consumer credit sale to charge a finance charge at any rate agreed to by the parties. Subsection (6) makes it clear that this section does not apply to a "sale of an interest in land," even if the parties contract into the U3C.
2. While subsection (2) of this section allows the parties to agree to any rate of finance charge, subsection (3) limits the amount of prepaid finance charges in closed end transactions. For all closed end consumer credit sales (other than those relating to certain manufactured homes), the maximum amount of prepaid finance charges is 2% of the amount financed or $100, whichever is less. Legislation adopted in 2000 provides that, for manufactured homes described in subsection (3)(a), the maximum amount of prepaid finance charges is 5% of the amount financed. However, in order to charge the 5% fee, the fee must be used to "buy-down" the interest rate that would have applied had the fee not been charged. Subsection 3(b) does not apply to a consumer credit sale secured by a security interest in a "manufactured home" as described in subsection 3(a). Note that, in all cases, any prepaid finance charge must be included in the annual percentage rate calculation for disclosure purposes under the TILA.
3. Subsections (4) and (5) were added by legislation adopted in 1998 and 1999 to address certain issues relating to precomputed contracts. The legislation adopted in 1998 and 1999 allows precomputed contracts for closed end consumer credit sales and addresses various issues (such as the rebate required upon prepayment) relating to the use of precomputed contracts. Note, however, that precomputed contracts may not be used for consumer loans.

K.S.A. 16a-2-202. Finance charge for consumer credit sales pursuant to open end credit.

(1) This section shall apply only to open-end consumer credit sales.

(2) A seller may charge a finance charge at any rate agreed to by the parties.

(3) A charge may be made in each billing cycle which is a percentage of an amount no greater than:

(a) The average daily balance of the account, which is the sum of the actual amounts outstanding each day during the billing cycle divided by the number of days in the cycle; or

(b) the unpaid balance of the account on the last day of the billing cycle.

(4) If the billing cycle is monthly, the charges may not exceed 1/12 of the annual rate agreed to by the consumer. If the billing cycle is not monthly, the maximum charge is that percentage which bears the same relation to the applicable monthly percentage as the number of days in the billing cycle bears to 30. For purposes of this subsection, a variation of not more than four days from month to month is "the last day of the billing cycle."

(5) For any period in which a finance charge is due, the parties may agree on a minimum amount.

History: L. 1973, ch. 85, § 17; L. 1980, ch. 77, § 2; L. 1981, ch. 94, § 2; L. 1982, ch. 93, § 2; L. 1983, ch. 79, § 2; L. 1985, ch. 82, § 2; L. 1988, ch. 85, § 4; L. 1988, ch. 86, § 2; L. 1997, ch. 90, § 2; L. 1999, ch. 107, § 11; July 1.

KANSAS COMMENT, 2010:

1. This section applies to all open-end consumer credit sales, including sales pursuant to seller credit cards, and allows the parties to agree to any rate of finance charge. Subsection (5) makes it clear that this section does not apply to a "sale of an interest in land," even if the parties' contract into the U3C.

2. Under subsection (2) a credit seller is given two options in determining the balance on which the finance charge will be imposed. The TILA requires the creditor to disclose and explain the method used. See Regulation Z, 12 C.F.R.§§ 226.6(a)(3) and 226.7(e). The average daily balance ("ADB") method authorized by subsection (2)(a) is a method by which the finance charge is computed on the sum of the amount of the actual daily balances each day during the billing cycle divided by the number of days in the billing cycle. In practice, there are several methods of computing the average daily balance, and each produces a different outstanding balance for the billing cycle. In most methods, payments are credited on the date of receipt; early payments or payments in excess of the minimum payment due result in smaller finance charges. The main variable is whether the creditor includes or excludes current transactions, that is, charges or purchases incurred during the current cycle. This section permits the use of any of the standard ADB methods currently in use. It also permits the creditor to offer a "free ride," or grace period during which current charges may be paid without incurring any additional finance charges.

   There are also three common non-ADB methods of computing the outstanding balance, but not all of them are permitted by this section. The "closing balance" method, also known as the "ending balance" method, is authorized by subsection (2)(b). Under this method, finance charges are characteristically computed on the balance in the account as of the end of the current billing cycle. Credit is given for all payments and other credits during the cycle, but the closing balance may also include all purchases made during the current cycle even though they were never billed before.

   Subsection (2)(b) also permits the so-called "adjusted balance" method. Under this method, finance charges are based on the ending balance, including credit for payments and other credits during the current cycle, but without adding the current purchases. However, the so-called "previous balance method" is prohibited by this section. Under this method, the finance charge is computed on the outstanding balance at the beginning of the billing cycle, without adjustment for payments or other credits received during the cycle, and before adding charges incurred during the cycle.

3. Subsection (4) permits the parties to agree to a minimum finance charge for any period in which a finance charge would otherwise be due. Thus, for example, the parties could agree that a $1.00 finance charge will be due if the normal finance charge calculation results in any finance charge (such as 5¢) for the period in question.

Part 3

CONSUMER LOANS: SUPERVISED LENDERS

K.S.A. 16a-2-301. (UCCC) Authority to make supervised loans; residential mortgage loan origination; registration required.

(1) Unless a person is exempt from licensing pursuant to K.S.A. 16a-2-311, and amendments thereto, such person shall not engage in the business of:

(a) Making supervised loans; or

(b) taking assignments of and directly or indirectly, including through the use of supervised loans servicing contracts or otherwise, and either:

(i) Undertaking collection of payments from debtors arising from supervised loans, :or

(ii) enforcing rights against debtors arising from supervised loans.

(2) If any person is engaged in the business of subsection (l)(b), such person shall promptly apply for a license and may for three months collect and enforce without such license, provided such person's application has not been denied.

History: L. 1973, ch. 85, § 18; L. 1980, ch. 76, § 6; L. 1985, ch. 83, § 1; L. 1988, ch. 85, § 5; L. 2009, ch. 29, § 16; July 1.

KANSAS COMMENT, 2010:

1. Supervised lenders include supervised financial organizations (see K.S.A. 16a-1-301(44)). Because supervised financial organizations are already subject to supervision by other agencies, the U3C does not require them to obtain a license in order to make supervised loans. Moreover, under the doctrine of federal preemption, federally-chartered supervised financial organizations cannot be required to obtain a license from the administrator for any purpose. For a general discussion of the preemption doctrine, see Fidelity Federal Savings & Loan Ass'n v. de la Cuesta, 458 U.S. 141, 102 S.Ct. 3014, 73 L.Ed.2d 664 (1982). In Tokarz v. Frontier Federal Savings & Loan Ass'n, 656 P.2d 1089 (Wash. App. 1983), the court held that federal savings and loan associations were exempt from state consumer protection laws. The same rule has been applied to federal credit unions. See Brown v. Austin Area Teachers Federal Credit Union, 588 S.W.2d 629 (Tex. Civ. App. 1979).

   In an effort to keep a level playing field for state-chartered financial institutions, Congress extended "most favored lender" protection to all federally-insured, state-chartered financial institutions as a part of the interest rate deregulation legislation it adopted in the early 1980s. See 12 U.S.C.A. § 1785(g) (for federally-insured credit unions) and 12 U.S.C.A.§ 1831d (for other federally-insured depository institutions). Thus, state-chartered supervised financial organizations that are federally-insured may make supervised loans in Kansas without first obtaining a supervised lender's license. See May 4, 1987 letter from Rita M. D'Agostino to Jim

Maag, distributed by the Kansas Banker's Association as Legislative Bulletin 14-87. See also Kan. A.G. Op. 81-158 and Kan. A.G. Op. 81-210.

2. Supervised financial organizations may generally "export" to Kansas the interest rates and related charges permitted by their home states as a matter of federal law and they do not need to obtain a supervised lender's license to make supervised loans in Kansas.
3. Legislation adopted in 2009 clarifies that a person taking assignment of supervised loans but using independent contractors to either collect on such loans or to enforce the assignees' rights arising from such loans is required to have a supervised lender license. See also Independent Financial, Inc. v. Wanna, 39 Kan.App.2d 733, 186 P.3d 196 (2008). If an unlicensed assignee not previously engaged in Kansas is in the business of making collections or enforcing rights under the paper as assigned undertakes collection or enforcement of rights, subsections (1)(b) and (c) give the assignee a three-month grace period in which to operate before obtaining a license.

Attorney General's Opinions:

- Finance charge for consumer loans; supervised lenders. 79-286.
- Supervised financial organization. 80-80.
- Supervised lenders; examination of national banks. 80-94.
- Supervised lender fees. 80-236.
- Definitions; supervised lender; supervised financial organization. 84-11.
- Debt collection. 2012-11.

K.S.A. 16a-2-302. (UCCC) License to make supervised loans; registration for residential mortgage loan originator fees.

(1) (a) The administrator shall receive and act on all applications for licenses to make supervised loans. Any person required to be licensed pursuant to this act shall submit an application in the manner prescribed by the administrator that shall contain the information the administrator may require by rule and regulation to make an evaluation of the financial responsibility, character and fitness of the applicant.

(b) Submitted with each application shall be a nonrefundable application fee pursuant to K.S.A. 16a-6-104(5), and amendments thereto. A license shall become effective as of the date specified in writing by the administrator. The license year shall be the calendar year and the license shall expire on December 31 of the year unless the license is renewed pursuant to subsection (l)(d). Each license shall be nontransferable and nonassignable, and shall remain in force until surrendered, suspended or revoked.

(c) The administrator shall consider an application for a license abandoned if the applicant fails to complete the application within 60 days after the administrator 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 and shall pay the fee set forth in subsection (1) upon such

application. If an application is considered abandoned pursuant to K.S.A. 16a-2-302, and amendments thereto, an applicant may make a written request for a hearing. The administrator shall conduct a hearing in accordance with the Kansas administrative procedure act.

(d) A license shall be renewed annually for the subsequent year by filing with the administrator, on or before December 1 of the current year, a renewal application accompanied with the fee prescribed under subsection (1) for each license. Such application shall be filed in the farm and manner prescribed by the administrator and shall contain such information that the administrator requires to determine the existence of any material changes from the information contained in the applicant's original license application or prior renewal application. A late fee may be assessed if a renewal application is filed after December 1.

(e) Each renewal application shall be accompanied by a nonrefundable fee that shall be established by rules and regulations pursuant to K.S.A 16a-6-104, and amendments thereto.

(f) There is hereby established a reinstatement period. Licensees may submit a complete renewal application through the last day of February each year. If approved, there will be no lapse in license coverage. An application for renewal or reinstatement received after the last day of February shall be treated as an original application and shall be subject to all reporting and fees associated therewith.

(2) No license shall be issued unless the administrator, upon investigation, finds that the financial responsibility, character and fitness of the applicant, and of the members thereof if the applicant is a copartnership or association and of the officers and directors thereof, if the applicant is a corporation, are such as to warrant belief that the applicant or licensee shall operate honestly and fairly within the purposes of this act. An applicant meets the minimum standard of financial responsibility for engaging in the business of making supervised loans, K.S.A. 16a-2-301(1), and amendments thereto, only if:

(a) The applicant has filed with the administrator a proper surety bond of at least $100,000 which has been approved by the administrator. The bond must provide within its terms that the bond shall not expire for two years after the date of the surrender, revocation or expiration of the subject license, whichever shall first occur. The required surety bond may not be canceled by the licensee without providing the administrator at least 30 days' prior written notice, provided that such cancellation shall not affect the surety's liability for violations of the uniform consumer credit code 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 the principal that gives rise to a claim under the bond; and

(b) the applicant provides evidence in a form and manner prescribed by the administrator that establishes the applicant will maintain a satisfactory minimum net worth, as determined by the administrator, to engage in credit transactions of the nature proposed by the applicant. Such net worth requirements shall be established by the administrator pursuant to rule and regulation and shall not exceed $500,000 for each applicant or licensee.

(3) (a) A licensee shall provide written notice to the administrator within 10 business days of the occurrence of any of the following events:

(1) The closing or relocation of any place of business;

(2) a change in the licensee's name or legal entity status; or

(3) the addition or loss of any owner, officer, member or director

(b) The administrator may request additional information concerning any written notice received pursuant to subsection (a) and charge a reasonable fee for any action required by the administrator as a result of such notice and additional information.

(4) A licensee may conduct the business of making loans for personal, family or household purposes only at or from any place of business for which the licensee holds a license and not under any other name than that in the license. Loans made pursuant to a lender credit card do not violate this subsection.

(5) All solicitations and published advertisements concerning consumer credit transactions directed at Kansas residents, including those on the internet or by other electronic means, shall contain the name and license number or unique identifier of the licensee on record with the administrator. Each licensee shall maintain a record of all solicitations or advertisements for a period of 36 months. As used in this subsection, "advertising" excludes business cards or promotional items, including, but not limited to, pens, pencils, hats and other such novelty items.

(6) The administrator shall remit all moneys received under K.S.A. 16a-l-101 *et seq*., and amendments thereto, to the state treasurer in ac-cordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury. Of each such deposit, 10% shall be credited to the state general fund and the balance shall be credited to the bank commissioner fee fund. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the administrator or the administrator's designee. Late fees paid under this section may be designated by the administrator for consumer education.

History: L. 1973, ch. 85, § 19; L. 1976, ch. 98, § 1; L. 1981, ch. 95, § 1; L. 1999, ch. 107, § 12; L. 1999, ch. 166, § 9; L. 2000, ch. 27, § 2; L. 2001, ch. 5, § 57; L. 2005, ch. 144, § 9; L. 2009, ch. 29, § 17; L. 2011, ch. 53, § 5; July 1.

KANSAS COMMENT, 2010:

1. This section adopts a test of "financial responsibility, character and fitness." Bonding and maintaining a minimum net worth are important parts of "financial responsibility." Additional guidance on these requirements can be found in K.A.R. 75-6-31.
2. If increased competition should cause the development of undesirable credit practices, those practices are subject to controls by the administrator's powers to revoke or suspend a license (K.S.A. 16a-2-303), and by the other powers of the administrator (article 6) as well as the provisions on remedies and penalties available to aggrieved consumers (article 5).
3. Under subsections (5), (6) and (7), licensees may be required to obtain a license for each place of business and may do business only at licensed locations. See K.A.R. 75-6-30. A "place of business" includes any location in Kansas where the licensee places an automated loan machine. K.A.R. 75-6-30(c). A lender credit card issuer does not conduct business within the meaning of this section at the place where a third person honors the card. This rule, however, does not apply to supervised financial organizations. Their authority to open new offices at which they may receive deposits and make loans is found not in the U3C but in the statutes otherwise governing those organizations.
4. Annual fees are required of all licensees and all persons required to file notification. See K.S.A. 16a-6-201 through K.S.A. 16a-6-203. This includes all persons making consumer credit sales, consumer leases or consumer loans and persons taking assignments of and undertaking collection of payments from or enforcement of rights against debtors arising from such sales, leases or loans. Supervised financial organizations are exempt from these requirements.

Attorney General's Opinions:

- Supervised financial organization. 80-80.
- Supervised lender fees. 80-236.
- Investment certificates of investment companies; standards of operation; permissible loans. 81-239.
- Authority of legislature to transfer money from special revenue funds into state general fund. 2002-45.

K.S.A. 16a-2-303. (UCCC) Denial, revocation or suspension of license; disciplinary proceedings.

(1) The administrator may deny an application or renewal or revoke or a supervised loan license if the administrator 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 licensee has repeatedly or willfully violated the provisions of K.S.A. 16a-1-101 *et seq.,* and amendments thereto or any rules and regulations, order or administrative interpretation lawfully made pursuant to this act;

(b) facts or conditions exist that would clearly have justified the administrator in refusing to grant a license had such facts or conditions been known to exist at the time the application for the license was made;

(c) the applicant or licensee has filed with the administrator any document or statement falsely representing or omitting a material fact;

(d) the applicant, licensee, members a copartnership or association or officers and directors of a corporation have been convicted of a felony crime or any crime involving fraud, dishonesty or deceit or the applicant or licensee knowingly or repeatedly contracts with or employs persons to directly engage in lending activities who have been convicted of a felony crime or any crime involving fraud, dishonesty or deceit;

(e) the applicant of licensee has engaged in deceptive business practices;

(f) the applicant or licensee has been the subject of any disciplinary action by this or any other state or federal agency;

(g) a final judgment has been entered against the applicant or licensee in a civil action and the administrator 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;

(h) the applicant or licensee has failed to keep and maintain sufficient records to permit an audit satisfactorily disclosing to the administrator the applicant or licensee's compliance with the provisions of this act; or

(i) the applicant or licensee has failed to file and maintain the surety bond or net worth required in K. S.A. l6a-2-302, and amendments thereto.

(2) Upon written request, the applicant or licensee is entitled to a hearing in accordance with the Kansas administrative procedure act, K.S.A. 77-501 *et seq*., and amendments thereto, if the administrator denies an application, fails to issue a new license within 60 days of receipt of a complete application, revokes a license, suspends a license or fails to issue a renewal within 30 days after receipt of a complete application.

(3) Any person holding a license to make supervised loans may surrender the license by notifying the administrator in writing of its surrender, but this surrender shall not affect such person’s liability for acts previously committed.

(4) No revocation, suspension, or relinquishment of a license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any debtor.

(5) None of the following actions shall deprive the administrator of any jurisdiction or right to institute or proceed with any disciplinary proceeding against such licensee, to render

a decision suspending, revoking or refusing to renew such license, or to establish and make a record of the facts of any violation of law for any lawful purpose:

(a) The imposition of an administrative penalty under this section;

(b) the lapse or suspension of any license issued under this act by operation of law;

(c) the licensee's failure to renew any license issued under this act; or

(d) the licensee's voluntary surrender of any license issued under this act.

(6) The administrator may reinstate a license, terminate a suspension, or grant a new license to a person whose license has been revoked or suspended if no fact or condition then exists which clearly would have justified the administrator in refusing to grant a license.

History: L. 1973, ch. 85, § 20; L. 1988, ch. 356, § 47; L. 1999, ch. 107, § 13; L. 2005, ch. 144, § 10; L. 2009, ch. 29, § 18; July 1.

KANSAS COMMENT, 2010:

This section provides the procedural framework under which a supervised lender license may be denied, revoked, suspended or reinstated. It should be read in conjunction with part 4 of Article 6 of the U3C, particularly K.S.A. 16a-6-410. If the administrator finds repeated or willful violations of the U3C or related regulatory requirements, the licensee's license may be denied, revoked or suspended.

K.S.A. 16a-2-304. Records; annual reports; maintenance of records; security of records; preservation of records.

(1) Every licensee and any assignee or servicer of a consumer credit transaction and every consumer credit filer shall maintain records in conformity with generally accepted accounting principles and practices in a manner that will enable the administrator and, in the case of a supervised financial organization its supervisory official or agency, to determine whether the licensee, assignee, servicer or consumer credit filer is complying with the provisions of K.S.A. 16a-1-101 *et seq.,* and amendments thereto. The record keeping system of a licensee, assignee, servicer or consumer credit filer shall be sufficient if the licensee, assignee, servicer or any consumer credit filer makes the required information reasonably available. The records need not be kept in the place of business where supervised loans are made, if the administrator or supervisory official or agency is given free access to the records wherever located. Every licensee and every consumer credit filer shall provide the administrator with the name, address, telephone number, email address, contact person and any other reasonable information regarding the location and availability of current records of a consumer credit transaction. The records pertaining to any loan shall be kept for the minimum time frames established by the administrator pursuant to rules and regulations.

(2) Every licensee and any assignee or servicer of a consumer credit transaction, and every consumer credit filer shall establish, maintain and enforce written policies and procedures regarding security of records which are reasonably designed to prevent the misuse of a consumer's personal or financial information.

(3) Before ceasing to conduct or discontinuing business, a licensee, assignee, servicer or consumer credit filer shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this act and applicable rules and regulations for the remainder of each period specified.

(4) All books, records and any other documents required to be retained may be maintained in a photographic, reproduced or electronic format. If the records are photographed, reproduced or retained in an electronic format, the licensee, assignee or consumer credit filer shall meet the following criteria:

(a) Arrange the records to permit immediate location of any particular record;

(b) with respect to electronic images and records stored on computer storage medium, maintain procedures for maintenance and preservation of, and access to, records in order to reasonably safeguard these records from loss, alteration or destruction; and

(c) all books, records and any other documents shall be made available for examination and inspection by the administrator or the administrator's designee. All records shall be delivered to the administrator within three business days of the date such documents are requested.

(5) In lieu of retention of the original records, any such photograph or reproduction shall have the same force and effect as the original thereof and be admitted in evidence equally with the original.

(6) On or before April 15 of each year every licensee shall file with the administrator and, in the case of a supervised financial organization with its supervisory official or agency, a composite annual report in the form prescribed by the administrator relating to all loans made by such licensee. The administrator shall consult with comparable officials in other states for the purpose of making the kinds of information required in annual reports uniform among the states. Information contained in annual reports shall be confidential and may be published only in composite form.

(7) No person required to be a licensee or a consumer credit filer or an assignee or servicer of a consumer credit transaction under this act shall alter, destroy, shred, mutilate, conceal, cover up or falsify any record with the intent to impede, obstruct or influence any investigation by the administrator or the administrator's designee or any proceeding brought by or before the administrator.

History: L. 1973, ch. 85, § 21; L. 1980, ch. 76, § 7; L. 1998, ch. 106, § 2; L. 2005, ch. 144, § 11; L. 2009, ch. 29, § 19; July 1.

KANSAS COMMENT, 2010:

Licensees are required to file annual reports in a form prescribed by the administrator. This allows the administrator to compile statistics to aid in the discharge of the administrator's duties and to provide the legislature with information necessary for a proper evaluation of the effectiveness of the U3C.

Attorney General's Opinions:

- Supervised lenders; examination of national banks. 80-94.

K.S.A. 16a-2-308. (UCCC) Regular schedule of payments; maximum loan term.

Supervised loans not made pursuant to open-end credit or lender credit cards issued by a supervised lender and in which the amount financed is $1,000 or less and the principal of which is payable in more than a single payment must be scheduled to be payable in substantially equal installments at equal periodic intervals except to the extent that the schedule of payments is adjusted to the seasonal or irregular income of the debtor and over a period of not more than 25 months..

History: L. 1973, ch. 85, § 25; L. 1977, ch. 71, § 1; July 1.

KANSAS COMMENT, 2010:

Under this section, all closed end supervised installment loans of $1,000 or less must be repayable in substantially equal installments at equal periodic intervals (normally one month), except where irregularities are appropriate to meet the debtor's needs with respect to seasonal or irregular income. In addition, limits are imposed on the aggregate term of such loans depending upon the amount financed.

K.S.A. 16a-2-309. Conduct of business; other than making loans.

A licensee may conduct the business of making loans under K.S.A. 16a-1-101 *et seq*., and any amendments thereto, within any office, room or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, unless the administrator finds that the other business is of such nature that such conduct tends to conceal a violation of this act or of the rules and regulations made thereunder and shall order such licensee in writing to desist from such conduct.

History: L. 1973, ch. 85, § 26; L. 1998, ch. 106, § 3; Apr. 23.

KANSAS COMMENT, 2000:

This section allows a licensed lender to make supervised loans through a separate office located in a retail store unless the administrator finds that the arrangement would tend to conceal evasion of the U3C. An example of an operation which might be shut down by the administrator under this section is a loan office in a dealer's place of business to which credit buyers are referred in order to insulate the lender from defenses of the consumer. See K.S.A. 16a-3-405.

K.S.A. 16a-2-310. Prohibited acts by persons licensed or registered under act.

No person required to be licensed or required to be a consumer credit filer under this act shall directly or indirectly:

(a) Delay closing of a loan for the purpose of increasing interest, costs, fees or charges payable by the borrower;

(b) misrepresent the material facts or make false promises intended to influence, persuade or induce a consumer to enter into a loan;

(c) misrepresent to or conceal from an applicant for a loan, a guarantor or a lender, material facts, terms or conditions of a transaction to which the person required to be licensed or required to be a consumer credit filer is a party;

(d) engage in any transaction, practice or business conduct that is not in good faith or that operates a fraud upon any person in connection with any consumer credit transaction;

(e) transfer, assign or attempt to transfer or assign, a license to any other person or assist or aid and abet any person who does not hold a valid license under this act in engaging in conduct requiring a license;

(f) solicit or enter into a contract with a borrower that provides in substance that the person required to be licensed or required to be a consumer credit filer may earn a fee or commission through best efforts to obtain a loan even though no loan is actually obtained for the borrower; or

(g) fail to comply with the uniform consumer credit code, or rules and regulations promulgated thereunder, or fail to comply with any other state or federal law, including the rules and regulations promulgated thereunder, applicable to any business authorized or conducted under the uniform consumer credit code.

History: L. 2009, ch. 29, § 3; July 1; July 1, 2024.

K.S.A. 16a-2-311. Exemptions from the supervised loan licensing requirements.

(1) The following shall be exempt from the supervised loan licensing requirements of this act:

(a) A supervised financial organization;

(b) the federal deposit insurance corporation acting in its corporate capacity of as receiver; or

(c) an attorney who is forwarded contracts for collection.

(2) This section shall be a part of and supplemental to the uniform consumer credit code.

Part 4

CONSUMER LOANS: MAXIMUM FINANCE CHARGES

K.S.A. 16a-2-401. Finance charge for consumer loan; loan secured by mortgage or interest in manufactured home; prepaid finance charges.

(1) For any consumer loan incurred pursuant to open-end credit, including, without limitation, a loan pursuant to a lender credit card, a lender may charge a finance charge at any rate agreed to by the parties, subject, however, to the limitations on prepaid finance charges set forth in subsection (4).

(2) For any consumer loan incurred pursuant to closed-end credit, a lender may charge a periodic finance charge, calculated accordingly to the actuarial method, not to exceed 36% per annum.

(3) This section does not limit or restrict the manner of calculating the finance charge, whether by way of add-on, discount or otherwise, so long as the rate and the amount of the finance charge does not exceed that permitted by this section.

(4) Prepaid finance charges on consumer loans are limited to an amount not to exceed the lesser of 2% of the amount financed or $300. Prepaid finance charges permitted under this subsection are in addition to finance charges permitted under subsection (1) and (2), as applicable. Prepaid finance charges permitted under this subsection are fully earned when paid and are non-refundable, unless the parties agree otherwise in writing.

(5) If, within 12 months after the date of the original loan, a lender or a person related to the lender refinances a loan with respect to which a prepaid finance charge was payable to the same lender pursuant to subsection (4), then the following apply:

(a) If a prepaid finance charge with respect to the original loan was payable to the lender pursuant to subsection (4), then the aggregate amount of prepaid finance charges payable to the lender or any person related to the lender with respect to

the new loan may not exceed the lesser of 2% of the additional amount financed or $300.

(b) For purposes of this subsection, "additional amount financed" means the difference between:

(i) The amount financed for the new loan, less the amount of all costs incurred in connection with the new loan which are not included in the prepaid finance charges for the new loan; and

(ii) the unpaid principal balance of the original loan.

6) For any period in which a finance charge is due on a consumer loan pursuant to open-end credit, the parties may agree on a minimum amount.

(7) This section does not apply to a payday loan governed by K.S.A. 16a-2-404, and amendments thereto.

History: L. 1973, ch. 85, § 27; L. 1974, ch. 91, § 1; L. 1975, ch. 126, § 1; L. 1980, ch. 76, § 9; L. 1980, ch. 77, § 3; L. 1981, ch. 94, § 3; L. 1982, ch. 94, § 1; L. 1983, ch. 79, § 3; L. 1985, ch. 82, § 3; L. 1986, ch. 90, § 1; L. 1988, ch. 85, § 6; L. 1988, ch. 86, § 3; L. 1988, ch. 87, § 2; L. 1993, ch. 200, § 7; L. 1995, ch. 54, § 2; L. 1999, ch. 107, § 15; L. 2000, ch. 27, § 3; L. 2000, ch. 159, § 1; July 1.

Revisor's Note: Section was also amended by L. 2000, ch. 28, § 2, but that version was repealed by L. 2000, ch. 159, § 14.

KANSAS COMMENT, 2010:

1. Subsection (1) of this section allows the parties to agree to any periodic rate of finance charge on an open-end consumer credit loan (other than one secured by a first or second mortgage). Subsection (10) of this section allows the parties to agree on a minimum finance charge for any period during which a finance charge would otherwise be due in an open-end consumer loan.
2. Subsection (2) of this section establishes the following periodic rate ceilings for a closed end consumer loan (other than one secured by a first or second mortgage):
   (a) 36% per annum on the portion of the unpaid balance which is $860 or less, and
   (b) 21% per annum on the portion of the unpaid balance which exceeds $860.

   Legislation adopted in 2000 provides that these rate ceilings apply to the unpaid balance of the loan, and are not based on the original principal amount of the loan. Thus a promissory note for a loan subject to this subsection may have two different interest rates, with one rate applying to the portion of the unpaid principal balance of the loan which exceeds $860 at any given time and the other rate applying to the portion of the unpaid principal balance which is equal to or less than $860 at such time.
3. As mentioned above, mortgage loans are not governed by the provisions of subsections (1) or (2) of this section. The rate of finance charge for first mortgage loans (even if they are otherwise subject to all or part of the U3C because they are high-rate or high loan-to-value mortgages) is

governed by K.S.A. 16-207. Of course, the parties to a first mortgage loan can always agree to make the transaction subject to the U3C. In that event, subsection (4) limits the maximum rate of periodic finance charge to 18% per annum.

Under subsection (3), the maximum rate of periodic finance charge on second mortgage loans is 18% per annum. However, the parties to a second mortgage loan can agree in writing to "opt out" of the U3C's rate ceilings and instead use the general usury limit authorized by K.S.A. 16-207(b). Note, however, that the parties to a second mortgage loan may only "opt out" of the U3C's rate ceilings. All other provisions of the U3C (including its limits on prepaid finance charges) would continue to apply to the transaction.

Subsections (3), (4) and (6)(a) were amended by legislation adopted in 2000 to address permissible finance charges on consumer loans secured by certain manufactured homes. Subsection (3), as amended in 2000, provides that a lender may charge a periodic finance charge not to exceed 18% on any consumer loan secured by a qualifying manufactured home. A specific rate authority (e.g., subsections (3) or (4) in the case of loans secured by manufactured homes) should control over a more general or non-explicit rate authority (e.g., subsections (1) or (2)). Subsection (6)(a), as amended in 2000, does not require that the prepaid finance charge in a loan secured by a manufactured home be used to "buy down" the interest rate. Compare this to K.S.A. 16a-2-201(3), also amended by legislation in 2000, which requires the maximum 5% prepaid finance charge in a credit sale of a manufactured home be used to buy down the interest rate that would otherwise apply.

Under subsection (4), the parties to a "consumer" loan secured by a qualifying manufactured home in which the amount financed exceeds $25,000 may agree to "opt in" to the U3C and, in so doing, may agree on a periodic rate not to exceed 18% (as well as prepaid finance charges permitted under subsection (6))— rather than being limited to the 15% usury rate found in K.S.A. 16-207(a) for unsecured or personal property loans not governed by the U3C.

4. While federal law generally subjects national banks to the usury limitations of the states in which they are located, see 12 U.S.C.A.§ 85, national banks may "export" the interest rates and related charges permitted in their home state and are not bound by the interest rate limitations of the state of the consumer's residence. For example, a national bank located in South Dakota is not bound by the limits imposed by this section in the rates it charges its Kansas credit cardholders. See Marquette National Bank v. First of Omaha Corp., 439 U.S. 299, 99 S.Ct. 540, 58 L.Ed.2d 534 (1978). This same treatment has been expanded beyond the pure interest rate to include items such as late payment fees, returned check fees, over limit fees and the like. See Smiley v. Citibank (South Dakota), N.A., 116 S.Ct. 1730 (1996).

5. Subsection (6) deals with prepaid finance charges. Any prepaid finance charge would ordinarily need to be included in the calculation to determine whether the rate of finance charge on a transaction exceeds the limits prescribed by this section. Under the special rule of subsection (6), however, this result is changed. Note, however, that any prepaid finance charges still must be included in the annual percentage rate calculation for disclosure purposes under the TILA. As a result, it would be possible for a loan contract to disclose an annual percentage rate for purposes of the TILA that is greater than the stated rate allowed by this section, and yet not be in violation of this section. Moreover subsection (6) makes it clear that prepaid finance charges are earned at the time the loan is made. Thus, if a loan is prepaid no refund of any portion of the prepaid finance charges needs to be made, unless the parties have provided for a refund in a signed writing.

   The maximum amount of prepaid finance charges depends on whether or not the transaction is a mortgage loan (including a loan secured by a qualifying manufactured home). Subsection (a)

permits lenders who make loans secured by real estate or certain manufactured homes to impose prepaid finance charges of up to 8% of the amount financed. However, the total of all prepaid finance charges payable to the lender or any related person cannot exceed 5% of the amount financed. Two of the largest and most common prepaid finance charges in mortgage loans are "points" (or origination fees) and mortgage broker fees. As noted in the Kansas Comment to subsection (4), first mortgage loans that are subject to the U3C because their loan-to-value ratios exceed 100% remain subject to the interest rate limitations of K.S.A. 16-207. Under subsection (8) of this section, however, the U3C's limits on prepaid finance charges continue to apply to such loans. Similarly, if the parties to a second mortgage loan "opt out" of the U3C's rate ceilings under subsection (3), the U3C's limits on prepaid finance charges continue to apply to the transaction. Subsection (6)(b) permits lenders in loans not secured by real estate or certain manufactured homes to impose nonrefundable prepaid finance charges of up to 2% of the amount financed or $100, whichever is less.

Prepaid finance charges permitted under subsection (6) are expressed as a percentage of the "amount financed" of the loan. "Amount financed" is defined in K.S.A. 16a-1-301(4) as "the net amount of credit provided to the consumer or on the consumer's behalf." This definition — and the accompanying Kansas regulation, K.A.R. 75-6-26 — tracks the Regulation Z treatment of "amount financed." See Regulation Z, 12 C.F.R. § 226.18(b). This brings up a noteworthy point:

First, the "amount financed" is usually the principal amount of the loan minus the amount of any prepaid finance charges. (There are some minor exceptions to this general rule under Regulation Z.) This means that, when a prepaid finance charge is imposed, the "amount financed" will be less than the principal amount of the loan. Accordingly, a lender desiring to charge the maximum prepaid finance charge that can be paid to the lender itself under subsection (6)(a), that is 5%, would need to multiply that percentage (5%) by the amount financed, and not by the principal amount of the loan. To illustrate, if the principal amount of the loan is $100 and the prepaid finance charge is $4.76, then the amount financed would be $95.24. ($100 - $4.76 = $95.24.) This prepaid finance charge approximately equals the 5% limit under subsection (6)(a). ($4.76 / $95.24 = 5%, rounding issues aside.) Accordingly, in most situations, the maximum prepaid finance charge under subsection (6)(a) payable to the lender itself, when expressed as a percentage of the principal amount of the loan, is 4.7619% (.05 / 1.05 = .047619). This analysis assumes the entire prepaid finance charge is payable only to the lender, with no prepaid finance charge payable to a third party (e.g., a mortgage loan broker). If a prepaid finance charge is also payable to a third party (let's say $2 on a $100 principal amount loan), then the 4.7619% multiplier would need to be multiplied by the principal amount of the loan minus the third-party prepaid finance charge (in this example, $98). Similarly, in most cases the maximum prepaid finance charge under subsection (6)(a) payable to the lender and any third parties, again when expressed as a percentage of the principal amount of the loan, would be approximately 7.4% (.08 / 1.08 = .074070).

6. Subsection (9) of this section was added by legislation adopted in 1999 and is directed at the practice known as "loan flipping" — quick, repeated refinancings of a consumer loan that are often accompanied by significant prepaid finance charges. Under this provision, if a loan is refinanced within the first 12 months by the same lender or a related party, then the lender (or the related party) may not receive prepaid finance charges that exceed the specified limits based on the additional amount financed in the subsequent loan. In that regard, the additional amount financed is determined by subtracting the unpaid principal balance of the old loan and the closing costs for the new loan that are not included in the prepaid finance charges for the new loan from the amount financed for the new loan.

7. Subsection (11) of this section applies if the parties to a contract for deed to real estate "opt in" to the U3C and subject the transaction to the 18% limit on periodic finance charges and the 8%/5% limit on prepaid finance charges that apply to first mortgage loans.
8. In a nutshell, the Kansas maximum interest rate or finance charge structure as of July 1, 2000, is as follows:
    (a) Open end consumer loans not secured by a first or second mortgage (or a qualifying manufactured home) — the rate agreed to by the parties, plus prepaid finance charges of 2% of the amount financed or $100, whichever is less (K.S.A. 16a-2-401(1) and (6)(b));
    (b) closed end consumer loans not secured by a first or second mortgage (or a qualifying manufactured home)—36% on the unpaid principal balance which is $860 or less, and 21% on the unpaid principal balance which exceeds $860, plus prepaid finance charges of 2% of the amount financed or $100, whichever is less (K.S.A. 16a-2-401(2) and (6)(b));
    (c) "consumer" loans (not secured by an interest in land) in which the amount financed exceeds $25,000 — 15%, with no specific limit on prepaid finance charges (K.S.A. 16-207(a); not covered by the U3C);
    (d) open end consumer credit sales — the rate agreed to by the parties (K.S.A. 16a-2-202(1));
    (e) closed end consumer credit sales — the rate agreed to by the parties, plus prepaid finance charges of 2% of the amount financed or $100, whichever is less; however, in the case of a closed end credit sale of a qualifying manufactured home, the seller may charge prepaid finance charges of 5% of the amount financed provided that they are used to buy-down the interest rate (K.S.A. 16a-2-201(2) and (3));
    (f) "consumer" credit sales (other than a contract for deed) in which the amount financed exceeds $25,000 — 15%, with no specific limit on prepaid finance charges (K.S.A. 16-207(a); not covered by the U3C);
    (g) consumer loans secured by a first mortgage and contracts for deed having a fixed rate, term and amortization schedule — 1 1/2% above current rate for federal home loan mortgage corporation conventional mortgages, with no specific limit on prepaid finance charges (K.S.A. 16-207(b); rate not covered by the U3C regardless of the rate or loan-to-value ratio, but prepaid finance charges are subject to the U3C's limits if the loan-to-value ratio exceeds 100%);
    (h) consumer loans secured by a subordinate mortgage having a fixed rate, term and amortization schedule — 18% plus prepaid finance charges of 8% of the amount financed (with a 5% of the amount financed limit on prepaid finance charges paid to the lender or a related party) (K.S.A. 16a-2-401(3) and (6)(a));
    (i) consumer loans secured by a first or second mortgage and contracts for deed that permit adjustment of the rate, term or amortization schedule — the rate agreed to by the parties, subject to the prepaid finance charge limitations (K.S.A. 16-207(h) and K.S.A. 16a-2-401(6));
    (j) non-consumer first mortgage loans and contracts for deed that permit adjustment of the rate, term or amortization schedule — the rate agreed to by the parties, with no specific limit on prepaid finance charges (K.S.A. 16-207(h) and K.S.A. 16a-2-401(7));

(k) consumer loans secured by qualifying manufactured homes — 18% plus prepaid finance charges of 8% of the amount financed (with a 5% of the amount financed limit on prepaid finance charges paid to the lender or a related party) (K.S.A 16a-2-401(3), (4) and (6)(a));

(l) insurance premium financing — $12 per $100 (approximately 21.50%) plus a flat $10 (K.S.A. 40-2610; not covered by the U3C);

(m) pawnbroker transactions — 10% per month (120% per annum) on transactions of $5,000 or less only (K.S.A. 16-719; not covered by the U3C);

(n) business and agricultural loans — the rate agreed to by the parties, with no specific limit on prepaid finance charges (K.S.A. 16-207(f); not covered by the U3C);

(o) pension plan loans to an individual participant or family member— the rate agreed to by the parties, with no specific limit on prepaid finance charges (K.S.A. 16-207(g) and K.S.A. 16a-1-301(17)(b)(ii); not covered by the U3C);

(p) broker-dealer advances to purchase or carry securities —1 1/2% above the broker-dealer's most recent commercial loan or 10%, whichever is higher (K.S.A. 16-214; not covered by the U3C);

(q) delinquent accounts which do not otherwise provide for interest and are not covered by the U3C — 10% (K.S.A. 16-201).

Note that whenever "no specific limit on prepaid finance charges" is used in the foregoing discussion, it is not meant to indicate that prepaid finance charges are prohibited. Rather, it is intended to indicate that there is no allowance for prepaid finance charges that are separate and apart from the general limit on finance charges, and that any prepaid finance charges must be included in determining if the applicable rate ceiling has been exceeded.

Attorney General's Opinions:

- Interest and charges; usury. 79-252.
- Finance charge for consumer loans; supervised lenders. 79-286.
- Supervised lenders; examination of national banks. 80-94.
- Interest and charges; extension of most favored lender doctrine to state banks. 81-158.
- Finance charges; additional charges not included therein. 81-209.
- Consumer loans; finance charge; exemption of adjustable rate loans from maximum finance charge limits. 82-128.
- Consumer loans; finance charge; effect of amendments passed in same legislative session. 82-153.
- Consumer loans; finance charge; exception of adjustable rate loans from maximum finance charge limits. 82-227.
- Consumer loans; maximum finance charges; loans secured by mortgage on real estate; charging of nonrefundable origination fee. 84-2.
- Definitions; supervised lender; supervised financial organization. 84-11.
- Disclosure; discounts for cash purchases. 86-115.
- Interest rates applicable to certain real estate mortgages; loan agreements applying consumer credit code (UCCC) rates. 97-99.

K.S.A. 16a-2-402. (UCCC) Consumer loans pursuant to open end credit; allowable charges per billing cycle.

(1) This section applies only to consumer loans pursuant to open-end credit.

(2) A charge may be made in each billing cycle which is a percentage of an amount no greater than:

(a) The average daily balance of the account, which is the sum of the actual amounts outstanding each day during the billing cycle divided by the number of days in the cycle; or

(b) the unpaid balance of the account on the last day of the billing cycle.

(3) If the billing cycle is monthly, the charge may not exceed 1/12 of the annual rate agreed to by the consumer. If the billing cycle is not monthly, the maximum charge is that percentage which bears the same relation to the applicable monthly percentage as the number of days in the billing cycle bears to 30. For the purposes of this section, a variation of not more than four days from month to month is "the last day of the billing cycle."

History: L. 1973, ch. 85, § 28; L. 1999, ch. 107, § 16; July 1.

KANSAS COMMENT, 2000:

The actual rate ceilings for open end consumer loans are set forth in K.S.A. 16a-2-401. This section establishes rules for determining the amount of the unpaid balance against which the finance charge rates will be applied. The various methods of computing the unpaid balance, and the effect of these rules, are explained in Kansas comment 2 to K.S.A. 16a-2-202.

K.S.A. 16a-2-403. Prohibiting surcharge on credit or debit cards.

No person or retailer doing business in any sales, service or lease transaction with a customer may impose a surcharge on a customer who elects to use a credit card as payment unless such person or retailer discloses the amount of such a surcharge through a clear and conspicuous notice to the customer at the point of entry or the point of sale and in advance of such transaction.

History: L. 1986, ch. 90, § 2; L. 1999, ch. 107, § 17; L. 2010, ch. 64, § 1; July 1.

KANSAS COMMENT, 2010:

1. This section, which is not part of the uniform act, prohibits surcharges for the use of credit cards in sales and lease transactions. The concept of a "surcharge" assumes the existence of a regular price, or norm against which the surcharge can be measured. Presumably, any extra charge which increases the regular price to a credit card customer would be a surcharge. This is the definition

used in the TILA; the term "regular price" is defined in TILA, 15 U.S.C.A. § 1601(x) as the tag or posted price.

Under this section, as under the TILA, surcharges are distinguished from discounts and, discounts for using cash are permitted. See TILA, 15 U.S.C.A. § 1666f; Kan. A.G. Op. No. 86-115. As a practical matter, there is no difference between posting a price for gasoline, for example, of $1.00 per gallon and offering a discount of 4 cents to cash purchasers, and posting a price of 96 cents per gallon and imposing a surcharge of 4 cents to credit card purchasers. Either way, the cash purchaser pays 96 cents and the credit card purchaser pays a dollar. Yet under this section, one practice is legal and the other is not. Abuse or manipulation of this rule might be a deceptive trade practice under the KCPA.

2. Under 15 U.S.C.A. § 1666f, discounts offered for inducing payment by cash instead of credit card are not to be considered finance charges for purposes of state usury laws. This means that such discounts need not be figured into the calculations for purposes of determining whether a creditor exceeds the rate limits imposed by the U3C. TILA 15 U.S.C.A. § 1666f requires that discounts be offered to all prospective buyers and that their availability be disclosed clearly and conspicuously; compliance with this rule exempts such discounts from the finance charge disclosure provisions of the TILA.

Attorney General's Opinions:

- Disclosure; discounts for cash purchases. 86-115.

K.S.A. 16a-2-404. Payday loans; finance charges; rights and duties.

(1) On consumer loan transactions in which cash is advanced:

(a) With a short term,

(b) a single payment repayment is anticipated, and

(c) such cash advance is equal to or less than $500, a licensed or supervised lender may charge an amount not to exceed 15% of the amount of the cash advance.

(2) The minimum term of any loan under this section shall be 7 days and the maximum term of any loan made under this section shall be 30 days.

(3) A lender and related interest shall not have more than two loans made under this section outstanding to the same borrower at any one time and shall not make more than three loans to any one borrower within a 30-calendar day period. Each lender shall maintain a journal of loan transactions for each borrower which shall include at least the following information:

(a) Name, address and telephone number of each borrower; and

(b) date made and due date of each loan.

(4) Each loan agreement made under this section shall contain the following notice in at least 10 point bold face type:

> NOTICE TO BORROWER: KANSAS LAW PROHIBITS THIS LENDER AND THEIR RELATED INTEREST FROM HAVING MORE THAN TWO LOANS OUTSTANDING TO YOU AT ANY ONE TIME. A LENDER CANNOT DIVIDE THE AMOUNT YOU WANT TO BORROW INTO MULTIPLE LOANS IN ORDER TO INCREASE THE FEES YOU PAY.

Prior to consummation of the loan transaction, the lender must:

(a) Provide the notice set forth in this subsection in both English and Spanish; and

(b) obtain the borrower's signature or initials next to the English version of the notice or, if the borrower advises the lender that the borrower is more proficient in Spanish than in English, then next to the Spanish version of the notice.

(5) The contract rate of any loan made under this section shall not be more than 3% per month of the loan proceeds after the maturity date. No insurance charges or any other charges of any nature whatsoever shall be permitted, except as stated in subsection (7), including any charges for cashing the loan proceeds if they are given in check form.

(6) Any loan made under this section shall not be repaid by proceeds of another loan made under this section by the same lender or related interest. The proceeds from any loan made under this section shall not be applied to any other loan from the same lender or related interest.

(7) A consumer who is unable to repay a payday loan as contemplated under this section when due may elect once every 12 months to repay the payday loan by means of an extended payment plan. The 12-month period shall be measured from the date that the consumer pays in full an extended payment plan with the lender until the date that the consumer enters another extended payment plan with the lender.

(a) To request an extended payment plan, the consumer shall request the plan before close of business on the last business day before the due date of the outstanding payday loan and sign an amendment to the original agreement which memorializes the plan terms.

(b) The extended payment plan terms shall allow the consumer to repay the outstanding payday loan including any fee due in at least four substantially equal installments. Each plan installment shall be due on or after a date on which the consumer receives regular income, or, if the consumer has no regular income, due dates shall be a minimum of two weeks between installments. The consumer may prepay an extended payment plan in full at any time without penalty. As long as the consumer complies with the terms of the extended payment plan, the plan shall be at no additional cost to the consumer and the lender shall not charge

the consumer any interest or additional fees during the term of the extended payment plan. The lender may, with each payment under the plan by the consumer, provide for the return of the consumer's prior held check and require a new check for the remaining balance under the plan.

(c) If the consumer fails to pay any extended payment plan installment when due, the consumer shall be in default of the payment plan and the lender may immediately accelerate payment on the remaining balance and take action to collect all amounts due.

(d) No additional payday loan shall be made to the consumer under this section during an extended payment plan.

(e) Lenders shall prominently display the availability of extended payment plans where loans are made and shall disclose the availability of extended payment plans in payday loan agreements.

(8) On a consumer loan transaction in which cash is advanced in exchange for a personal check, one return check charge may be charged if the check is deemed insufficient as defined in K.S.A. 16a-2-501(1)(e), and amendments thereto. Upon receipt of the check from the consumer, the lender shall immediately stamp the back of the check with an endorsement that states: "Negotiated as part of a loan made under K.S.A. 16a-2-404. Holder takes subject to claims and defenses of maker. No criminal prosecution."

(9) In determining whether a consumer loan transaction made under the provisions of this section is unconscionable conduct under K.S.A. 16a-5-108, and amendments thereto, consideration shall be given, among other factors, to:

(a) The ability of the borrower to repay within the terms of the loan made under this section; or

(b) the original request of the borrower for amount and term of the loan are within the limitations under this section.

(10) A consumer may rescind any consumer loan transaction made under the provisions of this section without cost not later than the end of the business day immediately following the day on which the loan transaction was made. To rescind the loan transaction:

(a) A consumer shall inform the lender that the consumer wants to rescind the loan transaction;

(b) the consumer shall return the cash amount of the principal of the loan transaction to the lender; and

(c) the lender shall return any fees that have been collected in association with the loan.

(11) A person shall not commit or cause to be committed any of the following acts or practices in connection with a consumer loan transaction subject to the provisions of this section:

(a) Use any device of agreement that would have the effect of charging or collecting more fees, charges or interest or that results in more fees, charges or interest being paid by the consumer, than allowed by the provisions of this section, including, but not limited to:

(i) Entering into a different type of transaction with the consumer;

(ii) entering into a sales/leaseback or rebate arrangement;

(iii) catalog sales; or

(iv) entering into any other transaction with the consumer or any other person that is designed to evade the applicability of this section;

(b) use, or threaten to use the criminal process in any state to collect on the loan;

(c) sell any other product of any kind in connection with the making or collecting of the loan;

(d) include any of the following provisions in a loan document:

(i) A hold harmless clause;

(ii) a confession of judgment clause;

(iii) a provision in which the consumer agrees not to assert a claim or defense arising out of the contract.

(12) As used in this section, "related interest" shall have the same meaning as "person related to" in K.S.A. 16a-1-301, and amendments thereto.

(13) Any person who facilitates, enables or acts as a conduit or agent for any third party who enters into a consumer loan transaction with the characteristics set out in subsections (1)(a) and (1)(b) shall be required to obtain a supervised loan license pursuant to K.S.A. 16a-2-301, and amendments thereto, regardless of whether the third party may be exempt from licensure provisions of the uniform consumer credit code.

(14) Notwithstanding that a person may be exempted by virtue of federal law from the interest rate, finance charge and licensure provisions of the uniform consumer credit

code, all other provisions of the code shall apply to both the person and the loan transaction.

(15) This section shall be supplemental to and a part of the uniform consumer credit code.

History: L. 1993, ch. 75, § 1; L. 1999, ch. 107, § 20; L. 2001, ch. 50, § 1; L. 2004, ch. 29, § 1; L. 2005, ch. 144, § 12; July 1.

KANSAS COMMENT, 2010:

1. This section is not part of the uniform act. These loans take many forms, with some involving the up-front exchange of the consumer's personal check (which may or may not be post-dated) for a discounted amount of cash. The administrator has also found certain arrangements for the purchase of discount coupons for merchandise from a particular catalog and certain internet service contracts to be disguised payday loans requiring supervised loan licensure.
2. Subsection (1) sets special high-limit rate ceilings for payday loans. Several requirements must be met to take advantage of the special rate ceilings. First, the creditor must be a supervised lender. Second, the loan must have a "short term" — which is defined as a minimum term of seven days and a maximum term of less than 30 days. See subsection (2). Third, the parties must anticipate that the loan will be repaid in a single payment. Fourth, the cash advance cannot exceed $500. If all of these requirements are met, then the lender may charge the special rates authorized by this section. This statute must be read in conjunction with federal laws that impose additional restrictions with respect to rates, terms, and required disclosures on loans to military personnel and their dependents. The federal law and implementing regulations preempt state law. See, for example, Section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Talent Amendment), 10 U.S.C.A. § 987, regulations that implement section 670 from the Department of Defense, found at 32 C.F.R. Part 232, and the Servicemembers Civil Relief Act, 50 U.S.C.A. § 501 et seq.
3. Creditors should remember that their ability to impose the special rates authorized by this section does not exempt them from the other provisions of the U3C or the disclosure requirements of the TILA. As a result, the special rates authorized by this section will need to be converted into rather high annual percentage rates for pre-transaction disclosure to the consumer.
4. Other than one return check charge for a personal check given by the consumer in exchange for cash, subsection (5) prohibits other charges of any type from being imposed in connection with a payday loan. This may include, but is not limited to, insurance charges, charges for cashing a check representing the loan proceeds, collection costs, court costs, service of process fees, and/or attorneys' fees.
5. Subsection (5) permits the creditor to contract for interest if the loan is not repaid at maturity.
6. Subsection (6) prohibits the practice of repaying one payday loan with the proceeds of another payday loan from the same lender or a related interest.

K.S.A. 16a-2-405. Payday loans to military borrowers; restrictions.

(a) Any person who makes a loan under the provisions of K.S.A. 16a-2-404, and amendments thereto, shall:

(1) Not garnish any wages or salary paid to a military borrower for service in the armed forces.

(2) Defer all collection activity against a military borrower who has been deployed to a combat or combat support posting for the duration of such posting.

(3) Not contact any person in the military chain of command of a military borrower in an attempt to collect such loan.

(4) Honor all terms of any repayment agreement between the person making such loan and:

(A) The military borrower; or

(B) any military counselor or third-party credit counselor negotiating on behalf of the military borrower.

(5) Not make any loan to any military borrower whenever the military base commander has declared such person's place of business off limits to military personnel.

(b) For the purposes of this section, "military borrower" means any of the following that have been called to active duty:

(1) Any member of the armed forces of the United States;

(2) any member of the national guard; or

(3) any member of the armed forces reserves.

(c) This section shall be supplemental to and a part of the uniform consumer credit code.

History: L. 2005, ch. 144, § 22; July 1.

KANSAS COMMENT, 2010:

The military provisions added to the Code assist in providing extra safeguards under state law to military personnel. This section, as well as K.S.A. 16a-2-404 must be read in conjunction with federal laws that impose additional restrictions with respect to rates, terms, and required disclosures on loans to military personnel and their dependents. The federal law and implementing regulations preempt state law. See, for example, Section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Talent Amendment), 10 U.S.C.A. § 987, regulations that implement section 670 from the Department of Defense, found at 32 C.F.R. Part 232, and the Servicemembers Civil Relief Act, 50 U.S.C.A. § 501 et seq.

Part 5

CONSUMER CREDIT TRANSACTIONS: OTHER CHARGES AND MODIFICATIONS

K.S.A. 16a-2-501. (UCCC) Additional charges.

(1) In addition to the finance charge permitted by the parts of this article on maximum finance charges for consumer credit sales and consumer loans, a creditor may contract for and receive the following additional charges in connection with a consumer credit transaction:

(a) Official fees and taxes;

(b) charges for insurance as described in subsection (2);

(c) late fees permitted under K.S.A. 16a-2-502, and amendments thereto, and service charges for insufficient payment methods permitted under paragraph (e);

(d) charges for other benefits, including insurance, conferred on the consumer, if the benefits are of value to the consumer and if the charges are reasonable in relation to the benefits, are of a type which is not for credit, and are excluded as permissible additional charges from the finance charge by rules and regulations adopted by the administrator;

(e) a service charge for an insufficient payment method, not to exceed $30, subject to the limitations contained in this subsection:

(i) For the purposes of this subsection, "insufficient payment method" means any instrument as defined in K.S.A. 84-3-104, and amendments thereto, drawn on any financial institution for the payment of money of preexisting indebtedness of the drawer or maker, which is refused payment by the drawee because the drawer or maker does not have sufficient funds in or credits with the drawee to pay the amount of the instrument upon presentation. Any payment instrument that is postdated or delivered to a payee who has knowledge at the time of delivery that the drawer or maker did not have sufficient funds in or credits with the drawee to pay the amount of the check, draft or order upon presentation shall not be deemed an insufficient payment instrument..

(ii) "Notice" shall be given to a consumer providing an insufficient payment method by one of the following methods:

(1) First class mail addressed to the consumer's last known address; or

(2) a clear notice of the insufficient payment method charge on the consumer's regular monthly statement.

(iii) If the consumer does not pay the amount of the insufficient payment plus the service charge to the payee within 14 days from the giving of notice, the payee may add the service charge to the outstanding balance of the preexisting indebtedness of the consumer to draw interest at the contract rate applicable to the preexisting indebtedness.

(f) Notwithstanding the provisions of subsection (e), if an insufficient payment method has been given to a creditor under a lender credit card, the creditor may charge a service charge for the insufficient payment method in an amount not to exceed the amount agreed to by the drawer or maker.

(2) Except as otherwise provided for in this act, a creditor may agree to provide insurance and may contract for and receive an additional charge for insurance written in connection with the transaction, including vendor's single interest insurance with respect to which the insurer has no right of subrogation against the consumer but excluding other insurance protecting the creditor against the consumer's default or other credit loss:

(a) With respect to insurance against loss of or damage to property, or against liability, if the creditor furnishes a clear and specific statement in writing to the consumer setting forth the cost of the insurance if obtained from or through the creditor and stating that the consumer may choose the person through whom the insurance is to be obtained;

(b) with respect to consumer credit insurance providing life, accident and health, or loss of employment coverage, if the insurance coverage is not a factor in the approval by the creditor of the extension of credit, and this fact is clearly disclosed in writing to the consumer, and if, in order to obtain the insurance in connection with the extension of credit, the consumer gives specific affirmative written indication of the consumer's desire to do so after written disclosure to the consumer of the cost thereof.

(c) a creditor need not make a separate charge for insurance provided or required by such creditor. This act does not authorize the issuance of any insurance prohibited under any statute, or rule thereunder, governing the business of insurance; and

(d) the excess amount of a charge for insurance provided for in agreements in violation of this act is an excess charge for the purposes of this act.

(3) With respect to a consumer loan or a consumer credit sale in either case pursuant to open- end credit, a creditor may charge the following fees in an amount not to exceed that agreed to by the consumer:

(a) Fees on a monthly or annual basis;

(b) over-limit fees; and

(c) cash advance fees.

The fees permitted under this subsection are in addition to any finance charges, additional charges or other charges permitted by the uniform consumer credit code.

(4) A charge not exceeding $5 per payment, if the borrower makes a single installment payment by authorizing a creditor, verbally or in writing, to make a payment through electronic methods, subject to the following limitations:

(a) No charge shall be assessed if the creditor also collects a late fee on the same installment; and

(b) no charge shall be assessed where the consumer has agreed in writing with the creditor to make all scheduled payments through the use of electronic methods.

History: L. 1973, ch. 85, § 29; L. 1987, ch. 80, § 1; L. 1988, ch. 88, § 1; L. 1988, ch. 89, § 1; L. 1988, ch. 87, § 3; L. 1990, ch. 209, § 2; L. 1991, ch. 72, § 1; L. 1996, ch. 174, § 1; L. 1999, ch. 107, § 18; L. 2004, ch. 32, § 1; July 1.

KANSAS COMMENT, 2010:

1. There are two categories of charges a creditor is permitted to make at the beginning of a credit transaction:

(1) finance charges (K.S.A. 16a-1-301(22)), within the limits established by parts 2 and 4 of this article, and

(2) additional charges as enumerated in this section.

The additional charges specified in this section may be imposed in a consumer credit transaction without having to be included in the finance charge for rate ceiling or disclosure purposes. In general, the charges designated as additional charges fall roughly into two categories:

(1) those closely related to the extension of credit but providing valuable subsidiary benefits to the consumer (e.g., the annual fee for a credit card or line of credit, or the premium for credit life, health, or property insurance), and

(2) those ultimately payable to third parties with no portion of the charge returnable to the creditor by commission or otherwise (e.g., taxes, or filing fees for perfecting security interests).

Paragraph (d) of subsection (1) provides the administrator with the flexibility needed to deal with new kinds of charges as new credit transactions evolve.

"Closing costs" as additional charges are permitted. K.A.R. 75-6-9. See also the Kansas comment to K.S.A. 16a-1-301(10).

The administrator has issued an administrative interpretation under subsection (1)(d) concerning so-called guaranteed auto protection or "GAP" products. See Administrative Interpretation No.

1004. GAP products are designed to provide assurance that there will be no deficiency balance against a consumer in the event that the consumer's financed vehicle experiences a total loss and the consumer's physical damage insurance is not sufficient to pay the debt in full. The administrative interpretation sets forth detailed limitations on the circumstances under which GAP products may be sold, detailed requirements concerning the substantive provisions of the GAP contract and detailed actuarial reporting requirements. GAP contracts and other debt cancellation products are also subject to Regulation Z. The treatment of these products is modeled on the familiar rules for excluding the cost of insurance from the finance charge. Thus, in order to be excluded from the finance charge, the product must not be required by the creditor (and that fact must be disclosed in writing), the fee for the initial term of the coverage must be disclosed, and the consumer must sign or initial a written request for the coverage after receiving these disclosures. See Regulation Z, 12 C.F.R. § 226.4(d)(3).

2. Subsection (1)(e) is not part of the uniform act. It permits a charge to be imposed on dishonored checks offered in payment of pre-existing indebtedness. This rule would apply primarily to checks offered in payment of installment or credit card obligations, and not to bad checks given to merchants for payment in full of goods or services. This charge is conceptually different from the other charges permitted by this section in that it is not a "front-end" charge, or a charge imposed at the beginning of a credit transaction, but instead is more in the nature of a delinquency charge or penalty. Like the other charges permitted in this and the immediately following section, the insufficient check fee may be imposed only if it is provided for in the consumer credit contract. If a charge greater than $10 but not to exceed $30 is imposed, the specific amount must be included in the contract.

   K.S.A. 60-2610 creates treble damage civil liability for worthless checks under the circumstances and procedures spelled out in that section. However, because of the comprehensive nature of the U3C with respect to consumer credit transactions, and because of the rule of this section mandating that any charges other than finance charges be specifically authorized by this section (or elsewhere in the U3C), the liability created by K.S.A. 60-2610 would not apply to consumer credit transactions. The rule of K.S.A. 16a-1-104, providing against implicit repeal of any part of the U3C, supports this conclusion. See also Kan. A.G. Op. No. 90-93 construing the various bad check statutes in Kansas.

3. The TILA requires that charges or premiums for insurance be included in the "finance charge" for the purpose of disclosing the annual percentage rate unless certain strict requirements as to disclosure and voluntariness are met. See Regulation Z 12 C.F.R. § 226.4(d). The tests specified in subsection (2) of this section are not quite identical, but it seems clear that any creditor who meets the tests of Regulation Z will also satisfy the tests of subsection (2). See also Kan. A.G. Op. No. 89-54 comparing the provisions of the U3C and Regulation Z as they relate to single interest insurance programs. The effect of subsection (2) is to require that charges or premiums for insurance be included in the finance charge for ceiling purposes as well unless the stated conditions are satisfied. In that regard the Federal Reserve has interpreted Regulation Z as not requiring the creditor to obtain a specific written indication of the consumer's desire to purchase insurance in connection with post-loan sales of credit insurance. See Official Staff Commentary to Regulation Z, 12 C.F.R. § 226.4(b)(7) and (8). The administrator has construed subsection (2)(b) in a similar fashion. See Administrative Interpretation No. 1005.

Attorney General's Opinions:

- Finance charges; additional charges not included therein. 81-209.
- Property insurance; damage to property unrelated to credit transaction. 86-42.
- Consumer credit insurance; property and liability insurance. 87-3.

- Consumer credit transaction; blanket single interest insurance programs. 89-54.
- Worthless checks; statutory service charge; preexisting indebtedness; notice; refusal of payment. 90-93.

K.S.A. 16a-2-502. (UCCC) Delinquency charges.

(1) The parties to a consumer credit transaction may contract for a late fee on any installment not paid in full within 10 calendar days after its scheduled or deferred due date in an amount not exceeding 5% of the unpaid amount of the installment or $25, whichever is less.

(2) As an alternative to the late fee set forth in subsection (1), the parties to a consumer credit transaction may contract for a late fee not to exceed $10 on any installment not paid in full within 10 calendar days after its scheduled or deferred due date, except that if the scheduled payment amount is $25 or less, the maximum late fee shall be $5.

(3) A late fee may be collected only once on an installment however long it remains in default. A late fee may be collected at the time it is assessed or at any time thereafter.

(4) No late fee may be assessed when such a fee or charge is attributable solely to failure of the consumer to pay a late fee on an earlier installment and the payment is otherwise a periodic payment received on the due date, or within 10 calendar days after its scheduled or def erred installment due date.

(5) Notwithstanding subsections (1), (2) and (4), the parties to a lender credit card agreement may contract for a late fee in an amount agreed to by the consumer and may impose such charge on any installment not paid in full on the next business day following the scheduled due date of the late payment.

(6) Notwithstanding subsections (1), (2) and (4), no late fee may be collected on a lender credit card installment which is paid in full on the next business day following the scheduled or deferred due date even though an earlier maturing installment or a late fee on an earlier installment may not have been paid in full.

History: L. 1973, ch. 85, § 30; L. 1975, ch. 127, § 3; L. 1988, ch. 85, § 7; L. 1988, ch. 86, § 4; L. 1988, ch. 87, § 4; L. 1992, ch. 46, § 1; L. 1993, ch. 200, § 8; L. 1994, ch. 39, § 1; L. 1996, ch. 166, § 4; L. 1999, ch. 107, § 19; July 1.

KANSAS COMMENT, 2010:

1. This section permits creditors to impose delinquency charges for late installments, as set forth therein. In order for a delinquency charge to be imposed, however, it must be provided for by the underlying consumer credit contract. Subsection (1) follows the model of the uniform act and sets the maximum delinquency charge by reference to a percentage of the unpaid amount of an installment with a specific dollar cap — 5% of the unpaid amount of the installment, but not more than $25.00. Note that the 5% limit is only applied to the unpaid amount of the installment,

not to the entire installment. Thus, if the consumer makes $950 of a $1,000 installment on time, the maximum delinquency charge under subsection (1) is $2.50 ($50 x 5% = $2.50). Thus, only if the unpaid amount of the installment is $500 or more does the $25 cap come into play. In the alternative, per subsection (2), the creditor may contract for a flat delinquency charge of up to $5 for installments of $25 and less and a delinquency charge of up to $10 on installments in excess of $25.

2. Subsections (3), (4) and (5) are aimed at the abusive practice known as "pyramiding," or the imposition of multiple delinquency charges stemming from a single delayed payment. If a consumer missed the installment due in January, for example, but then paid the installment due in February on time, the creditor might try to apply the February payment to the missed January installment. This would create a delinquency for February as well as for January, and indeed for all remaining installments under the contract if the debtor continued to make subsequent payments on time but did not make up the January payment. Subsection (3) is intended to limit the creditor to a single delinquency charge (for the missed January payment), and attempts to prevent the creditor from "pyramiding," or collecting delinquency charges for the later months. The F.T.C. Credit Practices Rule, 16 C.F.R. § 444.4, contains a similar rule.

   Subsection (4) addresses a different sort of pyramiding. Under the law of some states, if the consumer's payments were due on the first of the month and the January payment of $100 was not made until the 15th, the creditor could assess a late payment of $5, and then allocate the $100 payment received on February 1st as follows: $5 to the delinquency charge for January, and $95 to the February payment. This would cause the February payment to be delinquent as well, and the creditor could then impose another delinquency charge and allocate the March payment in a similar fashion. Following this pattern, if the consumer made each of the remaining $100 payments on time for the balance of the contract, the consumer would incur a delinquency charge for each month because the creditor could allocate current payments to unpaid delinquency charges in past periods. Subsection (4) meets this problem by compelling the creditor to apply the full $100 payment received on February 1 to the payment due that month, and so on for the remaining payments. Hence, the creditor could collect the delinquency charge only for January if all other payments were made on time. Subsection (5) codifies the long-standing position of the administrator previously set forth in the administrative regulations.

3. Subsections (6) and (7) were added by legislation adopted in 1999 and provide special rules for lender credit cards. Under these special rules, the normal 10-day grace period and the normal limits on delinquency charges do not apply. Thus, a creditor under a lender credit card may contract for a delinquency charge of any amount and may impose it if an installment is not paid in full on the first business day following the scheduled due date. In 2009, TILA, 15 U.S.C. § 1601 et seq. was amended to include the "Credit Cardholders Bill of Rights Act of 2009." The Credit Cardholders Bill of Rights Act of 2009 states that a payment received by the creditor by 5 p.m. on the due date, shall be considered timely payment.

K.S.A. 16a-2-504. (UCCC) Finance charge on refinancing.

With respect to a consumer credit transaction, the creditor may by agreement with the consumer refinance the unpaid balance including any accrued charges. For the purpose of determining the finance charge permitted, the amount financed resulting from the refinancing refinanced shall be the total of the unpaid balance and the accrued charges on the date of the refinancing.

History: L. 1973, ch. 85, § 32; L. 1993, ch. 200, § 9; Jan. 1, 1994.

KANSAS COMMENT, 2010:

This section provides the method of determining the amount financed on which the finance charge is based when a consumer credit transaction is refinanced, and sets the ceiling for the charge. The amount financed for the new transaction is equal to the unpaid balance of the old transaction plus accrued charges at the date of refinancing. See K.S.A. 16a-2-401(9) limitations on prepaid finance charges if refinancing.

K.S.A. 16a-2-505. (UCCC) Finance charge on consolidation.

(1) If a consumer owes an unpaid balance to a creditor with respect to a consumer credit transaction and becomes obligated on another consumer credit transaction with the same creditor, the parties may agree to a consolidation resulting in a single schedule of payments. The parties may agree to add the unpaid amount of the amount financed and accrued charges on the date of consolidation to the amount financed with respect to the subsequent consumer credit transaction.

The creditor may contract for and receive a finance charge as provided in subsection (2) based on the aggregate amount financed resulting from the consolidation.

(2) If the debts consolidated arise exclusively from consumer credit sales the transaction is a consolidation as a consumer credit sale and the amount of the finance charge is governed by the provisions on finance charge for consumer credit sales other than open-end credit. If the debts consolidated include a debt arising from a consumer loan the transaction is a consolidation as a consumer loan and the amount of the finance charges is governed by the provisions on finance charge for consumer loans.

History: L. 1973, ch. 85, § 33; L. 1993, ch. 200, § 10; Jan. 1, 1994.

KANSAS COMMENT, 2000:

1. This section permits the consolidation of balances arising from different transactions between the same consumer and creditor. The unpaid balance of the amount financed on the old transaction (together with any accrued charges) on the date of the consolidation is simply added to the amount financed with respect to the later transaction. The consolidated total is then payable on one schedule of payments. This usually means that the maturity of the first transaction will be extended.
2. If a series of secured credit sales by the same seller is consolidated, the seller must also comply with the rules for allocating payments in cross-collateral transactions. See K.S.A. 16a-3-302 and 16a-3-303.

K.S.A. 16a-2-506. (UCCC) Advances to perform covenants of consumer.

(1) If a consumer credit transaction agreement requires a consumer to insure or preserve the collateral and the consumer fails to do so, after providing the consumer prior notification and a reasonable opportunity to perform, the creditor may pay for the performance of insuring or preserving the collateral on the consumer's behalf and may add the payment to the unpaid debt balance. Within a reasonable time after advancing any sums, the creditor shall state to the buyer in writing the amount of the sums advanced, any charges with respect to this amount, and any revised payment schedule and, if the duties of the consumer performed by the creditor pertain to insurance, a brief description of the insurance paid for by the creditor including the type and amount of coverages. No further information need be given.

(2) A finance charge may be made for sums advanced pursuant to subsection (1) at a rate not to exceed the rate stated to the consumer pursuant to law in a disclosure statement, except that with respect to open-end credit the amount of the advance may be added to the unpaid balance of the debt and the creditor may make a finance charge not exceeding that permitted by the appropriate provisions on finance charge for consumer credit sales pursuant to open-end credit or for consumer loans whichever is appropriate.

History: L. 1973, ch. 85, § 34; Jan. 1, 1974.

KANSAS COMMENT, 2010:

Under this section, and if the agreement so provides, in some instances the creditor may add to the debt sums paid or advanced for the performance of duties on behalf of the consumer. Before doing so, however, the creditor must give prior notice to the consumer and must also disclose the details of the transaction to the consumer after the amount has been added. If the original transaction was made pursuant to open end credit, the creditor may add the amount of the advance to the unpaid balance of the account. In other cases the creditor may impose a finance charge on the additional amounts paid or advanced at a rate not in excess of the rate disclosed to the consumer for the original transaction. Normally the creditor would compute this charge for the remaining period of the agreement, and increase the amount of the consumer's remaining payments accordingly.

K.S.A. 16a-2-507. (UCCC) Recovery of collection costs and attorney fees.

(1) (a) With respect to a consumer credit transaction, the agreement may provide for the payment by the debtor of reasonable costs of collection paid to outside parties, including, but not limited to, court costs, attorney fees and collection agency fees, except that such costs of collection and shall not:

(A) Include costs that were incurred by a salaried employee of the creditor or its assignee;

(B) include the recovery of both attorney fees and collection agency fees; or

(C) be in excess of 15% of the unpaid debt after default.

(2) A provision in violation of this subsection shall be unenforceable.

(b) Reasonable collection costs and attorney fees pursuant to subsection (a) shall be considered separate from reasonable expenses incurred on realizing a security interest pursuant to K. S.A. l 6a-3-402, and amend-ments thereto.

History: L. 1973, ch. 85, § 35; L. 1994, ch. 276, § 1; July 1.

KANSAS COMMENT, 2010:

1. The U3C not only places limitations on the amount that a creditor may charge a consumer for credit at the time the agreement is entered into (parts 2 and 4 of article 2), but also on the amount that the creditor may charge a defaulting consumer for collecting the debt. See also K.S.A. 16a-3-402.
2. This section permits the payment by the debtor of the reasonable costs of collection, including attorneys' fees or collection agency fees. However, there are significant limits on the creditor's ability to recover such costs. First, fees paid to an in-house attorney or collection agent on a salary may not be recovered. Second, the creditor may not recover both attorneys' fees and collection agency fees. Finally, the costs of collection may not exceed 15% of the unpaid debt after default. Note that the 15% limit is based on the amount of the "debt" — not on the unpaid "principal" balance. Thus, the creditor should be allowed to include other items in the computation such as unpaid delinquency charges, unpaid insurance premiums and any amounts that the creditor has advanced under K.S.A. 16a-2-506.
3. It is important to note that K.S.A. 16a-2-507, like many of the other post-transaction provisions of the U3C providing for costs or fees, is not self-executing. The costs of collection (including court costs, attorneys' fees or collection agency fees) are recoverable from the consumer only if the underlying agreement so provides. In Credit Union One of Kansas v. Stamm, 254 Kan. 367, 867 P.2d 285 (1994), the court held that a contract provision in a consumer credit transaction authorizing the creditor to recover attorney fees to the extent authorized by law, did not violate the prohibition in K.S.A. 16a-2-507 (overruling Halloran v. North Plaza State Bank, 17 Kan.App.2d 840, 844 P.2d 764 (1993)). Compare the disclosure required after default under K.S.A. 16a-5-110.

Attorney General's Opinions:

- Attorney fees; national direct student loans. 86-113.

K.S.A. 16a-2-508. (UCCC) Conversion to open end credit.

The parties may agree to add the unpaid balance of a consumer credit transaction not made pursuant to open-end credit to the consumer's open-end credit account with the creditor. The unpaid balance so added shall be an amount equal to the amount financed determined according to the provisions on finance charge on refinancing.

History: L. 1973, ch. 85, § 36; Jan. 1, 1974.

KANSAS COMMENT, 2000:

The parties may agree to add a closed end consumer loan or consumer credit sale to an open end account. This section provides that the old loan or sale is treated as being refinanced at the time of the conversion and the unpaid balance resulting from the refinancing (K.S.A. 16a-2-504) is added to the open end account.

K.S.A. 16a-2-509. (UCCC) Right to prepay.

The consumer may prepay in full the unpaid balance of a consumer credit transaction at any time without penalty.

History: L. 1973, ch. 85, § 37; L. 1993, ch. 200, § 11; Jan. 1, 1994.

KANSAS COMMENT, 2010:

This section does not apply to a first mortgage loan unless otherwise governed by the U3C. See K.S.A. 16a-1-301(17)(b). Nor does this section give the consumer a right to make a partial prepayment without the consent of the creditor.

Attorney General's Opinions:

- Interest and charges; usury. 79-252.
- Consumer credit transactions; prohibition on prepayment penalties; preemption as to national banks. 83-132.

K.S.A. 16a-2-510. (UCCC) Prepayment; minimum charges; judgments; rebate.

(1) Upon prepayment in full, but not upon a refinancing of a consumer credit transaction other than one pursuant to open-end credit, the creditor may collect or retain a minimum charge of $10, if the minimum charge was contracted for and the finance charge earned at the time of prepayment is less than the minimum charge contracted for. If the finance charge is less than the minimum provided therefor, then the finance charge so contracted may be retained as the minimum finance charge.

(2) If the maturity is accelerated for any reason and judgment is obtained, the judgment shall be taken in accordance with the provisions of K.S.A. 16-205, and amendments thereto.

(3) Upon prepayment in full of a consumer credit contract by proceeds of consumer credit insurance, the consumer or the consumer's estate shall be entitled to the same rebate as though the consumer had prepaid the agreement on the date the proceeds of the insurance are paid to the creditor, but no later than 10 business days after satisfactory proof of loss is furnished to the creditor.

History: L. 1973, ch. 85, § 38; L. 1974, ch. 90, § 2; L. 1982, ch. 93, § 4; L. 1988, ch. 85, § 8; L. 1988, ch. 86, § 5; L. 1993, ch. 200, § 12; L. 1999, ch. 107, § 21; July 1.

KANSAS COMMENT, 2010:

1. Subsection (1) permits the creditor to collect or retain specified minimum charges upon prepayment of any closed end consumer credit transaction if the minimum charge is contracted for and if the finance charge earned at the time of prepayment is less than the minimum charge. The permitted minimum charges are those for which the TILA requires no annual percentage rate disclosure. See Regulation Z, 12 C.F.R. § 226.18, fn 42.
2. The actuarial method has been mandated in all consumer credit transactions (other than precomputed closed end credit sales under K.S.A. 16a-2-201(5), which itself requires rebates to be calculated under the actuarial method).

Attorney General's Opinions:

- Interest and charges; usury. 79-252.

Article 3 – REGULATION OF AGREEMENTS AND PRACTICES

Part 1

GENERAL PROVISIONS

Part 2

DISCLOSURE

K.S.A. 16a-3-201. (UCCC) Consumer leases.

A lessor shall disclose to the consumer the information required by rules and regulations adopted by the administrator pursuant to K.S.A. 16a-6-104, and amendments thereto.

History: L. 1973, ch. 85, § 41; L. 1992, ch. 46, § 2; July 1.

KANSAS COMMENT, 2010:

1. The U3C covers only those leases which exceed four months in duration. See the Kansas comment to K.S.A. 16a-1-301(16). Note that potential liability at the end of the lease term is limited by K.S.A. 16a-3-401; see the Kansas comment to that section.
2. In 1976, Congress added the Consumer Leasing Act (CLA) to the TILA, 15 U.S.C.A. § 1667 et seq. The CLA contains its own requirements for disclosure in consumer leasing transactions, and inconsistent state law is preempted. See Federal Reserve Board Regulation M, 12 C.F.R. Part 213. As had earlier been done for consumer credit sales and loans, the administrator has adopted a regulation that incorporates the federal disclosure requirements for leases by reference. See K.A.R. 75-6-26. See also the Kansas comment to K.S.A. 16a-3-401.

K.S.A. 16a-3-202. (UCCC) Notice to consumer.

(1) A written agreement that requires or provides for the signature of the consumer and that evidences a consumer loan or consumer credit sale other than one pursuant to open-end credit shall contain a clear, conspicuous, and printed notice to the consumer that such consumer should not sign the agreement before reading it, and that such consumer is entitled to a copy of the agreement and may prepay the unpaid balance at any time without penalty. The following notice if clearly and conspicuously printed complies with this subsection:

NOTICE TO CONSUMER: 1. Do not sign this agreement before you read it. 2. You are entitled to a copy of this agreement. 3. You may prepay the unpaid balance at any time without penalty.

(2) A written agreement that requires or provides for the signature of the consumer and that evidences a consumer lease shall contain a clear, conspicuous and printed notice to the consumer that such consumer should not sign the agreement before reading it and that such consumer is entitled to a copy of the agreement. The following notice if clearly and conspicuously printed complies with this subsection:

NOTICE TO CONSUMER: 1. Do not sign this agreement before you read it. 2. You are entitled to a copy of this agreement.

History: L. 1973, ch. 85, § 42; Jan. 1, 1974.

KANSAS COMMENT, 2010:

The disclosures required in this section are intended to give the consumer some important information about closed end credit agreements or consumer leases. As to the definition of "conspicuous," see K.S.A. 16a-1-301(12).

K.S.A. 16a-3-203. (UCCC) Notice of assignment.

(1) The consumer is authorized to pay the original creditor until he receives notification of assignment of rights to payment pursuant to a consumer credit transaction and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the consumer, the assignee must provide reasonable proof that the assignment has been made or the consumer may pay the original creditor.

(2) If the payment is received by the assignor of a consumer credit contract for the benefit of the assignee, the date of payment shall be deemed to be the day payment is received by the assignor.

History: L. 1973, ch. 85, § 43; Jan. 1, 1974.

KANSAS COMMENT, 2010:

The consumer is protected in paying the original creditor until he or she receives notice of an assignment. This section is derived from the UCC, K.S.A. 84-9-406. The assignee should also be mindful of the potential for an affirmative duty to give certain notices with respect to refunds of premiums on consumer credit insurance. See the Kansas comment to K.S.A. 16a-4-108(3).

K.S.A. 16a-3-204. (UCCC) Change in terms of open end credit accounts.

(1) If a creditor makes a change in the terms of an open-end credit account without complying with this section any additional cost or charge to the consumer resulting from

the change is an excess charge and subject to the remedies available to consumers and to the administrator.

(2) A creditor may change the terms, including the finance charge, of an open-end credit account whether or not the change is authorized by prior agreement. Except as provided in subsection (3), the creditor shall give to the consumer written notice of any change at least 30 days before the effective date of the change.

(3) The notice specified in subsection (2) is not required if:

(a) The consumer elects to pay an amount designated on a billing statement as including a new charge for a benefit offered to the consumer when the benefit and charge constitute the change in terms and when the billing statement also states the amount payable if the new charge is excluded;

(b) the change involves no significant cost to the consumer; or

(c) the change applies only to debts incurred after a date specified in a notice of the change.

(4) The notice provided for in this section is given to the consumer when mailed to the consumer at the address used by the creditor for sending periodic billing statements.

History: L. 1973, ch. 85, § 44; L. 1980, ch. 77, § 4; L. 1981, ch. 94, § 4; L. 1982, ch. 93, § 5; L. 1983, ch. 79, § 4; L. 1985, ch. 82, § 4; L. 1987, ch. 81, § 1; L. 1993, ch. 49, § 1; July 1.

KANSAS COMMENT, 2010:

In 2009, the Credit Cardholders Bill of Rights Act of 2009 was added to TILA 15 U.S.C. § 1601 et seq. Such Act preempts this provision to the extent it requires all creditors to provide at least 45 days notice to the consumer prior to the effective date of a rate increase. The notice must completely and conspicuously describe the changes in the APR and describe how the increase will apply to an existing balance. If the customer disapproves of the change he or she may avoid any liability predicated on it

(a) with respect to future transactions, by refraining from making further purchases or loans under the revolving account, and

(b) with respect to the balance in the account at the time of the notice of change, by paying it in full before the change takes effect.

K.S.A. 16a-3-205. (UCCC) Receipts; statements of account; evidence of payment.

(1) The creditor shall deliver or mail to the consumer, without request, a written receipt for each payment by coin or currency on an obligation pursuant to a consumer credit transaction. A periodic statement showing a payment received by mail or electronic methods shall comply with this subsection.

(2) Upon written request of the consumer, the person to whom an obligation is owed pursuant to a consumer credit transaction, other than one pursuant to open-end credit, shall provide a written statement of the dates and amounts of payments made within the past 15 months and the amount required to pay the debt in full. The statement shall be provided without charge.

(3) After a consumer has fulfilled all obligations with respect to a consumer credit transaction, other than one pursuant to open-end credit, the person to whom the obligation was owed shall upon request of the consumer, deliver or mail to the consumer written evidence acknowledging payment in full of all obligations with respect to the transaction.

History: L. 1973, ch. 85, § 45; L. 2005, ch. 144, § 13; July 1.

KANSAS COMMENT, 2000:

1. Subsection (1) assures consumers of receipts for payments made in currency but imposes no duty on creditors to give receipts for payments made by check, money order, or the like. Sending periodic statements for open end credit accounts (Regulation Z § 226.7) showing payments made relieves the creditor of any further duty to send receipts. A creditor may also comply with this section by sending periodic statements showing payments in closed end transactions.
2. Subsection (2) allows consumers to obtain a statement of account in closed end transactions. The consumer's receipt of periodic statements serves this need in open end credit accounts.
3. Subsection (3) allows the consumer to obtain evidence of satisfaction upon payment in full of closed end credit obligations. Again, this requirement is unnecessary in open end credit owing to the creditor's duty to reflect payments in periodic statements.

K.S.A. 16a-3-206. (UCCC) Compliance with rules and regulations; truth in lending.

A creditor shall disclose to the consumer the information required by the rules and regulations adopted by the administrator pursuant to K.S.A. 16a-6-104, and amendments thereto.

History: L. 1973, ch. 85, § 46; L. 1981, ch. 93, § 6; L. 1987, ch. 80, § 2; July 1.

KANSAS COMMENT, 2010:

The disclosure requirements of the TILA (15 U.S.C.A. § 1601 et seq.) are incorporated by reference pursuant to rules and regulations adopted by the administrator under K.S.A. 16a-6-117 and this section. See K.A.R. 75-6-26. The purpose is to obtain dual administrative enforcement of the TILA. See K.S.A. 16a-5-203(6). The U3C does contain a few disclosure requirements that go beyond federal law. See K.S.A. 16a-3-202, 16a-2-404(4), and 16a-3-207.

Attorney General's Opinions:

- Arrests; citations; procedures and penalties; appearance bonds; use of credit cards. 82-165

K.S.A. 16a-3-208. Advertising; prohibited conduct.

(1) No person shall make, directly or indirectly, a false, misleading or deceptive advertisement regarding loans or the availability of loans.

(2) No person shall advertise the size of any loan, security required for a loan, rate of charge or other conditions of lending except with the full intent of making loans at those rates, or lower rates, and under those conditions or conditions more favorable to the consumer, to loan applicants who meet the standards or qualifications prescribed.

(3) This section shall be supplemental to and a part of the uniform consumer credit code.

History: L. 1999, ch. 107, § 2; July 1.

KANSAS COMMENT, 2010:
This type of deceptive advertisement prohibited by this section may violate the KCPA and expose the lender to penalties under both statutes.

K.S.A. 16a-3-209. Calendar days used for computing time.

(a) Unless otherwise specifically stated, for the purposes of K.S.A. 16a-1-101 *et seq.*, and amendments thereto, in computing any period of time, calendar days shall be used. The day of the act, event or default from which the designated period of time begins to run shall not be included. Saturdays, Sundays and legal holidays are included, unless the last day of the period so computed is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or a legal holiday. ''Legal holiday'' includes any day designated as a holiday by the Federal Reserve Bank.

(b) This section shall be part of and supplemental to the uniform consumer credit code.

History: L. 2009, ch. 29, § 1; July 1.

K.S.A. 16a-3-210. Use of electronic communication in lieu of regular mail.

(1) Any writing or signature required by this act may be provided or executed using an electronic format pursuant to K.S.A. 16-1601 *et seq*., and amendments thereto.

(2) If a consumer agrees in writing to the use of an electronic format instead of United States mail to send a document, any requirement under this act to use United States mail to send a document may be satisfied by sending the document by such electronic format. When a document is sent using an electronic format, the time of sending and receipt is defined pursuant to K.S.A. 16-1615, and amendments thereto.

(3) This section shall be a part of and supplemental to the uniform consumer credit code.

Part 3

LIMITATIONS ON AGREEMENTS AND PRACTICES

K.S.A. 16a-3-301. (UCCC) Security in sales or leases.

(1) With respect to a consumer credit sale, a seller may take a security interest in the property sold. In addition, a seller may take a security interest in goods upon which services are performed or in which goods sold are installed or to which they are annexed, or in land to which the goods are affixed or which is maintained, repaired or improved as a result of the sale of the goods or services, if in the case of a security interest in land the debt secured is $3,000 or more, or, in the case of a security interest in goods the debt secured is $900 or more. Except as provided with respect to cross-collateral, a seller may not otherwise take a security interest in property of the buyer to secure the debt arising from a consumer credit sale.

(2) With respect to a consumer lease, a lessor may not take a security interest in property of the lessee to secure the amount payable arising from the lease.

(3) A security interest taken in violation of this section shall be void.

History: L. 1973, ch. 85, § 47; L. 1981, ch. 93, § 7; L. 1999, ch. 107, § 22; July 1.

KANSAS COMMENT, 2010:

1. This section limits sellers and lessors with respect to the manner in which they may secure the obligation arising from a consumer credit sale (K.S.A. 16a-1-301(14)) or consumer lease (K.S.A. 16a-1-301(16)). Additional restrictions on collateral are found in the F.T.C. Credit Practices Rule, 16 C.F.R. Part 444, and Federal Reserve Board Regulation AA, 12 C.F.R. Part 227, which prohibit lenders and retail installment sellers of goods or services from receiving from any consumer an obligation which constitutes or contains a non-possessory, non-purchase money security interest in most household goods. See also K.S.A. 84-9-204, which limits security interests in after-acquired consumer goods.
2. Sales of goods. Under this section, a seller may take a security interest in the goods sold but not in other goods or land of the buyer unless the goods sold become closely connected with the other goods or land in which the security interest is taken. For example, an appliance dealer may retain a security interest in a washing machine sold but may not take a security interest in other appliances of the buyer to secure the sale obligation unless the dealer complies with K.S.A. 16a-3-302. Except as provided in K.S.A. 16a-3-302, a seller of goods may take additional security for the sale obligation in other goods or land of the buyer only if the debt secured is substantial $900 in the case of security interest in goods, $3,000 in the case of a security interest in land — and then only if the other goods or land in which the additional security interest is taken are closely related to the goods sold, i.e.,
    (a) goods in which the goods sold are installed or to which they are annexed (accessions), or

(b) land to which the goods are annexed (fixtures) or which is maintained, repaired, or improved by the goods sold.

The F.T.C. Credit Practices Rule does not affect the ability of sellers of goods to take security interests in land in these limited circumstances. For example, a mobile home dealer could take a mortgage on the consumer's lot in the mobile home park. However, the F.T.C. Rule may affect the seller of accessions. If the goods into which the goods sold are installed or annexed are household goods, the seller could not take the larger item as collateral. For example, a seller of a new engine or sound system could take a security interest in the car into which these items are installed, but a seller of a new motor for a washing machine could not take the washing machine as collateral because that would create a non-possessory, non-purchase money security interest in household goods in violation of the F.T.C. Rule.

3. Sales of services. Under this section, the seller may not take a security interest in goods or land of the buyer to secure an obligation arising out of the sale of services unless the services are performed on the goods or are used to maintain, repair, or improve the land. Even then, as in cases involving sales of goods, the debt secured must be substantial — $900 in the case of a security interest in goods and $3,000 in the case of a security interest in land. Thus a seller of dancing lessons may not take a security interest in goods or land of the buyer, and a carpenter or painter may take a security interest in the buyer's residence only if the debt arising from these services is $3,000 or more. Under the F.T.C. Rule, the seller of services may not take a security interest in household goods even if the services are performed on household goods. Thus an appliance repairman who repairs a consumer's washing machine may not take a security interest in that washing machine to secure the repair bill.
4. Sales of land. The seller can retain a security interest only in the land sold and not in other goods or land of the buyer. It should be noted, however, that this section applies only to consumer credit sales of land which are within the scope of the U3C. Most land sales are excluded from the coverage of the U3C. See the Kansas comment to K.S.A. 16a-1-301(14). See also K.S.A. 16a-2-307, which contains additional restrictions on taking land as security in certain supervised loans.
5. Consumer leases. A lessor may not secure the lease obligation by taking a security interest in property of the lessee. The lease itself, of course, serves as a form of security with respect to the leased property.

Attorney General's Opinions:

- Consumer credit insurance; property and liability insurance. 87-3.
- Property and liability insurance. 87-47.

K.S.A. 16a-3-302. (UCCC) Cross-collateral.

(1) In addition to contracting for a security interest pursuant to the provisions on security in sales or leases , a seller in a consumer credit sale may secure the debt arising from the sale by contracting for a security interest in other property if as a result of a prior sale the seller has an existing security interest in the other property. The seller may also contract for a security interest in the property sold in the subsequent sale as security for the previous debt.

(2) If the seller contracts for a security interest in other property pursuant to this section, the finance charge thereafter on the aggregate unpaid balances so secured may not exceed that permitted if the balances so secured were consolidated pursuant to the provisions on consolidation involving a refinancing . The seller shall have a reasonable time after so contracting to make any adjustments required by this section. "Seller" in this section does not include an assignee not related to the original seller.

History: L. 1973, ch. 85, § 48; Jan. 1, 1974.

KANSAS COMMENT, 2010:

1. A seller who sells goods on credit to a buyer in more than one sale may secure the debts arising from each sale by a cross-collateral security interest in the other goods sold so long as the seller has an existing security interest in the other goods. K.S.A. 16a-3-303 specifies when a seller loses a security interest in goods in a cross-collateral situation.
2. Cross-collateral clauses are most commonly used by sellers of furniture and appliances, and their use of these clauses may be affected by the F.T.C. Credit Practices Rule, 16 C.F.R. Part 444, which prohibits the taking of non-possessory, non-purchase money security interests in most household goods. See the Kansas comment to K.S.A. 16a-3-301. Under the F.T.C. Rule, cross-collateral clauses that attempt to make household goods serve as security for all current and future loans are invalid. However, the F.T.C. Rule does not prohibit retention of a security interest in household goods upon refinancing or consolidation of an original purchase money transaction. Thus, cross-collateral clauses are permitted to the extent that they allow a creditor to retain a security interest in refinancing or consolidating a prior transaction in which the security interest arose. As a result, household goods which secure the prior loan may continue to secure a refinanced or consolidated loan, but clauses that go beyond refinancing or consolidation of purchase money transactions violate the F.T.C. Rule if they include household goods.
3. In cases not involving household goods, subsection (1) allows cross-collateral to be taken either for separate debts or for consolidated debts, but subsection (2) limits the rate of the finance charge that a seller may charge in the separate debt case to that chargeable had the debts been consolidated pursuant to K.S.A. 16a-2-505(1).

K.S.A. 16a-3-303. (UCCC) Debt secured by cross-collateral.

(1) If debts arising from two or more consumer credit sales, other than sales pursuant to open- end credit, are secured by cross-collateral or consolidated into one debt payable on a single schedule of payments, and the debt is secured by security interests taken with respect to one or more of the sales, payments received by the seller after the taking of the cross-collateral or the consolidation are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been first applied to the payment of the debts arising from the sales first made. To the extent debts are paid according to this section, security interests in items of property shall terminate as the debt originally incurred with respect to each item is paid.

(2) Payments received by the seller upon an open-end credit account are deemed, for the purpose of determining the amount of the debt secured by the various security interests,

to have been applied first to the payment of finance charges in the order of their entry to the account and then to the payment of debts in the order in which the entries to the account showing the debts were made.

(3) If the debts consolidated arose from two or more sales made on the same day, payments received by the seller are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of the smallest debt.

History: L. 1973, ch. 85, § 49; L. 1981, ch. 93, § 8; July 1.

KANSAS COMMENT, 2010:

1. When a seller consolidates debts arising from multiple sales and secures the consolidated debt by security interests in the goods sold in those sales, or when a seller secures separate debts by cross-collateral (K.S.A. 16a-3-302), this section prevents the seller from retaining a security interest in all of the goods until the buyer's entire debt is paid. The basis of this section is that a security interest in goods terminates when the debt incurred in the purchase of those goods is paid. For the purpose of determining when this debt is paid, subsection (1) first allocates the buyer's payments to the debts first incurred. Thus, if the seller consolidates debts of $100, $200, and $300 arising from sales made in that order, the security interest in the goods purchased pursuant to the $100 sale terminates when $100 of the consolidated debt is paid. If the seller does not consolidate these debts but secures them by cross-collateral, all of the buyer's payments must be allocated to the $100 debt until it is paid off, and so forth. Subsection (2) applies this first-payments-against-first-debts rule to open end credit accounts.
2. Subsection (3) applies to the case in which the buyer purchases a $750 TV in one department at 9:30 a.m. and a $150 printer in another department at 10:00 a.m. Subsequently, the debts are consolidated. This subsection relieves the seller of having to keep records of the exact hour a sale is made.
3. This section applies only to credit sales; nothing in the U3C prohibits lenders from taking cross-collateral and applying the payments in any way they choose. However, In re Gibson, 16 B.R. 257 (Bankr. D. Kan. 1981), the court applied the first-payments-against-first-debts rule of this section by analogy to a cross-collateralized loan. Contrary to the rule of this section, however, the court also ruled that after the first item was paid off the lien was not extinguished; instead, it merely became non-purchase money and continued to secure debts attributable to other items.

   Under the F.T.C. Credit Practices Rule, if the item paid off was household goods, any continuing non-possessory, non-purchase money security interest would be invalid. See the discussion of the F.T.C. Rule in the Kansas comments to K.S.A. 16a-3-301 and 16a-3-302.

K.S.A. 16a-3-304. (UCCC) Use of multiple agreements.

(1) No creditor may engage in a pattern or practice of using multiple agreements to obtain a higher finance charge than would otherwise be permitted by the provisions of K.S.A.16a-1-101 *et seq*., and any amendments thereto.

(2) The excess amount of finance charge in this section is an excess charge for the purposes of the provisions on rights of parties and the provisions on civil actions by the administrator.

History: L. 1973, ch. 85, § 50; L. 1977, ch. 71, § 2; L. 1999, ch. 107, § 23; L. 2005, ch. 144, § 14; July 1.

KANSAS COMMENT, 2000:

Originally, the graduated rate ceiling structure of the U3C allowed a creditor to charge higher rates on smaller balances. However, given the general lifting of the U3C's rate ceilings, this concern now only applies to closed end, non-real estate secured consumer loans and payday loans. See K.S.A. 16a-2-401(2) and K.S.A. 16a-2-404. In order to achieve maximum rates on those transactions, a creditor might arbitrarily divide a transaction into two or more agreements so that the amount financed under each is within the range on which the highest rate can be charged. By doing so, the creditor violates this section and subsection (2) makes the excess amount of finance charge provided for an excess charge for purposes of the provisions on remedies by consumers and the administrator. For example, a licensed lender violates this section by manipulating the transaction by directing a consumer seeking a $1,200 loan to sign one note for $600 and the consumer's spouse to sign another note for $600 in order to charge the highest rate permitted by K.S.A. 16a-2-401(2). On the other hand, the lender would not violate this section if one spouse borrowed $600 at one time and the other spouse on a voluntary separate loan application borrowed $600 at some other time.302.

K.S.A. 16a-3-305. (UCCC) No assignment of earnings.

(1) No creditor may take an assignment of earnings of the consumer for payment or as security for payment of a debt arising out of a consumer credit transaction. An assignment of earnings in violation of this section is unenforceable by the assignee of the earnings and revocable by the consumer. This section does not prohibit an employee from authorizing deductions from such employee's earnings if the authorization is revocable.

(2) A sale of unpaid earnings made in consideration of the payment of money to or for the account of the seller of the earnings is deemed to be a loan to the consumer secured by an assignment of earnings.

History: L. 1973, ch. 85, § 51; Jan. 1, 1974.

KANSAS COMMENT, 2010:

The U3C recognizes the potential for hardship to a consumer and his or her dependents that could result from a disruption of the steady flow of family income. Just as K.S.A. 60-730 prevents a creditor from attaching unpaid earnings of a debtor before obtaining a judgment, this provision precludes a creditor from reaching the debtor's earnings pursuant to an irrevocable wage assignment obtained from the debtor. The purpose of both limitations is to afford the debtor an opportunity to have the debt determined by a court before the debtor's unpaid earnings are taken by a creditor. This provision prohibits a creditor from taking either an assignment of earnings as payment or as security for payment for a debt or a sale of earnings in payment of the price or rental. Under K.S.A. 16a-1-

301(21), the definition of "earnings" includes periodic payments under pension, retirement, or disability programs; thus this section also prohibits assignments of these entitlements.

A revocable payroll deduction authorization in favor of a creditor, as frequently used by credit unions, is authorized by this section. The F.T.C. Credit Practices Rule, 16 C.F.R. Part 444, prohibits irrevocable assignments of earnings, but permits certain irrevocable payroll deduction plans. Under this section, however, payroll deduction plans are permitted only if they are revocable. See also K.A.R. 75-6-23 requiring a separate form for authorizing a revocable payroll deduction that contains a clear and conspicuous notice to the debtor that the deduction may be revoked at any time and that must be worded so that the form may be used for revoking the deduction.

K.S.A. 16a-3-306. (UCCC) Authorization to confess judgment prohibited.

No consumer of any other person acting on the consumer's behalf may authorize any person to confess judgment on a claim arising out of a consumer credit transaction. An authorization in violation of this section shall be void.

History: L. 1973, ch. 85, § 52; Jan. 1, 1974.

KANSAS COMMENT, 2010:

This section does not prohibit the consumer from confessing judgment in connection with litigation. A similar prohibition is found in the F.T.C. Credit Practices Rule, 16 C.F.R. Part 444.

K.S.A. 16a-3-307. (UCCC) Certain negotiable instruments prohibited.

With respect to a consumer credit sale or consumer lease, the creditor shall only accept currently dated negotiable instruments as evidence of the obligation of the buyer or lessee. For purposes of this section, a creditor shall not make the consumer credit sale contract or consumer lease contract a negotiable instrument.

History: L. 1973, ch. 85, § 53; L. 1981, ch. 93, § 9; July 1.

KANSAS COMMENT, 2000:

This section, together with K.S.A. 16a-3-403, 16a-3-404, and 16a-3-405, states a major tenet of the U3C, that the holder in due course doctrine should be abrogated in consumer cases and that the assignee of any note or installment contract arising from a consumer credit sale or lease should be subject to any defenses and claims that the buyer had against the original seller or lessor arising out of the sale or lease. Whatever beneficial effects holder in due course doctrine may have in promoting the currency of paper is greatly outweighed by the harshness of its consequences in denying consumers the right to raise valid defenses arising out of consumer credit transactions. The first step in abolition of the doctrine is the prohibition found in this section against the use of negotiable instruments in consumer credit sales and consumer leases. The F.T.C. Holder in Due Course Regulations, 16 C.F.R. Part 433, also effectively abolishes the holder in due course doctrine in consumer credit sales and leases by requiring a printed legend on consumer contracts which renders the paper non-negotiable. See the Kansas comments to K.S.A. 16a-3-404 and 16a-3-405.

K.S.A. 16a-3-308. (UCCC) Balloon payments.

In a consumer credit transaction with a balloon payment, other than one pursuant to open-end credit, if any scheduled payment is more than twice as large as the average of earlier scheduled payments, the consumer shall have the right to refinance the amount of that payment at the time it is due without penalty. The terms of the refinancing shall be no less favorable to the consumer than the terms of the original transaction. The provisions of this section shall not apply to the extent that the payment schedule is adjusted to the seasonal or irregular income of the consumer.

History: L. 1973, ch. 85, § 54; L. 1981, ch. 93, § 10; L. 1991, ch. 73, § 1; L. 2002, ch. 125, § 1; L. 2009, ch. 29, § 20; July 1.

KANSAS COMMENT, 2010:

Balloon payments can be used to induce a buyer or borrower to enter into a burdensome contract by offering invitingly small installment payments until the end of the contract when the buyer or borrower is confronted with a balloon payment too large to pay. See also K.S.A. 16a-2-308, prohibiting balloon payments in certain small, supervised loans. This section meets the threat of misuse of balloon payments by giving the consumer the right to compel refinancing of the amount of the balloon payment at the time it is due without penalty and under terms no less favorable than those of the original transaction. Under the refinancing, the size of the installment payments may not exceed the average scheduled payments (excluding the balloon payment) and the rate of finance charge may not exceed that under the original agreement. If the balloon payment was agreed to by the parties to accommodate the consumer because of his seasonal or irregular income expectations, the abuse at which this section is aimed is not present and the section does not apply.

Attorney General's Opinions:

- Interest and charges; usury. 79-252.
- Limitations on consumers' liability; balloon payments; denial of right to refinance. 82-143.

K.S.A. 16a-3-309. (UCCC) Referral sales.

(1) (a) In a consumer credit sale, no seller shall offer or give a rebate, discount or otherwise pay value to the buyer in consideration of the buyer giving the seller the names of third parties, or otherwise assist the seller in making a sale to a third party when the earning of the rebate, discount or other value is contingent upon an event subsequent to the time of the sale.

(b) In a consumer lease, no lessor shall offer or give a rebate, discount of otherwise pay value to the lessee in consideration of the lessee giving to the lessor the names of third parties, or otherwise aiding the lessor in leasing to a third party when the earning of the rebate, discount or other value is contingent upon an event subsequent to the time of the lease.

(2) If a buyer or lessee is induced by a violation of this section to en-ter into a consumer credit sale or consumer lease, the agreement shall be unenforceable by the seller or lessor and the buyer or lessee, at the buyer's or lessee's option, may rescind the agreement or retain the goods delivered and the benefit of any services performed, without any obligation to pay for them.

History: L. 1974, ch. 85, § 55; Jan. 1, 1974; July 1, 2024.

KANSAS COMMENT, 2000:

1. The typical sale scheme which would be barred by this section is one in which the seller, before closing the sale, offers to reduce the price by $25 for every name of a person the buyer supplies who will agree to buy from the seller. The seller may be able to make an inflated price much more palatable to a buyer by convincing the buyer that the referral plan will greatly reduce the amount the buyer will actually have to pay. The buyer may not realize until later that the friends whose names were provided are not as gullible and that the buyer will be required to pay the original balance of the contract price.
2. The evil this section is aimed at is the raising of expectations in a buyer of benefits to accrue from events which are to occur in the future. This provision has no effect on a seller's agreement to reduce at the time of the sale the price of an item in exchange for the buyer's giving the seller a list of prospective purchasers or assisting in other ways if the price reduction is not contingent on whether the purchasers do in fact buy or on whether other events occur in the future.
3. The misuse of the referral sale scheme has been so pervasive in some segments of seller credit that this provision, in an effort to halt these practices, not only makes agreements in violation of this section unenforceable but also allows the buyer to retain the goods sold or the benefit of services rendered with no obligation to pay for them. Alternatively, the buyer may rescind the agreement, return the goods, and recover any payment.
4. The KCPA contains a similar prohibition. K.S.A. 50-626(b)(1)(E). As a result, a seller who engages in an unlawful referral scheme may be subject to liability or penalties under both the U3C and the KCPA.

Part 4

LIMITATIONS ON CONSUMER'S LIABILITY

K.S.A. 16a-3-401. (UCCC) Restriction on liability in consumer lease.

The obligation of a lessee upon expiration of a consumer lease may not exceed twice the average payment allocable to a monthly period under the lease. This limitation does not apply to charges for damages to the leased property or for other default.

History: L. 1973, ch. 85, § 56; L. 1981, ch. 93, § 11; July 1.

KANSAS COMMENT, 2010:

1. This section is designed to protect consumer lessees against abuses associated with what are sometimes described as "open end" or "net" leases. Under "open end" or "net" leases, the parties

contract that at the expiration of the lease the article leased, usually an automobile, will have a certain depreciated value and will be sold. If it brings less than the agreed depreciated value, the lessee is liable for the difference; if it brings more, the lessee is entitled to the surplus. Under such an agreement, the lessee will have no understanding of how much the lease might cost unless the lessee can accurately predict what the secondhand market will be at the expiration of the lease. Moreover, if the lessor sets an unrealistically high depreciated value the contingent liability of the lessee will increase accordingly, and the seller can offer deceptively low rental payments to a gullible customer.

2. Under this section the liability, contingent or otherwise, of the lessee at the end of the term of the lease is limited to twice the average monthly rental payment. This limitation not only avoids the possibility of a large contingent liability on the part of the lessee at the end of the term but also gives the lessee a basis for comprehending how much the lease will actually cost. The CLA creates a set of rebuttable presumptions concerning the residual value of the leased property which in most cases will protect the consumer from having a residual liability greater than three times the average monthly payment under the lease. In this regard, this section offers greater protection since it absolutely prohibits residual charges greater than twice the average monthly payment. The CLA also permits the lessee to obtain (at his or her own expense) a neutral appraisal by an independent third party agreed to by both parties, and provides that any such appraisal is final and binding on the parties. Kansas lessees could, of course, make use of this provision if they wished.
3. This section does not limit the charges the lessor may impose for damage to the leased property or for default. The CLA, however, limits default and other similar charges to amounts which are reasonable in light of the anticipated or actual harm caused by the default or delinquency. See TILA 15 U.S.C.A. § 1667b. This federal limitation prohibits lessors from imposing unreasonably large default or other similar charges.
4. Because of the special problems associated with the open end lease, the CLA requires that the disclosures given to the consumer lessee at the beginning of the lease include disclosure of the fact that the consumer will be liable for the fair market differential on termination, if the consumer will in fact be so liable, as well as a statement of the fair market value of the property at the inception of the lease.

K.S.A. 16a-3-402. (UCCC) Limitation on default charges.

Except for reasonable expenses incurred in realizing on a security interest, the agreement with respect to a consumer credit transaction may not provide for any charges as a result of default by the consumer other than those authorized by K.S.A. 16a-1-101 *et seq*., and amendments thereto. A provision in violation of this section shall be unenforceable.

History: L. 1973, ch. 85, § 57; Jan. 1, 1974.

KANSAS COMMENT, 2010:

The U3C limits the credit-related charges a creditor may impose on a consumer not only at the outset of the contract but also at the default stage. Except for delinquency charges (K.S.A. 16a-2-502), collection costs and attorneys' fees (K.S.A. 16a-2-507), and expenses arising from realizing on collateral authorized by the UCC (K.S.A. 84-9-615), the creditor may impose no collection or default charges on a consumer.

Attorney General's Opinions:

- Savings and loan association code; examinations; acceptance of examinations made by the Federal Savings and Loan Insurance Corporation. 83-113.
- Consumer credit transactions; prohibition on prepayment penalties; preemption as to national banks. 83-132.
- Attorney fees; national direct student loans. 86-113.

K.S.A. 16a-3-403. (UCCC) Credit card issuer subject to defenses.

(1) If the issuer of a credit card, other than a lender credit card, is the seller or lessor or a person related to the seller or lessor, or if the seller or lessor is licensed, franchised, or permitted by the issuer to do business under the business name or trade name or designation of the issuer, the issuer is subject to all claims and defenses of a buyer or lessee against the seller or lessor arising out of a sale or lease of goods or services pursuant to the credit card.

(2) The issuer of a lender credit card is not subject to the claims and defenses of a buyer or lessee arising out of a sale or lease of goods or services pursuant to a lender credit card except where a home solicitation sale is involved. For purposes of this section, a "home solicitation sale" means a sale to a consumer of goods (other than equipment used in a business) or services, in which the seller or a person acting for the seller engages in a personal solicitation (other than by telephone or mail) of the sale at a residence of the buyer. It does not include a sale made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale.

(3) Claims or defenses of a buyer or lessee against a seller or lessor in connection with a home solicitation sale may be asserted against the issuer of the lender credit card only:

   (a) If the buyer or lessee has attempted in good faith to obtain reasonable satisfaction from the seller or lessor with respect to claims or defenses, and

   (b) to the extent of the amount owing to the issuer with respect to the sale or lease at the time the issuer has notice of the claims or defenses. Notice of the claims or defenses may be given prior to the attempt specified in paragraph (a). The notice, which may generally state the claims or defenses, shall be in writing and sent to the seller, the lessor or to the issuer.

(4) For the purpose of determining the amount owing to the issuer with respect to a sale or lease under a credit card, payments received upon the account are deemed to have been first applied to the payment of finance charges in the order of their entry to the account and then to the payment of debts in the order in which the entries of the debts are made to the account.

(5) An agreement may not provide for greater rights for an issuer of a credit card than this section permits.

History: L. 1973, ch. 85, § 58; L. 1981, ch. 93, § 12; July 1.

KANSAS COMMENT, 2010:

1. Subsection (1) makes it clear that the issuer of a seller credit card is subject to all claims and defenses of the buyer against the seller arising out of the sale, even where the seller of goods or services is not the issuer of the card but a franchisee who honors the card. Some credit card issuers (e.g., the major retail chains) are themselves the sellers or lessors of products or services, and their liability as sellers or lessors is in no way affected by their status as credit card issuers. When the card issuer allows others to sell products while operating under the issuer's name (e.g., oil distributors), the card issuer should be liable to the full amount of the credit extended in the sale as the financier of the transaction. In addition, the card issuer in these cases may also be the manufacturer or processor of a defective product sold pursuant to its credit card by the franchised dealer. In such cases, their liability under other law as manufacturer or processor is not affected by this section.
2. The provisions of subsections (2) and (3), insulating lender credit card issuers from underlying claims and defenses except in home solicitation sales, vary from the uniform act and have been overridden by the TILA. Under TILA 15 U.S.C.A. § 1666i, the liability of issuers of seller credit cards is basically the same as in this section. With respect to lender credit cards, however, the TILA makes the issuer subject to all claims (other than tort claims) and defenses arising out of any transaction in which the card was used as a method of payment. There are three limitations on this liability: First, the cardholder must make a good faith attempt to resolve the dispute with the person who honored the card; second, the amount of the transaction must exceed $50; and third, the transaction must have occurred within the debtor's state or within 100 miles of the debtor's residence. The rationale of these limitations is to make card issuers subject to claims and defenses in those transactions in which the credit card is more likely to be used as a true credit device (transactions over $50) and in which the great volume of credit card use takes place (within the consumer's state or within 100 miles of his residence). Liability is also limited to the amount of credit outstanding at the time the cardholder first notifies the issuer or person honoring the card of the claim or defense. This parallels the liability of assignees and "all in the family" lenders under K.S.A. 16a-3-404 and 16a-3-405. Under Regulation Z, 12 C.F.R. § 226.12(c), the cardholder may withhold payment for the property or services in dispute, and the card issuer is prohibited from making an adverse credit report until the dispute is settled.

K.S.A. 16a-3-404. (UCCC) Assignee subject to defenses; application of payments received by assignee; limitation of actions; assignee may require seller or lessor to repurchase obligation; joinder of parties; procedure.

(1) An assignee of the rights of the seller or lessor under a consumer credit sale or consumer lease is subject to all claims and defenses of the buyer or lessee against the seller or lessor arising out of the sale or lease, notwithstanding that:

(a) There is an agreement to the contrary, or

(b) the assignee is a holder in due course of a negotiable instrument issued in violation of the provisions prohibiting certain negotiable instruments.

(2) Claims or defenses of a buyer or lessee specified in subsection (1) may be asserted against the assignee only:

(a) If the buyer or lessee has attempted in good faith to obtain reasonable satisfaction from the seller or lessor with respect to claims or defenses,

(b) if the buyer or lessee, when requested in writing to do so by the seller, lessor or the assignee, has given notice in writing to the seller or lessee and the assignee stating the claims or defenses,

(c) to the extent of the amount owing to the assignee with respect to the sale or lease at the time the assignee has notice of such claims or defenses. Such notice, generally stating the claims or defenses, shall be in writing and shall be sent to the seller and to the assignee if the buyer or lessee has received written notice of the name and address of the assignee, and

(d) as a matter of defense to or setoff against claims by the assignee except that the buyer or lessee shall not be prohibited from bringing an action to rescind an obligation against which it has a defense or setoff.

(3) For the purpose of determining the amount owing to the assignee with respect to the sale or lease:

(a) Payments received by the assignee after the consolidation of two or more consumer credit sales, other than pursuant to open-end credit, are deemed to have been first applied to the payment of the sales first made; if the sales consolidated arose from sales made on the same day, payments are deemed to have been first applied to the smaller or smallest sale or sales;

(b) payments received upon an open-end credit account are deemed to have been first applied to the payment of finance charges in the order of their entry to the account and then to the payment of debts in the order in which the entries of the debts are made to the account.

(4) Any action by an assignee or the original seller or lessor who has repurchased an obligation under subsection (5) to enforce an obligation, or any action by a buyer or lessee to rescind, or any request to repurchase the obligation, shall be brought within one year from the date of receipt of the notice of the claim or defense, or default in payment, whichever is later.

(5) If a claim or defense of a buyer or lessee against a seller or lessor is asserted against an assignee, the assignee may, regardless of any existing agreement to the contrary, require the seller or lessor to repurchase the obligation for an amount equal to the price for

which the obligation was assigned, plus that portion of the finance charge earned by the assignee, minus payments previously made to the assignee by the buyer or lessee. In any action by the buyer or lessee to rescind an obligation held by the assignee, the seller or lessor shall have the right to intervene, and any party may join as a defendant any manufacturer or other person who is or may be liable to another party. If the action to rescind is brought against the seller or lessor, such seller or lessor shall have the right to join as a defendant any manufacturer or other person who is or may be liable to such seller or lessor.

(6) An agreement may not provide greater rights for an assignee than this section permits.

History: L. 1973, ch. 85, § 59; L. 1975, ch. 127, § 1; L. 1976, ch. 145, § 40; L. 1981, ch. 93, § 13; July 1.

KANSAS COMMENT, 2010:

1. This section does away with the holder in due course doctrine under which the assignee of consumer paper could enforce the obligation irrespective of legitimate claims or defenses which the consumer may have had against the dealer. The doctrine is codified in the UCC (K.S.A. 84-3-305 and 84-9-403) so that the U3C will supersede the UCC rule, at least with respect to consumer credit transactions (see K.S.A. 84-9-201). The third-party financier will be subject to claims and defenses whether the holder in due course of a negotiable instrument issued in violation of K.S.A. 16a-3-307, or an assignee claiming under a "cut-off clause" or "waiver of defenses clause" which in the past had been used as a contractual substitute for negotiability. The policy justifications for this section are to protect the consumer from the harshness of the holder in due course doctrine as well as to encourage financial institutions taking assignments of consumer paper to use discretion in dealing with sellers and lessors whose transactions give rise to an unusual percentage of consumer complaints. See also the Kansas comment to K.S.A. 16a-3-307.
2. Except for the consumer's right to rescind a contract held by a third party subject to a defense, the rights of the consumer under this section are basically defensive. That is, the consumer-buyer is prohibited from suing the third-party financier for return of any down payment of installments already paid before the assignee receives notice of the defense. The consumer-buyer may assert a claim or defense only as a defense to or set-off against claims by the third-party financier. In addition, the consumer can assert a claim or defense against the assignee only to the extent of the amount still owing to the assignee at the time the assignee gets written notice of the claim or defense. For example, if a consumer purchases a used car from a dealer and signs a $700 installment contract which is then assigned to a bank or finance company, and if the consumer has already made four monthly installments of $30 each before discovering that the car is a lemon, the consumer can defend against a claim for the balance due by the bank or finance company but the consumer can neither obtain a refund from the financier of $120 nor subject the financier to any open ended claim for personal injury arising from defects in the car. (See, however, the Eachen case discussed in note 4, infra.) The third-party financier is subject only to claims and defenses against the seller arising out of the sale, e.g., a claim for breach of warranty. For example, in Perry v. Goff Motors, Inc., 12 Kan. App. 2d 139, 736 P.2d 949 (1987), the court held that the assignee was subject to the buyer's claim that the sale of a car was fraudulent and void because it violated the Kansas motor vehicle laws. In addition, the buyer must make a good faith effort to obtain reasonable satisfaction from the seller before asserting the claim or defense

against the assignee. The terms "good faith effort" and "reasonable satisfaction" are deliberately not defined; their meaning will depend upon the facts of a given case.

In Rosemond v. Campbell, 343 S.E.2d 641 (S.C. App. 1986), the court held that the U3C permitted the consumer to assert any claim available against the seller, including a fraud claim, offensively in a suit against the assignee. The South Carolina legislature, however, had amended the U3C to remove the language "as a matter of defense to or setoff against" found in subsection (2)(d) of this section. In Kansas, the consumer would have to wait until the assignee sued and then raise the claim as a defense.

3. Subsection (3) provides FIFO ground rules for determining what amount is owing to the assignee at the time notice of the defense is given. Subsection (5) provides for mandatory recourse by the financier against the dealer after assertion of a defense by the consumer, although non-recourse paper is still effective if the consumer has no excuse for the default. The theory of this subsection is that the ultimate risk should be shifted to the merchant in cases where the merchant's misconduct (breach of warranty, fraud, etc.) gave rise to the consumer defense. Third party practice — intervention, joinder or impleader — is also expressly authorized by this subsection wherever appropriate. Subsection (4) sets forth a short one-year statute of limitation for suits brought under this section.
4. This section should be read together with the F.T.C. Holder in Due Course Regulations, 16 C.F.R. Part 433, which require that all consumer paper contain a legend in ten point, bold face type expressly stating that the holder of the paper is subject to all claims and defenses which the consumer debtor could assert against the seller or lessor of the goods or services in the underlying transaction. The F.T.C. Regulations do not create any substantive rights in the consumer; they merely preserve against the assignee all state law rights the consumer already had against the seller or lessor. The purpose of the F.T.C. Regulations, like the purpose of this section, is to abolish the holder in due course doctrine in consumer transactions. Under the F.T.C. Regulations, the debtor's recovery is limited to a refund of amounts already paid, although the F.T.C. Regulations do not prohibit a greater recovery if state law allows it. In Eachen v. Scott Housing Systems, Inc., 630 F.Supp. 162 (M.D. Ala. 1986), the court ruled that the F.T.C. Regulations permitted the consumer to sue the assignee for breach of warranty, notwithstanding that state law limited liability to cases of defense or setoff. Liability was limited to a refund of amounts paid.
5. This section deals only with the assignee's derivative liability for claims and defenses arising out of the underlying contract. Neither this section nor the F.T.C. Regulations limit rights the consumer may have directly against the third-party financier for the financier's own actions, either under the KCPA or similar statute or under developing concepts of lender liability.

K.S.A. 16a-3-405. (UCCC) Lender subject to defenses arising from sales and leases.

(1) A lender, other than the issuer of a lender credit card, who, with respect to a particular transaction, makes a consumer loan for the purpose of enabling a consumer to buy or lease from a particular seller or lessee goods or services is subject to all claims and defenses of the consumer against the seller or lessor arising from that sale or lease of the goods and services if:

(a) The lender knows that the seller or lessor arranged, for a commission, brokerage, or referral fee, for the extension of credit by the lender;

(b) the lender is a person related to the seller or lessor unless the relationship is remote or is not a factor in the transaction;

(c) the seller or lessor guarantees the loan or otherwise assumes the risk or loss by the lender upon the loan;

(d) the lender directly supplies the seller or lessor with the contract document used by the consumer to evidence the loan, and the seller or lessor significantly participates in the preparation of the document; or

(e) the loan is conditioned upon the consumer's purchase or lease of the goods or services from the particular seller or lessor, but the lender's payment of proceeds of the loan to the seller or lessor does not in itself establish that the loan was so conditioned.

(2) Claims or defenses of a buyer or lessee specified in subsection (1) may be asserted against the lender only:

(a) If the buyer or lessee has attempted in good faith to obtain reasonable satisfaction from the seller or lessor with respect to the claims or defenses;

(b) if the buyer or lessee, when requested in writing to do so by the seller, lessor or the lender, has given notice in writing to the seller or lessee and the lender stating the claims or defenses,

(c) to the extent of the amount owing to the lender with respect to the sale or lease at the time the lender has notice of the claims or defenses. Such notice, generally stating the claims or defenses, shall be in writing and shall be sent to the seller (or lessor), and to the lender if the buyer or lessee has received written notice of the name and address of the lender; and

(d) as a matter of defense to or setoff against claims by the lender except that the buyer or lessee shall not be prohibited from bringing an action to rescind an obligation against which it has a defense or setoff.

(3) For the purpose of determining the amount owing to the lender with respect to the sale or lease:

(a) Payments received by the lender after the consolidation of two or more consumer loans, other than pursuant to open-end credit, are deemed to have been first applied to the payment of the loans first made; if the loans consolidated arose from loans made on the same day, payments are deemed to have been first applied to the smaller or smallest loan or loans; and

(b) payments received upon an open-end credit account are deemed to have been first applied to the payment of finance charges in the order of their entry to the

account and then to the payment of debts in the order in which the entries of the debts are made to the account.

(4) An agreement may not provide greater rights for a lender than this section permits.

(5) Notwithstanding any of the foregoing, the participation of the lender or lessor in any of the arrangements between seller and buyer to ensure the perfection of the lender or lessor's security interest shall not in itself establish a relationship described and controlled by subsection (1).

History: L. 1973, ch. 85, § 60; L. 1975, ch. 127, § 2; L. 1981, ch. 93, § 14; July 1.

KANSAS COMMENT, 2000:

1. This section extends the U3C's policy of preserving consumer claims and defenses to direct loan cases in those situations in which the relationship between the seller or lessor and the lender justifies allowing the consumer to raise claims or defenses against the lender. In order to preclude financiers from circumventing K.S.A. 16a-3-404 by shaping the transaction as a "direct loan" where it is really more like a purchase of dealer paper, this section sets forth five guidelines to test whether a true direct loan is involved. If it is, the consumer has no right to raise against the lender any claims or defenses against the seller whose product or service the consumer bought with the proceeds of the loan. Disguised dealer paper -- sometimes called an "all in the family" loan -- remains subject to the consumer's claims and defenses as if the transaction involved the assignment of an installment sales contract.
2. As indicated under subsection (1), any one of the following elements will subject the "direct lender" to claims and defenses of the consumer against the seller arising from the sale:
    (a) knowledge by the lender that the seller arranged for the extension of credit for a fee;
    (b) a close personal or corporate relationship between seller and lender (see the definition of "person related to" in K.S.A. 16a-1-301(34));
    (c) dealer guarantee of the loan;
    (d) use of the lender's "direct loan" forms by a dealer who has significantly participated in their preparation; and
    (e) the lender's conditioning of the loan upon the consumer's use of the proceeds to purchase from a particular seller.

    With respect to this last element, the lender's making the proceeds check payable to a particular dealer does not in itself make the transaction an "all in the family" loan. Similarly, under subsection (5) any participation by the lender in the sales transaction solely to insure perfection of a security interest, such as notation of the lender's lien on a certificate of title, does not in itself make a "direct loan" subject to the buyer's claims and defenses against the seller.
3. Subsections (2) and (3) of this section parallel those found in K.S.A. 16a-3-404. See the Kansas comments to that section. Nothing in this section limits the rights of an "all in the family" lender to recover from the seller after being subjected to a consumer's claims or defenses under this section.
4. As with liability of assignees for claims and defenses under K.S.A. 16a-3-404, the liability of direct lenders may be affected by the F.T.C. Holder in Due Course Regulations, 16 C.F.R. Part

433. The F.T.C. Regulations require all consumer contracts which arise out of certain direct loans to contain a legend in ten point, bold face type expressly stating that the lender or other holder of the paper is subject to claims and defenses which the consumer debtor could assert against the seller or lessor of the goods or services obtained with the proceeds of the loan. The direct loans which are subject to the F.T.C. Regulations arise in two circumstances:

(a) those in which the seller or lessor refers consumers to the lender, and

(b) those in which the seller or lessor is affiliated with the lender by common control, contract or business arrangement.

As in the case of assignees, liability is limited to refund of the amounts already paid by the consumer. See Kansas comment 5 to K.S.A. 16a-3-404. Because of the differences in definitions, the U3C and the F.T.C. Regulations will each reach some direct loans not covered by the other, but many "all in the family" lenders will be subject to both provisions.

5. As in the case of the assignee's liability under K.S.A. 16a-3-404, this section deals only with the "all in the family" lender's derivative liability for claims and defenses arising out of the underlying sale or lease contract. Neither this section nor the F.T.C. Regulations limit rights the consumer may have directly against the lender for the lender's own actions, either under the KCPA or similar statute or under developing concepts of lender liability.

Article 4 – INSURANCE

Part 1

INSURANCE IN GENERAL

K.S.A. 16a-4-102. (UCCC) Scope.

(1) Except as provided in subsection (2), this article applies to insurance provided or to be provided in relation to a consumer credit transaction.

(2) The provision on cancellation by a creditor applies to loans the primary purpose of which is the financing of insurance. No other provision of this article applies to insurance so financed.

History: L. 1973, ch. 85, § 62; Jan. 1, 1974.

KANSAS COMMENT, 2000:

In general, this article applies to nearly all forms of insurance provided in connection with a consumer credit transaction. See the Kansas comment to the next section. Lenders engaged in premium financing are exempted from the U3C by K.S.A. 16a-1-202(5); premium financing is controlled by the Kansas insurance premium financing act (K.S.A. 40-2601 et seq). For example, rate ceilings on insurance premium finance transactions will continue to be governed by K.S.A. 40-2610 rather than by the ceilings established for other consumer credit transactions covered by the U3C. By subsection (2), however, a single provision of this article is made applicable to lenders engaged in insurance premiums financing; the borrower must be forewarned of cancellation of the financed insurance by the lender (see K.S.A. 16a-4-304). Nothing else in this article affects the practices of a lender in that business.

Attorney General's Opinions:

- Consumer credit insurance; property and liability insurance. 87-3.

K.S.A. 16a-4-104. (UCCC) Creditor's provision of and charge for insurance; excess amount of charge.

(1) Except as otherwise provided in this article and subject to the provisions on additional charges and maximum finance charges, a creditor may agree to provide insurance, and may contract for and receive a charge for insurance separate from and in addition to other charges. A creditor need not make a separate charge for insurance provided or required by him. This act does not authorize the issuance of any insurance prohibited under any statute, or rule thereunder, governing the business of insurance.

(2) The excess amount of a charge for insurance provided for in agreements in violation of this article is an excess charge for the purposes of the provisions of the article on

remedies and penalties as to effect of violations on rights of parties and of the provisions of the article on administration as to civil actions by the administrator.

History: L. 1973, ch. 85, § 64; Jan. 1, 1974.

KANSAS COMMENT, 2010:

1. Subsection (1) broadly authorizes creditors to contract for and receive payments for providing insurance covering the whole range of transactions within the scope of this article. See K.S.A. 16a-4-102. A creditor may provide insurance without making a charge in addition to the finance charge and, in that event, is not required to disclose any amount as a charge for insurance. If, however, the creditor requires insurance in connection with a consumer credit sale, consumer lease, or consumer loan, the fact that the cost of providing it is buried in an increased finance charge, giving the insurance for "free," will not necessarily exclude the creditor from restrictions under any other law.
2. Limitations are placed on the making of an additional or separate charge for insurance in K.S.A. 16a-2-501, and the authorization of this section is subject to that provision. In addition, such a charge must be limited as provided in K.S.A. 16a-4-107.

Attorney General's Opinions:

- Consumer credit insurance; property and liability insurance. 87-3.

K.S.A. 16a-4-105. (UCCC) Conditions applying to insurance to be provided by creditor.

If a creditor agrees with a consumer to provide insurance

(1) The insurance shall be evidenced by an individual policy or certificate of insurance delivered to the consumer, or sent to such consumer at such consumer's address, as provide, within 30 days after the term of the insurance commences under the agreement between the creditor and consumer; or

(2) the creditor shall promptly notify the consumer of any failure or delay in providing the insurance.

History: L. 1973, ch. 85, § 65; Jan. 1, 1974.

KANSAS COMMENT, 2010:

Unlike the NAIC model act, the U3C does not require that any specific information about the insurance coverage be disclosed to the consumer. This section requires only that the creditor deliver to the consumer at an early date the credit insurance policy, or a certificate if a group policy is involved. The TILA, however, does require special credit insurance disclosures that the creditor must give in order to exclude the insurance costs from the finance charge. See Regulation Z, 12 C.F.R. § 226.4(d). A similar approach is followed by the U3C. See K.S.A. 16a-2-501(2). In addition, more detailed disclosures concerning insurance are required by administrative regulation. See K.A.R. 40-5-103(c).

Attorney General's Opinions:

- Consumer credit insurance; property and liability insurance. 87-3.

K.S.A. 16a-4-106. (UCCC) Unconscionability.

(1) In applying the provisions of this act on unconscionability to a separate charge for insurance, consideration shall be given, among other factors, to:

(a) Potential benefits to the consumer including the satisfaction of his obligations;

(b) the creditor's need for the protection provided by the insurance; and

(c) the relation between the amount and terms of credit granted and the insurance benefits provided.

(2) If consumer credit insurance otherwise complies with this article and other applicable law, then neither the amount, the term of the insurance nor the charge of the insurance is unconscionable.

History: L. 1973, ch. 85, § 66; Jan. 1, 1974.

KANSAS COMMENT, 2010:

1. It may be shown that an agreement about insurance, like any other term of a consumer credit contract, is unconscionable, and the effects of such a showing are those specified in K.S.A. 16a-5-108 and 16a-6-111. This section lists only some of the factors to be considered for unconscionability, and indicates that a balancing of benefits, needs, and costs is required. In general, the creditor's need for insurance protection and the debtor's potential benefit are more patent in connection with extensions of credit that are substantial as to amount and time; the expense of providing exceptional coverage is suspect in relation to relatively small extensions of credit. The relation between the credit terms and the insurance terms must be taken into account in applying this section.
2. One aspect of credit insurance that has produced widespread complaints is the phenomenon of "reverse competition." In most credit insurance, the creditor keeps a portion of the premium as a commission. The effect of this practice is to encourage creditors to seek out insurers who charge the highest rates for the same coverage. This reverses the normal market forces, and prices are driven to their highest, rather than lowest, levels. Creditors seldom advise consumers who buy credit insurance that the same coverage is often available at a lower price. In *Browder v. Hanley Dawson Cadillac Co.*, 379 N.E.2d 1206 (Ill. App. 1978), the court held that failure to disclose the availability of cheaper, but comparable, credit insurance constituted an unfair or deceptive practice trade under the Illinois consumer deceptive practices act by concealing, suppressing, or omitting a material fact. To the same effect is Matter of Dickson, 432 F.Supp. 752 (W.D.N.Car. 1977). Failing to disclose the availability of cheaper insurance may be a violation of K.S.A. 40-2403 et seq. It could also be a factor in making a determination of unconscionability under this act.

Attorney General's Opinions:
- Consumer credit insurance; property and liability insurance. 87-3.
- Consumer credit transaction; blanket single interest insurance programs. 89-54.

K.S.A. 16a-4-107. (UCCC) Maximum charge by creditor for insurance.

(1) Except as provided in subsection (2), if a creditor contracts for or receives a separate charge for insurance, the amount charged to the consumer for the insurance may not exceed the premium to be charged by the insurer, as computed at the time the charge to the consumer is determined, conforming to any rate filings required by law and made by the insurer with the commissioner of insurance.

(2) A creditor who provides consumer credit insurance in relation to open-end credit may calculate the charge to the consumer in each billing cycle by applying the current premium rate to the unpaid balance of debt in the same manner as is permitted with respect to finance charges for consumer credit sales pursuant to open- end credit.

History: L. 1973, ch. 85, § 67; Jan. 1, 1974.

KANSAS COMMENT, 2000:
1. Subsection (1) generally limits the creditor's charge to the debtor for insurance to the premiums to be charged by the insurer. Subsection (2) authorizes convenient methods of calculating charges in open end credit transactions that might not be permitted if subsection (1) were applied inflexibly. See the Kansas comment to K.S.A. 16a-2-202 for an explanation of the various methods of determining the unpaid balance in open end credit accounts.
2. As noted in the Kansas comment to the previous section, creditors often keep a portion of the premiums as a commission. It has been argued that this practice violates the rule of this section because the amount charged to the consumer, which includes the commission, exceeds the premium actually received by the insurer. The cases to date have not accepted this argument. *See Tew v. Dixieland Finance, Inc*., 527 So.2d 665 (Miss. 1988); *Spears v. Colonial Bank of Alabama*, 514 So.2d 814 (Ala. 1987).

Attorney General's Opinions:
- Consumer credit insurance; amount of insurance. 88-13.

K.S.A. 16a-4-108. (UCCC) Refund or credit required; amount.

(1) Upon prepayment in full of a consumer credit sale or consumer loan by the proceeds of consumer credit insurance, the consumer or such consumer's estate is entitled to a refund of any portion of a separate charge for insurance which by reason or prepayment is retained by the creditor or returned by the insurer unless the charge was computed from time to time on the basis of the balances of the consumer's account.

(2) This article does not require a creditor to grant a refund or credit to the consumer if all refunds and credits due under this article amount to less than $5, and except as provided in subsection (1) does not require the creditor to account to the consumer for any portion of a separate charge for insurance because

(a) the insurance is terminated by performance of the insurer's obligation;

(b) the creditor pays or accounts for premiums to the insurer in amounts and at times determined by the agreement between them; or

(c) the creditor receives directly or indirectly under any policy of insurance a gain or advantage not prohibited by law.

(3) Except as provided in subsection (2), the creditor shall promptly make or cause to be made an appropriate refund or credit to the consumer for any separate charge made to such consumer for insurance if:

(a) The insurance is not provided or is provided for a shorter term than that for which the charge to the consumer for insurance was computed; or

(b) the insurance terminates prior to the end of the term for which it was written because of prepayment in full or otherwise.

(4) A refund or credit required by subsection (3) is appropriate as to amount if it is computed according to a method prescribed or approved by the commissioner of insurance or a formula filed by the insurer with the commissioner of insurance at least 30 days before the consumer's right to a refund or credit becomes determinable, unless the method or formula is employed after the commissioner of insurance notifies the insurer that it was not approved.

History: L. 1973, ch. 85, § 68; Jan. 1, 1974.

KANSAS COMMENT, 2000:

1. Subsection (1) concerns a premium for consumer credit insurance, or any part of it, that is not treated by the insurer as earned, even though the insurer has paid benefits for which the premium charge was made. If the premium was the subject of a separate charge to the debtor, a refund must be made. Making the refund is not practicable, however, and is not required, if the charge has been computed on the debtor's outstanding balances. Subsection (2)(a) recognizes that the insurer may, upon performance of its obligation, properly treat the premium as earned.
2. Subsection (2)(c) permits a creditor to derive from consumer credit insurance gains and advantages such as dividends and refunds resulting from favorable mortality or morbidity experience with respect to insured debtors, and is predicated on the following conclusions:

    (1) Although the gains and advantages may be large to the creditor, they are relatively insignificant to each insured debtor and the calculating, clerical, and mailing costs of returning them to insured debtors would be unreasonably disproportionate to the amounts involved, and

(2) the requirement of this article that premiums for consumer credit insurance be reasonable in relation to benefits (K.S.A. 16a-4-203), if properly enforced by the insurance commissioner, will preclude the possibility of the use of consumer credit insurance as a device by creditors for concealing hidden charges from debtors.

3. Subsection (3) requires the creditor (subject to the exceptions provided by subsection (2)) to make a refund, or cause a refund to be made, if the insurance is not provided as contemplated or if it terminates prior to its expected term because of prepayment or other reasons. As a result of apparent deficiencies in the efforts of creditors (particularly assignees), the administrator has issued an administrative interpretation to facilitate the refunds required by subsection (3). See Administrative Interpretation No. 1002.
4. Subsection (4) commits to the insurance commissioner the responsibility for approval of methods and formulas for computing refunds or credits that are required by the circumstances stated in subsection (3).

K.S.A. 16a-4-109. (UCCC) Existing insurance; choice of insurer; notice of option.

If a creditor requires insurance, the consumer shall have the option of providing the required insurance through an existing policy of insurance owned or controlled by the consumer, or through a policy obtained and paid for by the consumer, but the creditor may for reasonable cause decline the insurance provided by the consumer. The creditor shall provide the consumer with a written notice on the loan agreement or other instrument fully informing the consumer of the option authorized by this section.

History: L. 1973, ch. 85, § 69; L. 1988, ch. 153, § 2; July 1.

KANSAS COMMENT, 2000:

This section is directed against the practice of "tying" the grant of credit to the purchase of insurance from a particular insurer, through a particular agent, or the like. This practice is also prohibited by the NAIC model act. This section also requires the creditor to provide the consumer with written notice of his or her option under this section.

Attorney General's Opinions:

- Consumer credit insurance; property and liability insurance. 87-3.

K.S.A. 16a-4-110. (UCCC) Charge for insurance in connection with a refinancing or consolidation; duplicate charges.

(1) A creditor may not contract for or receive a separate charge for insurance in connection with a refinancing or a consolidation, unless:

(a) The consumer agrees at or before the time of refinancing or consolidation that the charge may be made;

(b) the consumer is or is to be provided with insurance for an amount or a term, or insurance of a kind, in addition to that to which said consumer would have been entitled had there been no refinancing or consolidation;

(c) the consumer receives a refund or credit on account of any unexpired term of existing insurance in the amount that would be required if the insurance were terminated; and

(d) the charge does not exceed the amount permitted by this article.

(2) A creditor may not contract for or receive a separate charge for insurance which duplicates insurance with respect to which the creditor has previously contracted for or received a separate charge.

History: L. 1973, ch. 85, § 70; L. 1993, ch. 200, § 13; Jan. 1, 1994.

KANSAS COMMENT, 2000:

A separate charge for insurance written in connection with a refinancing or a consolidation is permitted only if it has been agreed to by the debtor and bears an appropriate relation to the premium (K.S.A. 16a-4-107). No new charge may be made for coverage to which the debtor is already entitled. Actual termination of existing insurance is not required. Subsection (1)(b) recognizes that augmenting existing insurance coverage for a new separate charge is appropriate, but that "pyramiding" charges is not. Subsection (2) explicitly prohibits pyramiding.

K.S.A. 16a-4-111. (UCCC) Cooperation between administrator and commissioner of insurance.

The administrator and the commissioner of insurance are authorized and directed to consult and assist one another in maintaining compliance with this article. They may jointly pursue investigations, prosecute suits, and take other official action, as may seem to them appropriate, if either of them is otherwise empowered to take the action. If the administrator is informed of a violation or suspected violation by an insurer of this article, or of the insurance laws, rules, and regulations of this state, the administrator shall advise the commissioner of insurance of the circumstances.

History: L. 1973, ch. 85, § 71; Jan. 1, 1974.

KANSAS COMMENT, 2000:

Coordination of activities of creditors and insurers is essential to the provision of insurance related to consumer credit transactions. Accordingly, the public interest requires that officials charged with supervising credit practices and those concerned with related insurance practices coordinate their efforts. This section directs them to consult and work together in promoting compliance with this article with efficiency and economy. Compare the administrator's obligation to consult with and assist the authorities charged with supervision of supervised financial organizations under K.S.A. 16a-6-105.

K.S.A. 16a-4-112. (UCCC) Administrative action of commissioner of insurance.

(1) To the extent that the commissioner's responsibility under this article requires, the commissioner of insurance shall adopt rules and regulations pursuant to this act regarding insurers, forms, schedules of premium rates and charges, the commissioner's approval or disapproval of such rules and regulations and, in case of violation, may make an order for compliance.

(2) Each provision on administrative procedures and judicial review of the article on administration that applies to and governs administrative action taken by the administrator also applies to and governs all administrative action taken by the commissioner of insurance pursuant to this section.

History: L. 1973, ch. 85, § 72; L. 1999, ch. 107, § 25; July 1.

KANSAS COMMENT, 2000:

Since Kansas never enacted the NAIC model act, subsection (1) is necessary to give the insurance commissioner the powers and duties needed to carry out the provisions of article 4. In addition, part 4 of article 6 sets forth administrative procedures to govern actions taken by the insurance commissioner under this section. See the Kansas comment to K.S.A. 16a-6-401.

Attorney General's Opinions:

- Consumer credit insurance; property and liability insurance. 87-3.

Part 2

CONSUMER CREDIT INSURANCE

K.S.A. 16a-4-201. (UCCC) Term of insurance.

(1) Consumer credit insurance provided by a creditor may be subject to the furnishing of evidence of insurability satisfactory to the insurer. Whether or not such evidence is required, the term of the insurance shall commence no later than when the consumer becomes obligated to the creditor or when the consumer applies for the insurance, whichever is later, except as follows:

(a) If any required evidence of insurability is not furnished until more than 30 days after the term would otherwise commence, the term may commence on the date when the insurer determines the evidence to be satisfactory; or

(b) if the creditor provides insurance not previously provided covering debts previously created, the term may commence on the effective date of the policy.

(2) The originally scheduled term of the insurance shall extend at least until the due date of the last scheduled payment of the debt except as follows:

(a) if the insurance relates to an open-end credit account, the term need extend only until the payment of the debt under the account and may be sooner terminated after at least 30 days' notice to the consumer; or

(b) if the consumer is advised in writing that the insurance will be written for a specified shorter time, the term need extend only until the end of the specified time.

(3) The term of the insurance shall not extend more than 15 days after the originally scheduled due date of the last scheduled payment of the debt unless it is extended without additional cost to the consumer or as an incident to a deferral, refinancing, or consolidation.

History: L. 1973, ch. 85, § 73; Jan. 1, 1974.

KANSAS COMMENT, 2000:

1. The term of consumer credit insurance provided by a creditor should normally be the same as the term of the debt.
2. Subsection (1) permits postponement of the effective date of consumer credit insurance coverage until after the debt is incurred:
   (a) Under the preamble to subsection (1), when the debtor delays the application for the insurance coverage does not then become effective at least until the debtor applies for the insurance;
   (b) under subsection (1)(a), when the insurer requires the debtor to furnish evidence of insurability satisfactory to the insurer and the debtor does not furnish the evidence "until more than 30 days after the term would otherwise commence" -- coverage does not then become effective until the insurer determines the evidence of insurability to be satisfactory;
   (c) under subsection (1)(b), when the creditor newly provides insurance with respect to debt previously created -- coverage does not then become effective at least until the effective date of the policy.
3. However, under subsection (1), if evidence of insurability satisfactory to the insurer is required, and is furnished within "30 days after the term would otherwise commence," coverage becomes effective when the term of insurance would otherwise commence, e.g., the life of a debtor who, less than 30 days after becoming obligated to a creditor, furnishes evidence of insurability satisfactory to the insurer under a group policy insuring the lives of the creditor's debtors furnishing such evidence and who then dies is insured under the policy.
4. Subsection (2) specifies the circumstances when the term of consumer credit insurance need not extend to the due date of the last scheduled installment of the debt.
5. Subsection (3) limits, subject to the stated exceptions, the term of consumer credit insurance to 15 days after the scheduled due date of the last installment of the debt.

K.S.A. 16a-4-202. (UCCC) Amount of insurance.

(1) Except as provided in subsection (2),

(a) In the case of consumer credit insurance providing life coverage, the amount of insurance may not initially exceed the debt and, if the debt is payable in installments, may not at any time exceed the greater of the scheduled or actual amount of the debt; or

(b) in the case of any other consumer credit insurance, the total amount of periodic benefits payable may not exceed the total of scheduled unpaid installments of the debt, and the amount of any periodic benefit may not exceed the original amount of debt divided by the number of periodic installments in which it is payable.

(2) If consumer credit insurance is provided in connection with an open-end credit account, the amounts payable as insurance benefits may be reasonably commensurate with the amount of debt as it exists from time to time. If consumer credit insurance is provided in connection with a commitment to grant credit in the future, the amounts payable as insurance benefits may be reasonably commensurate with the total from time to time of the amount of debt and the amount of the commitment.

History: L. 1973, ch. 85, § 74; L. 1988, ch. 85, § 9; July 1.

KANSAS COMMENT, 2010:

1. Subsection (1) provides generally applicable limitations on the amounts of consumer credit insurance and benefits.
2. Subsection (2) provides more flexible limitations on the amounts of consumer credit insurance benefits necessary in connection with open end credit accounts and credit commitments.
3. Limitations of this kind are essential to the effectiveness of the requirement of K.S.A. 16a-4-203(2) that premium rates be reasonable in relation to the benefits provided by consumer credit insurance.

Attorney General's Opinions:

- Consumer credit insurance; property and liability insurance. 87-3.
- Property and liability insurance. 87-47.
- Consumer credit insurance; amount of insurance. 88-13.

K.S.A. 16a-4-203. (UCCC) Filing and approval of rates and forms.

(1) A creditor may not use a form or a schedule of premium rates or charges, the filing of which is required by this section, if the commissioner of insurance has disapproved the

form or schedule and has notified the insurer of such disapproval. A creditor may not use a form or schedule unless:

(a) The form or schedule has been on file with the commissioner of insurance for 30 days, or was approved by the commissioner prior to such creditor's use; and

(b) the insurer has complied with this section with respect to the insurance.

(2) Except as provided in subsection (3), all policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements and riders relating to consumer credit insurance delivered or issued for delivery in this state, and the schedules of premium rates or charges pertaining thereto, shall be filed by the insurer with the commissioner of insurance. Within 30 days after the filing of any form or schedule, the commissioner shall disapprove it if the premium rates or charges are unreasonable in relation to the benefits provided under the form, or if the form contains provisions that are unjust, unfair, inequitable or deceptive, or encourage misrepresentation of the coverage, or are contrary to any provision of the insurance code or of any rule or regulation promulgated thereunder.

(3) If a group policy has been delivered in another state, the forms to be filed by the insurer with the commissioner of insurance are the group certificates and notices of proposed insurance. The commissioner shall approve them if:

(a) Such group certificates and notices of proposed insurance provide the information that would be required if the group policy were delivered in this state; and

(b) the applicable premium rates or charges do not exceed those established by his rules or regulations.

History: L. 1973, ch. 85, § 75; Jan. 1, 1974.

KANSAS COMMENT, 2010:

1. This section gives the Kansas insurance commissioner the power to regulate credit life, accident and health insurance premium rates. See K.A.R. 40-5-107.
2. Subsection (3) facilitates insuring, as a group, the debtors of a creditor operating across state lines.

Attorney General's Opinions:

- Consumer credit insurance; amount of insurance. 88-13.

Part 3

PROPERTY AND LIABILITY INSURANCE

K.S.A. 16a-4-301. (UCCC) Property insurance.

(1) A creditor may not contract for or receive a separate charge for insurance against loss of or damage to property unless:

(a) the insurance covers a substantial risk of loss of or damage to property related to the credit transaction;

(b) the amount, terms, and conditions of the insurance are reasonable in relation to the character and value of the property insured or to be insured; and

(c) the term of the insurance is reasonable in relation to the terms of credit.

(2) The term of the insurance is reasonable if it is customary and does not extend substantially beyond a scheduled maturity.

(3) A creditor may not contract for or receive a separate charge for insurance against loss of or damage to property unless property is purchased pursuant to a credit card or in a transaction pursuant to open-end credit, or unless the amount financed exclusive of charges for the insurance is $900 or more, and the value of the property is $900 or more.

History: L. 1973, ch. 85, § 76; L. 1999, ch. 107, § 24; July 1.

KANSAS COMMENT, 2000:

1. The restrictions on property insurance imposed by subsection (1) are similar to those provided by retail installment sales acts in a number of states and basically track with the old Kansas sales finance act.
2. Subsection (2) permits reasonable flexibility so that the expiration of the term of property insurance need not coincide exactly with the scheduled maturity of the debt.
3. Subsection (3) prohibits a separate charge for property insurance when either the amount of debt or the value of the property to be insured is relatively small. Open end credit is exempted from this limitation.

Attorney General's Opinions:

- Property insurance; damage to property unrelated to credit transaction. 86-42.
- Consumer credit insurance; property and liability insurance. 87-3.
- Property and liability insurance.87-47.

K.S.A. 16a-4-302. (UCCC) Insurance on creditor's interest only.

If a creditor contracts for or receives a separate charge for insurance against loss of or damage to property, the risk of loss or damage not willfully caused by the consumer is on the consumer only to the extent of any deficiency in the effective coverage of the insurance, even though the insurance covers only the interest of the creditor.

History: L. 1973, ch. 85, § 77; Jan. 1, 1974.

KANSAS COMMENT, 2000:

This section prohibits a separate charge to the consumer for property insurance covering the creditor's interest in property unless the consumer also receives the benefit of the insurance to the extent he does not willfully cause the loss or damage, risk of which is insured. "Single interest" property insurance for which the creditor makes a separate charge to the consumer may not provide for subrogation of the insurer to the rights of the creditor as to any loss or damage not willfully caused by the consumer. See also K.S.A. 16a-2-501(2).

Attorney General's Opinions:

- Consumer credit transaction; blanket single interest insurance programs. 89-54

K.S.A. 16a-4-303. (UCCC) Liability insurance.

A creditor may not contract for or receive a separate charge for insurance against liability unless the insurance covers a substantial risk of liability arising out of the ownership or use of property related to the credit transaction.

History: L. 1973, ch. 85, § 78; Jan. 1, 1974.

KANSAS COMMENT, 2000:

This section imposes restrictions with respect to liability insurance comparable to those imposed with respect to property insurance by subsection (1) of K.S.A. 16a-4-301.

K.S.A. 16a-4-304. (UCCC) Cancellation by creditor.

A creditor shall not request cancellation of a policy of property or liability insurance except after the consumer's default or in accordance with a written authorization by the consumer, and in either case the cancellation shall not take effect until written notice is delivered to the consumer or mailed to such consumer at the address provided. The notice shall state that the policy may be cancelled on a date not less than 10 days after the notice is delivered, or, if the notice is mailed, not less than 13 days after it is mailed.

History: L. 1973, ch. 85, § 79; Jan. 1, 1974.

KANSAS COMMENT, 2000:

This section requires advance written notice, by either the creditor or the insurer, of the prospective cancellation of property or liability insurance provided in connection with a consumer credit transaction. This section also applies to premium finance loans. See K.S.A. 16a-4-102(2).

Article 5 – REMEDIES AND PENALTIES

Part 1

LIMITATIONS ON CREDITORS' REMEDIES

K.S.A. 16a-5-103. (UCCC) Restrictions on deficiency judgments.

(1) This section applies to a deficiency on a consumer credit sale of goods or services and on a consumer loan in which the lender is subject to defenses arising from sales; a consumer is not liable for a deficiency unless the creditor has disposed of the goods in good faith and in a commercially reasonable manner.

(2) If the seller repossesses or voluntarily accepts surrender of goods which were the subject of the sale and in which the seller has a security interest, the buyer is not personally liable to the seller for the unpaid balance of the debt arising from the sale of a commercial unit of goods of which the cash sale price was $1,000 or less, and the seller is not obligated to resell the collateral unless the buyer has paid 60% or more of the cash price and has not signed after default a statement renouncing such buyer's rights in the collateral.

(3) If the seller repossesses or voluntarily accepts surrender of goods which were not the subject of the sale but in which the seller has a security interest to secure a debt arising from a sale of goods or services or a combined sale of goods and services and the cash price of the sale was $1,000 or less, the buyer is not personally liable to the seller for the unpaid balance of the debt arising from the sale, and the seller's duty to dispose of the collateral is governed by (K.S.A. 84-9-610, and amendments thereto.

(4) If the lender takes possession or voluntarily accepts surrender of goods in which such lender has a security interest to secure a debt arising from a consumer loan in which the lender is subject to defenses arising from sales K.S.A. 16a-3-405, and amendments thereto and the net proceeds of the loan paid to or for the benefit of the debtor were $1,000 or less, the debtor is not personally liable to the lender for the unpaid balance of the debt arising from the loan and the lender's duty to dispose of the collateral is governed by K.S.A. 84-9-610, and amendments thereto.

(5) For the purpose of determining the unpaid balance of consolidated debts or debts pursuant to open-end credit, the allocation of payments to a debt shall be determined in the same manner as provided by K.S.A. 16a-3-303, and amendments thereto.

(6) The consumer may be liable in damages to the creditor if the consumer has wrongfully damaged the collateral or if, after default and demand, the consumer has wrongfully failed to make the collateral available to the creditor.

(7) If the creditor brings an action against the consumer for a debt arising from a consumer credit sale of goods or services or from a consumer loan in which the lender is subject

to defenses arising from sales, when under this section the creditor would not be entitled to a deficiency judgment if the creditor took possession of the collateral, and obtains judgment:

(a) The creditor may not take possession of the collateral, and

(b) the collateral is not subject to levy or sale on execution or similar proceedings pursuant to the judgment.

History: L. 1973, ch. 85, § 82; L. 2005, ch. 144, § 16; July 1.

KANSAS COMMENT, 2010:

1. Where there has been a default with respect to a secured consumer credit transaction, the rights of the creditor and consumer are controlled by part 6 (Default) of UCC article 9 (K.S.A. 84-9-601, et seq.), except to the extent that such rights are changed by the U3C (see K.S.A. 84-9-201). Under the UCC, the creditor has the right to take possession of the collateral on default and may proceed without judicial process. K.S.A. 84-9-609. The creditor may then sell, lease or otherwise dispose of the collateral in public or private proceedings, and may buy at the foreclosure sale. The consumer is entitled to reasonable notification of the time and place of any public sale and reasonable notification of the time after which the collateral will be disposed of privately. K.S.A. 84-9-611. Proceeds are applied first to the expenses of repossession and disposition and then to satisfaction of the indebtedness. Any excess is paid to the consumer and the consumer is liable for any deficiency. K.S.A. 84-9-615. If the consumer has paid 60% of the cash price in the case of a sale or 60% of the principal in the case of a loan and, after default, has not signed a statement renouncing his or her rights, the creditor must dispose of the collateral. If the creditor fails to dispose of the collateral within 90 days after repossession the consumer may recover under K.S.A. 84-9-625. In all other cases the creditor may retain the collateral in satisfaction of the debt, if the consumer does not object after receipt of notification of the creditor's intention to do so. K.S.A. 84-9-620 and K.S.A. 84-9-622. The consumer has a right to redeem the collateral at anytime before disposition of the collateral or satisfaction of the obligation, by tendering fulfillment of all obligations secured by the collateral as well as expenses of the creditor. K.S.A. 84-9-623.
2. The provisions of the UCC outlined above are modified to some extent by this section with respect to proceedings to enforce rights arising from consumer credit sales and consumer loans in which the lender is subject to claims and defenses arising from sales and leases, or so-called "all in the family" loans. See K.S.A. 16a-3-405. For both types of transactions, subsection (1) adopts the position of the line of cases under the UCC that directly or indirectly deny the creditor a deficiency if the creditor has not disposed of the collateral in good faith and in a commercially reasonable manner. See, e.g., Beneficial Finance Co. v. Reed, 212 N.W.2d 454 (Iowa 1973).

   Several Kansas cases have cited and discussed the rule of subsection (1); most, however, have found that the particular creditor disposed of the goods in a commercially reasonable manner and, therefore, was entitled to recover a deficiency. See, e.g., Kelley v. Commercial National Bank, 235 Kan. 45, 678 P.2d 620 (1984); Medling v. Wecoe Credit Union, 234 Kan. 852, 678 P.2d 1115 (1984). In Topeka Datsun Motor Co. v. Stratton, 12 Kan. App. 2d 95, 736 P.2d 82 (1987), the court held that failure to provide proper notice to the consumer under the UCC rules constituted failure to dispose of the collateral in a commercially reasonable manner and, as a result, the creditor was barred from recovering a deficiency under the rule of this subsection.

3. Under subsection (2), with respect to a consumer credit sale in which the cash price is $1,000 or less, a seller who repossesses or voluntarily accepts surrender of goods sold in which the creditor has a security interest may not obtain a deficiency judgment against the buyer if the proceeds on disposition of the goods are insufficient to pay the indebtedness and the expenses of the seller. The seller need not resell the goods unless the buyer has paid 60% of the cash price and, after default, has not signed a statement renouncing his or her rights in the collateral. In cases of sales of $1,000 or less, this section gives to the seller the option of either suing for the unpaid balance or repossessing, but the creditor may not do both. The UCC concept of "commercial unit" is borrowed, see K.S.A. 84-2-105(6), and is intended to preclude the argument that subsection (2) is inapplicable to a consumer credit sale of a stove, a refrigerator, a washer, a dryer, and a TV set for a total cash price of more than $1,000 when each of these "commercial units" does not separately cost more than $1,000.

4. The seller may have a security interest in collateral other than goods sold in the consumer credit sale. The U3C allows the seller to take a security interest in collateral other than goods sold in certain limited circumstances. See K.S.A. 16a-3-301 and 16a-3-302, and the Kansas comments to those sections. In those cases, if the cash price of the sale is $1,000 or less, the seller who repossesses or voluntarily accepts surrender of collateral may not obtain a deficiency judgment against the buyer. Subsection (3). The rights of the buyer with respect to compulsory disposition of collateral which was not the subject of the sale and recovery of any surplus on disposition are defined in the UCC. See K.S.A. 84-9-610 and 84-9-620.

5. Under subsection (4), if a lender makes a consumer loan in which the net proceeds paid to or for the benefit of the consumer are $1,000 or less to enable the consumer to purchase goods under circumstances where the lender is subject to claims and defenses arising from the sale of goods (K.S.A. 16a-3-405) and, pursuant to a security interest acquired in the goods, repossesses or voluntarily accepts surrender of the goods, the lender may not obtain a deficiency judgment against the consumer if the proceeds on disposition of the goods are insufficient to pay the indebtedness and the expenses of the lender with respect to that loan. Whether the lender is subject to this restriction depends on whether the criteria for "all in the family" loans in K.S.A. 16a-3-405 are satisfied. The importance of these criteria is illustrated by Central Finance Co., Inc. v. Stevens, 221 Kan. 1, 558 P.2d 122 (1976), where a direct loan under $1,000 was used by the consumer to buy a car. The loan was not an "all in the family" loan and, as a result, the lender was not precluded by this section from recovering a deficiency. However, if, for example, a consumer borrowed $700 in a "direct loan" from a lender in corporate control of a dealer from whom the consumer purchased an item with the proceeds of the loan, the lender would be precluded from obtaining a deficiency against the consumer. See the definition of "person related to" in K.S.A. 16a-1-301(31).

6. Subsection (6) is designed to protect creditors against consumers who wrongfully damage collateral or who wrongfully refuse to surrender collateral. In addition to the right of the creditor to repossess the collateral, this subsection gives the creditor a right of action for damages for the loss of value of the collateral resulting from wrongful injury to the goods or, in the case of wrongful refusal to surrender the collateral, for any loss suffered by the creditor because of an inability to repossess.

7. Subsection (7) prohibits a creditor not entitled to a deficiency judgment under this section from achieving substantially the same result by first obtaining judgment for the debt and then levying on the collateral on execution.

8. It has been held that elimination of a deficiency judgment under this section is not an unconstitutional impairment of contract rights. See Sanco Enterprises, Inc. v. Christian, 495 P.2d 404 (Okla. Sup. Ct. 1972).

K.S.A. 16a-5-107. (UCCC) Extortionate extensions of credit.

(1) If it is the understanding of the creditor and the consumer that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person, the repayment of the extension of credit is unenforceable through civil judicial processes against the consumer.

(2) If an extension of credit was made at an annual rate exceeding 36% calculated according to the actuarial method and that the creditor then had a reputation for the use or threat of use of violence or other criminal means to cause harm to the person, reputation or property of any person to collect extensions of credit or to punish the nonrepayment thereof, there is prima facie evidence that the extension of credit was unenforceable under subsection (1).

History: L. 1973, ch. 85, § 83; Jan. 1, 1974.

KANSAS COMMENT, 2010:

1. This section is derived from 18 U.S.C. § 892, as added by title II of the TILA. It is intended to facilitate federal prosecutions with respect to making extortionate extensions of credit by providing one of the elements required for a prima facie case under the TILA provision referred to above, namely, that the repayment of the extension of credit would be unenforceable through civil judicial processes against the debtor. The federal rule sets the presumption of extortion at 45%, not at the 36% level used in this section. The uniform text of the U3C also uses 45%. Kansas' choice of 36% should have no effect on federal prosecutions, however, since the prima facie rule of this section would obviously apply to any federal prosecution of a lender who charged over 45%.
2. The effect of this section on Kansas law is to render unenforceable consumer loans above 36% when the specified elements of violence or other criminal means are present. Nothing in this section makes an extortionate extension of credit, in and of itself, a criminal offense under Kansas law. On the other hand, threats or other acts of violence directed toward consumer borrowers may themselves constitute crimes independent of this section. See also K.S.A. 16a-5-301(1), which imposes criminal liability on supervised lenders who make loans above the rates permitted by the U3C.

K.S.A. 16a-5-108. (UCCC) Unconscionability; inducement by unconscionable conduct.

(1) The unconscionability of an act or practice is a question for the trier of fact.

(2) With respect to a consumer credit transaction, if the trier of fact finds:

(a) The agreement was unconscionable at the time it was made, or was induced by unconscionable conduct, the court may refuse to enforce the agreement, or

(b) any clause of the agreement was unconscionable at the time it was made, the court may refuse to enforce the agreement, may enforce the remainder of the agreement without the unconscionable clause or may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(3) If it is claimed or appears to the trier of fact that the agreement or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its setting, purpose, and effect to aid the court in making the determination.

(4) A charge or practice expressly permitted by this act shall not be unconscionable.

History: L. 1973, ch. 85, § 84; Jan. 1, 1974.

KANSAS COMMENT, 2010:

1. Subsections (1) and (2) are derived in large part from the UCC. See K.S.A. 84-2-302. Contrary to the UCC, however, it is the trier of fact who determines whether a particular bargaining context or contract clause is unconscionable under the U3C. The trier of fact may be a judge or a jury. Under the KCPA, the determination of unconscionability is, as under the UCC, a matter of law for the court. See K.S.A. 50-627(b). The model act also followed the UCC and made the issue of unconscionability one of law; as a result, the Kansas provision is nonuniform in this respect. Pursuant to subsection (2), the consumer has a right to choose a judge or jury as the trier of fact with respect to unconscionability claims in a consumer credit contract case. Pursuant to K.S.A. 16a-1-107, a consumer may not waive or agree to forego rights granted pursuant to the U3C. Additionally, K.S.A. 60-238 and Section 5 of the Bill of Rights in the Kansas Constitution provides that a right to a jury trial may not be waived. Since the right to a jury trial may not be waived pursuant to the U3C, K.S.A. 60-238 and the Kansas Constitution, a waiver of jury trial provision should not be included in a contract subject to the U3C.
2. Subsection (1) provides, as does the UCC (see K.S.A. 84-2-302), that a court can refuse to enforce or can adjust an agreement or part of an agreement that was unconscionable on its face at the time it was made. However, many agreements are not in and of themselves unconscionable according to their terms, but they would never have been entered into by a consumer if unconscionable means had not been employed to induce the consumer to agree to the contract. It would be a frustration of the policy against unconscionable contracts for a creditor to be able to utilize unconscionable acts or practices to obtain such an agreement. Consequently, subsection (1) also gives the court the power to refuse to enforce an agreement if the trier of fact finds that it was induced by unconscionable conduct. Finally, subsection (1) includes provisions for a determination of unconscionability in a transaction that a consumer is led to believe will give rise to a consumer credit transaction so that, for example, a seller cannot bind the consumer to a short term sale contract payable in a lump sum on the assurance that the seller will secure financing for the consumer, and then inform the consumer that financing is unavailable and keep the down payment or goods traded in as a penalty for nonpayment.
3. In subsection (2), the omission of the adjective "commercial" found in the UCC (see K.S.A. 84-2-302) from the provision concerning the presentation of evidence as to the contract's "setting, purpose, and effect" is deliberate. Unlike the UCC, this section is concerned only with transactions involving consumers, and the relevant standard of conduct for purposes of this

section is not that which might be acceptable as between knowledgeable merchants but rather that which measures acceptable conduct on the part of a business person toward a consumer.

4. This section is intended to make it possible for the courts to police contracts or clauses which are found to be unconscionable or induced by unconscionable conduct. The basic test is whether, in the light of the background and setting of the market, the needs of the particular trade or case, and the condition of the particular parties to the conduct or contract, the conduct involved is, or the contract or clauses involved are so one-sided, or the bargaining power of the parties so unbalanced, as to be unconscionable under the circumstances existing at the time of the making of the contract. The particular facts involved in each case are of utmost importance since certain contracts or contractual provisions may be unconscionable in some situations but not in others. Inequality of bargaining power might be termed "procedural unconscionability" while unfair clauses in the fine print of a contract might be called "substantive unconscionability."

   While this section does not contain a "laundry list" of factors to be considered in making the determination of unconscionability, the lists of factors provided in the KCPA, K.S.A. 50-627(b), and in the U3C in K.S.A. 16a-6-111, concerning the administrator's power to halt unconscionable conduct, may be looked to for guidance. Another useful and widely cited discussion can be found in Wille v. Southwestern Bell Tel. Co., 219 Kan. 755, 549 P.2d 903 (1976). See also the discussion in Paglia v. Elliott, 373 N.W.2d 121 (Iowa 1985), discussing the unconscionability provision of the Iowa U3C; and Besta v. Beneficial Loan Co. of Iowa, 855 F.2d 532 (8th Cir. 1988), holding that it was unconscionable under the Iowa U3C for a finance company to arrange to finance a loan over a six-year period without informing the debtor that a three-year loan would have been cheaper. The following pre-U3C cases may also provide useful guidance. Williams v. Walker-Thomas Furn. Co., 350 F.2d 445 (D.C. Cir. 1965); American Home Improvement, Inc. v. MacIver, 105 N.H. 435, 201 A.2d 886 (1964); Unico v. Owen, 50 N.J. 101, 232 A.2d 405 (1967); Henningsen v. Bloomfield Motors, Inc., 32 N.J. 358, 161 A.2d 69 (1960); Frostifresh Corp. v. Reynoso, 54 Misc.2d 119, 281 N.Y.S.2d 964 (Supp. Ct. App. Term. 2d Dept. 1967), rev'g in part 52 Misc.2d 26, 274 N.Y.S.2d 757 (Nassau Co., 1966); Steele v. J.I. Case Co., 197 Kan. 554, 419 P.2d 902 (1966).

5. Subsection (3) prohibits a finding that a charge or practice expressly permitted by the U3C is in itself unconscionable. However, even though a practice or charge is authorized by the U3C, the totality of a particular creditor's conduct may show that the practice or charge is part of unconscionable conduct. Therefore, in determining unconscionability, the creditor's total conduct, including that part of the creditor's conduct which is in accordance with the provisions of the U3C, may be considered.

Attorney General's Opinions:

- Limitations on consumer's liability; balloon payments; denial of right to refinance. 82-143.

K.S.A. 16a-5-109. (UCCC) Default.

An agreement of the parties to a consumer credit transaction with respect to default on the part of the consumer is enforceable only to the extent that:

(1) the consumer fails to make a payment as required by agreement; or

(2) the prospect of payment, performance, or realization of collateral is significantly impaired; the burden of establishing the prospect of significant impairment is on the creditor.

History: L. 1973, ch. 85, § 85.

KANSAS COMMENT, 2010:

1. One of the vital terms of every consumer credit agreement is that which sets forth the criteria which will constitute default. By its nature "default" is not a term that is negotiated by the parties — it is generally controlled by the creditor. It is appropriate, therefore, that its content and implications be confined by the law so as to prevent abuse. This section is intended to accomplish that.
2. This section recognizes that there are two entirely distinct sets of circumstances which might constitute default on an installment obligation. The first and most common is the failure to pay an installment as required. A default of this type is susceptible of being cured by the consumer without impairing the continuing contractual relationship between the consumer and the creditor. See K.S.A. 16a-5-110. The second type of default relates to behavior of the consumer which endangers the prospect of a continuing relationship. It may be insolvency, illegal activity, or an impending removal of assets from the jurisdiction. There must, however, be circumstances present which significantly impair the relationship. Useful discussions of the types of factors and circumstances which constitute "significant impairment" can be found in Johnson County Auto Credit, Inc. v. Green, 277 Kan. 148, 83 P.2d 152 (2004); Prairie State Bank v. Hoefgen, 245 Kan. 236, 777 P.2d 811 (1989); and Medling v. Wecoe Credit Union, 234 Kan. 852, 678 P.2d 1115 (1984). The burden of proof is on the creditor to justify action on a claim of default of this type. This differs from the rule of UCC. See K.S.A. 84-1-208.
3. The "significant impairment" rule of subsection (2) prohibits so-called "insecurity clauses" under which default and acceleration can be called whenever the creditor in good faith feels "insecure." This also differs from the rule of UCC. See K.S.A. 84-1-208.
4. Under an administrative interpretation issued by the administrator, a demand or "call" feature may be included in non-real estate consumer loan agreements that are "interest only" — those in which the regularly scheduled payments are only of interest. See Administrative Interpretation No. 1001. This interpretation points out that calling for full payment in the middle of the regularly scheduled term (e.g., in the 30th month of a 48 month contract) would trigger the consumer's right to refinance the balloon payment under K.S.A. 16a-3-308.

Attorney General's Opinions:

- Definitions; supervised lender; supervised financial organization. 84-11.

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(Name, address, and telephone number of creditor)

K.S.A. 16a-5-111. (UCCC) Cure of default.

(1) After a consumer has been in default for 10 days for failure to make a required payment in a consumer credit transaction payable in installments, a creditor may give the consumer the notice described in this section. A creditor gives notice to the consumer under this section when the creditor delivers the notice to the consumer or delivers or mails the notice to the address of the consumer's residence.

(2) The notice shall be in writing and shall conspicuously state the following: The name, address and telephone number of the creditor to which payment is to be made, a brief description of the credit transaction, the consumer's right to cure the default, the amount of payment and date by which payment must be made to cure the default, and the consumer's possible liability for the reasonable costs of collection, including, but not limited to, court costs, either attorney fees or collection agency fees and any other information required by the administrator as set forth by rules and regulations or by administrative interpretation.

(3) With respect to a consumer credit transaction payable in installments, after a default consisting only of the consumer's failure to make a required payment, a creditor may neither accelerate maturity of the unpaid balance of the obligation nor take possession of collateral because of that default until 20 days after a notice of the consumer's right to cure is given. Until 20 days after the notice is given, the consumer may cure all defaults consisting of a failure to make the required payment by tendering the amount of all unpaid sums due at the time of the tender, without acceleration, plus any unpaid late fees. Cure shall restore the consumer to the consumer's rights under the agreement as though the defaults had not occurred.

(4) With respect to defaults on the same obligation after a creditor has once given a notice of consumer's right to cure, this section gives the consumer no right to cure and imposes no limitation on the creditor's right to proceed against the consumer or the collateral.

(5) Unless the consumer voluntarily surrenders the collateral to the creditor, the creditor may take possession of the collateral without judicial process only if possession can be taken without entry into a dwelling and without the use of force or other breach of the peace.

(6) Nothing in this section shall prohibit a consumer from voluntarily surrendering the collateral of the consumer credit transaction and shall not prohibit the creditor from thereafter enforcing the creditor's security interest in the collateral at any time after surrender.

History: L. 1973, ch. 85, § 87; L. 1974, ch. 91, § 3; L. 2005, ch. 144, § 17; July 1.

KANSAS COMMENT, 2000:

1. As noted in the Kansas comment to the preceding section, the creditor must wait 20 days after sending the notice provided for in K.S.A. 16a-5-110; no acceleration of the unpaid balance or

repossession of the collateral may take place until the 20-day grace period expires. If, before that time, the consumer pays the missing installment, plus any unpaid delinquency or other charges, the default has been "cured" and the consumer's prior status is restored.

2. This section imposes no limitation on the creditor's right to proceed against a consumer or goods that are collateral with respect to successive defaults on the same obligation. If the consumer misses another installment after once curing a default, subsection (3) makes it clear that the creditor can accelerate and repossess as permitted by the UCC. In addition, as noted in the Kansas comment to K.S.A. 16a-5-110, the right to cure applies only to defaults consisting of missed installment payments; there is no right to cure a default arising from an act constituting a significant impairment of the relationship.

Part 2

CONSUMERS' REMEDIES

K.S.A. 16a-5-201. (UCCC) Effect of violations on rights of parties.

(1) If a creditor has violated the provisions of this act applying to collection of excess charges or enforcement of rights, restrictions on interests in land as security, limitations on the schedule of payments or loan terms for supervised loans , attorney's fees , security in sales and leases, assignments of earning , authorizations to confess judgment , certain negotiable instruments prohibited , assignees subject to defenses, credit card issuer subject to defenses or limitations on default charges , the consumer may recover actual damages and except for a class action a penalty in an amount determined by the court not less than $100 nor more than $1,000. With respect to violations arising from sales or loans made pursuant to open-end credit, no action pursuant to this subsection may be brought more than two years after the violations occurred. With respect to violations arising from other consumer transactions, no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement.

(2) If a creditor has violated the provisions of this act applying to authority to make supervised loans, the loan is void and the consumer is not obligated to pay either the amount financed or finance charge. If the consumer has paid any part of the amount financed or finance charge, the consumer has a right to recover the payment from the person violating this act or from an assignee of that person's rights who undertakes direct or indirect collection of payments or enforcement of rights arising from the debt including, but not limited to, loans described in K.S.A. 16a-2-301(1), and amendments thereto. With respect to violations arising from loans made pursuant to open-end credit, no action pursuant to this subsection may be brought more than two years after the violation occurred. With respect to violations arising from other loans, no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was paid. Persons

subject to the penalties in this subsection shall not include attorneys or collection agencies that do not purchase a consumer obligation.

(3) A consumer is not obligated to pay a charge in excess of that allowed by this act, and if the consumer has paid an excess charge the consumer has a right to a refund of twice the excess charge. If the consumer has paid an amount in excess of the lawful obligation under the agreement, the consumer may recover twice the excess amount from the person who made the excess charge or from an assignee of that person's rights who undertakes direct or indirect collection of payments from or enforcement of rights against debtors arising from the debt including, but not limited to, loans described in K.S.A.16a-2-301(1), and amendments thereto. Persons subject to the penalties in this subsection shall not include attorneys or collection agencies who do not purchase a consumer obligation.

(4) If a creditor has contracted for or received a charge in excess of that allowed by this act, or if a consumer is entitled to a refund and a person liable to the consumer refuses to make a refund within a reasonable time after demand, the consumer may recover from the creditor or the person liable in an action except for a class action a penalty in an amount determined by the court not less than $100 or more than $1,000. With respect to excess charges arising from sales or loans made pursuant to open-end credit, no action pursuant to this subsection may be brought more than two years after the time the excess charge was made. With respect to excess charges arising from other consumer credit transactions no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was made. Persons subject to the penalties in this subsection shall not include attorneys or collection agencies who do not purchase a consumer obligation.

(5) Except as otherwise provided, no violation of the provisions of K.S.A. 16a-1-101 *et seq.,* and amendments thereto, impairs rights on a debt.

(6) A creditor has no liability for a penalty under subsection (1) or subsection (4) if within 15 days after discovering an error, and prior to the institution of an action under this section or the receipt of written notice of the error, the creditor notifies the person concerned of the error and corrects the error. If the violation consists of a prohibited agreement, giving the consumer a corrected copy of the writing containing the error is sufficient notification and correction. If the violation consists of an excess charge, correction shall be made by an adjustment or refund.

(7) If the creditor establishes by a preponderance of evidence that a violation is unintentional or the result of a bona fide error of law or fact notwithstanding the maintenance of procedures reasonably adapted to avoid any such violation or error, no liability is imposed under subsections (1), (2), and (3), the validity of the transaction is not affected, and no liability is imposed under subsection (4) except for refusal to make a refund.

(8) In an action in which it is found that a creditor has violated any provision of K.S.A. 16a-1-101 *et seq*., and amendments thereto, the court shall award to the consumer the costs of the action and to the consumer's attorneys their reasonable fees. Reasonable attorney's fees shall be determined by the value of the time expended by the attorney and not by the amount of the recovery on behalf of the consumer.

(9) A creditor who in good faith complies with a written administrative interpretation shall not be subject to any penalties under this section for any act done or omitted in conformity with such written administrative interpretation.

History: L. 1973, ch. 85, § 89; L. 1992, ch. 80, § 2; July 1.

KANSAS COMMENT, 2010:

1. Rights that are accompanied by inadequate remedies or no remedy at all and limitations on agreements and practices that do not provide for sufficient penalties or for any penalty at all are generally ineffective to accomplish the desired result. They become little more than exhortatory, easily ignored, and meaningless proclamations. In order to protect rights created and to deter provisions of agreements and practices proscribed by legislation, suitable remedies and penalties must exist. Since an aggrieved party is one of the persons best able to enforce violations of rights and limitations, this section sets forth a right of action in the consumer in the event of violation by the creditor of each section of the U3C that does not include its own provision for infraction and, better to deter such practices, even of some that do, as in the case of restrictions on land as security (K.S.A. 16a-2-307).
2. Subsection (1) lists eleven provisions of the U3C for the contravention of which actual damages and a penalty may be recovered. The formula used for the penalty is derived from TILA 15 U.S.C.A. § 1640, with a minimum and a maximum recovery. Within this range, a court may apportion penalties according to the seriousness of the offense and the overall circumstances of each violation. These civil penalties attach irrespective of the fact that the consumer has suffered no monetary damage. They are designed to encourage individual consumers to serve as their own "private attorneys general" in order that the U3C may be vigorously enforced. Thus, the penalties are designed not only to provide a deterrent to potential violators but also an incentive to consumers to bring an action when a violation has occurred. In Credit Union One of Kansas v. Stamm, 254 Kan. 367, 867 P.2d 285 (1994), the court held that a contract provision in a consumer credit transaction authorizing the creditor to recover attorney fees to the extent authorized by law, did not violate the prohibition in K.S.A. 16a-2-507 (overruling Halloran v. North Plaza State Bank, 17 Kan.App.2d 840, 844 P.2d 764 (1993)). Given its strong minimum civil penalty approach, subsection (1) also provides for a relatively short statute of limitations: one year after the last installment is due under a closed end contract and two years after the violation occurs under open end credit.
3. Subsection (2) describes the remedy available to the consumer when a loan with an annual percentage rate exceeding 12% is made by a person not authorized to make such a loan. The remedy is to void the transaction and allow the consumer to retain the proceeds.
4. Subsections (3) and (4) set forth the rights of the consumer with respect to excess charges by a creditor. The penalty is recovery of twice the amount of the excess charge (subsection (3)) as well as the $100 minimum civil penalty (subsection (4)) provided for in subsection (1). As in subsection (1), a short statute of limitations is provided and attorneys or collection agencies are insulated from liability so long as they did not purchase the usurious obligation. An excess charge might arise when the consumer credit transaction expressly provides for a finance charge in

excess of what is allowable under the U3C. It might also arise indirectly, as when the creditor improperly uses multiple agreements in violation of K.S.A. 16a-3-304.

5. Under subsection (5), except in cases where the obligation is expressly voided by the U3C (as, for example, in cases involving unlicensed loans under K.S.A. 16a-2-301, referral sales under K.S.A. 16a-3-309, or extortionate loans under K.S.A. 16a-5-107), the creditor may enforce an otherwise valid obligation even though the creditor has violated one of the provisions of the U3C. For example, a creditor suing to enforce an installment contract would, if the installment contract form included a negotiable note, simply face a counterclaim based on the civil penalties in subsection (1). See K.S.A. 16a-5-202.

6. Subsection (6) provides that if the creditor voluntarily notifies the consumer of the error and corrects the error within 15 days after discovering it, the creditor is not subject to a penalty. Such a provision encourages the autonomous correction of errors and violations. Voluntariness is considered to cease, however, either upon the commencement of an action against the creditor or upon the creditor's receipt of written notification from the consumer of the violation.

   Acts done or omitted in conformity with a written administrative interpretation of the administrator result in no liability under the U3C except for refund of an excess charge. See subsection (9) and K.S.A. 16a-6-104(4).

7. Subsection (8) directs the court to award to the consumer the costs of the action and to the consumer's attorneys their reasonable fees in any action where it is found that a creditor has violated the U3C. The direction to award attorney's fees should enable consumers to find attorneys to prosecute their cases, an essential element if the consumers' rights provided by the U3C are to be enforced, as an attorney is assured of adequate compensation. This subsection applies whether or not the particular violation is one of those enumerated in subsection (1). For example, in Topeka Datsun Motor Co. v. Stratton, 12 Kan. App. 2d 95, 736 P.2d 82 (1987), the court awarded attorney's fees in a case involving a failure to conduct a commercially reasonable resale in violation of K.S.A. 16a-5-103; and in Farmers State Bank v. Haflich, 10 Kan. App. 2d 333, 699 P.2d 553 (1985), an award was made in a case involving a violation of the notice and right to cure rules of K.S.A. 16a-5-110 and 16a-5-111. The court in both cases also held that an award of attorney's fees under this subsection is mandatory. Thus, the trial court has no discretion to refuse to consider the consumer's motion for attorney's fees.

8. The U3C provides for other remedies in addition to those set forth in this section. For example, the consumer has a defense to the enforcement of a transaction which violates K.S.A. 16a-5-107 on extortionate extensions of credit. K.S.A. 16a-5-108 gives a consumer a remedy in certain cases of unconscionability.

   In addition to the foregoing individual consumers' remedies, the U3C provides for actions by the administrator for the benefit of consumers. The administrator may issue cease and desist orders with respect to violations of the U3C or may bring civil actions to restrain violations of it. See K.S.A. 16a-6-108 and 16a-6-110. The administrator may also bring a civil action against a creditor to recover actual damages sustained and excess charges paid by one or more consumers who have a right to recover explicitly granted by the U3C, but not for penalties, and amounts recovered shall be paid to each consumer or set off against such consumer's obligation. K.S.A. 16a-6-113. K.S.A. 16a-6-111 provides for civil actions by the administrator for injunctions against a course of making unconscionable agreements or of fraudulent or unconscionable conduct.

   Finally, in addition to the individual consumers' remedies and remedies of the administrator described above, the consumer may have other remedies based on general principles of law or equity, or based on the provisions of other applicable law such as the KCPA. See K.S.A. 16a-1-

103 and 16a-6-115. Also, damages or penalties to which a consumer is entitled may be set off `against the consumer's obligation and may be raised as a defense to an action on the obligation without regard to the time limitations prescribed by this section. See K.S.A. 16a-5-202.

Attorney General's Opinions:

- Recovery by the administrator. 80-122.

K.S.A. 16a-5-202. (UCCC) Refunds and penalties as setoff to obligation.

Refunds or penalties to which the consumer is entitled pursuant to this part may be set off against the consumer's obligation and may be raised as a defense to a suit on the obligation without regard to the time limitations prescribed by this part.

History: L. 1973, ch. 85, § 90.

KANSAS COMMENT, 2000:

As noted in the Kansas comment to the preceding section, this section permits a consumer to set off damages or penalties to which the consumer may be entitled against the consumer's obligation, without regard to the time limitations prescribed by other sections in this part. The policy of this section was stated in Valley View State Bank v. Caulfield, 11 Kan. App. 2d 601, 731 P.2d 316 (1987), as follows: "Without 16a-5-202, a creditor who had committed a violation could wait one year under the closed end contract, and two years under open end credit, and commence an action and not be concerned with any violations." 631 P.2d at 318. In Caulfield, the court also held that the term "obligation," as used in this section, refers only to the note or contract on which suit is brought, and not to prior notes which were consolidated or renewed into the current note. As a result, violations which had occurred in the prior notes and which were now time-barred could not be raised.

K.S.A. 16a-5-203. (UCCC) Civil liability for violation of disclosure provisions.

(1) Except as otherwise provided in this section, a creditor who fails to disclose information to a person entitled to the information under the provisions of K.S.A. 16a-1-101 *et seq*., and amendments thereto, or under rules and regulations adopted by the administrator is liable to that person in an amount equal to the sum of:

   (a) Twice the amount of the finance charge in connection with the transaction, but the liability pursuant to this paragraph shall be not less than $200 or more than $2,000; and

   (b) in the case of a successful action to enforce the liability under paragraph (a), the costs of the action together with reasonable attorney's fees as determined by the court.

(2) A creditor has no liability under this section if within 15 days after discovering an error, and prior to the institution of an action under this section or the receipt of written notice

of the error, the creditor notifies the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to assure that the person will not be required to pay a credit service charge or loan finance charge in excess of the amount or percentage rate actually disclosed.

(3) A creditor may not be held liable in any action brought under this section for a violation of the provisions of K.S.A. 16a-1-101 *et seq*., and amendments thereto, if the creditor shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error.

(4) Any action which may be brought under this section against the original creditor in any credit transaction involving a security interest in land may be maintained against any subsequent assignee of the original creditor where the assignee, its subsidiaries, or affiliates were in a continuing business relationship with the original creditor either at the time the credit was extended or at the time of the assignment, unless the assignment was involuntary, or the assignee shows by a preponderance of evidence that it did not have reasonable grounds to believe that the original creditor was engaged in violations of this act and that it maintained procedures reasonably adapted to apprise it of the existence of the violations.

(5) No action pursuant to this section may be brought more than one year after the date of the occurrence of the violation.

(6) The liability of the creditor under this section is in lieu of and not in addition to the creditor's liability under the federal truth in lending act.

History: L. 1973, ch. 85, § 91; L. 1981, ch. 93, § 15; L. 1988, ch. 85, § 10; L. 1999, ch. 107, § 26; July 1.

KANSAS COMMENT, 2010:

1. This section is derived from TILA 15 U.S.C.A. § 1640. It is intended to allow fulfillment of the demand of that statute that under state law classes of credit transactions be subject to requirements substantially similar to those imposed by the TILA and that adequate provision for enforcement exist if the state wishes to apply for an exemption from the TILA with respect to federal truth in lending. Subsections (1) through (5), consequently, are modeled on the federal provisions. Subsection (6) precludes double liability if a creditor is sued both under this section and under the TILA.
2. The disclosure requirements of the TILA are incorporated into the U3C pursuant to K.S.A. 16a-3-206 and 16a-6-117 and K.A.R. 75-6-26.

Part 3

CRIMINAL PENALTIES

K.S.A. 16a-5-301. (UCCC) Intentional violations; penalties.

(1) It is unlawful for any person to violate any of the provisions of this act, any rule and regulation adopted or order issued under this act. A conviction for an intentional violation is a class A nonperson misdemeanor. A second or subsequent conviction of this subsection is severity level 7 nonperson felony.

(2) The criminal liability of a person under this section is in lieu of and not in addition to the creditor's criminal liability under the federal truth in lending act.

(3) A person, other than a supervised financial organization or an attorney or collection agency who does not purchase the credit obligation, who willfully engages in the business of entering into consumer credit transactions, or of taking assignments of rights against consumers arising therefrom and undertakes direct or indirect collection of payments or enforcement of these rights, without complying with the provisions of this act concerning notification or payment of fees is guilty of a class A misdemeanor and upon conviction thereof shall be punished in the manner provided by law.

History: L. 1973, ch. 85, § 92; L. 1999, ch. 107, § 27; July 1.

KANSAS COMMENT, 2010:

Any intentional violation of any provision of the U3C or any rule, regulation or order issued under it is a criminal offense.

Article 6 – ADMINISTRATION

Part 1

POWERS AND FUNCTIONS OF ADMINISTRATOR

K.S.A. 16a-6-104. (UCCC) Powers of administrator; reliance on rules and regulations; written administrative interpretations; nationwide mortgage licensing system and registry.

(1) In addition to other powers granted by this act, the administrator may:

(a) Receive and act on complaints, take action designed to obtain voluntary compliance with the provisions of K.S.A. 16a-1-101 *et seq*., and amendments thereto, or commence proceedings on the administrator's own initiative;

(b) provide guidance to persons and groups on their rights and duties under K.S.A. 16a-1-101 *et seq*., and amendments thereto;

(c) establish or support programs for the education of consumers with respect to credit practices:

(A) As a condition in settlements of investigations or examinations, the administrator may require a payment designated for consumer education to be expended as directed by the administrator for such purpose; and

(B) the administrator may fund consumer education programs from operating funds in an amount up to 1% of operating funds.

(d) make studies appropriate to effectuate the purposes and policies of K.S.A. 16a-1-101 *et seq*., and amendments thereto;

(e) adopt, amend and revoke rules and regulations to carry out the specific provisions of K.S.A. 16a-1-101 *et seq*., and amendments thereto;

(f) issue, amend and revoke written administrative interpretations;

(g) maintain offices within this state;

(h) appoint employees and agents and set such employees' compensation, and authorize attorneys appointed under this section to appear for and represent the administrator in court;

(i) examine periodically at intervals the administrator deems appropriate the loans, business and records of every licensee or consumer credit filer, except licensees that are supervised financial organizations. The official or agency responsible for the supervision of each supervised financial organization shall examine the loans, business and records of each such organization in the manner and periodically at intervals prescribed by the administrator. In addition, for the purpose of discovering violations of K.S.A. 16a-1-101 *et seq*., and amendments thereto, or securing information lawfully required, the administrator or the official or agency to whose supervision the organization is subject to K.S.A. 16a-6-105, and amendments thereto, may at any time investigate the loans, business and records of any supervised lender. For examination purposes the administrator shall have free and reasonable access to the offices, places of business and records of the licensee or consumer credit filer and the administrator may control access to any documents and records of a licensee or consumer credit filer;

(j) refer such evidence as may be available concerning violations of this act or of any rule and regulation or order to the attorney general or in consultation with the attorney general to the proper county or district attorney, who may in the prosecutor's discretion, with or without such a referral, institute the appropriate criminal proceedings under the laws of this state;

(k) if deemed necessary by the administrator, require fingerprinting of any applicant, licensee, owners or members thereof if a copartnership or association, or officers and directors thereof if a corporation, or any agent or other person acting on their behalf. The administrator, or the administrator's designee, shall 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 which the federal bureau of investigation may have to maintain with the individual states, the administrator 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;

(l) exchange information regarding the administration of this act with any agency of the United States or any state which regulates the licensee, or consumer credit filer who administers statutes, rules and regulations or other programs related to consumer credit and to enter into information sharing arrangements with other governmental agencies or associations representing governmental agencies which are deemed necessary or beneficial to the administration of this act;

(m) use the nationwide mortgage licensing system and registry as a channeling agent for requesting and distributing any information regarding supervised lender licensing to and from any source so directed by the administrator;

(n) 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 the act and to take such other actions as may be reasonably necessary to participate in the nationwide mortgage licensing system and registry. The administrator shall regularly report violations of law, enforcement actions and other relevant information, to the nationwide mortgage licensing system and registry;

(o) require any licensee to file reports with the nationwide mortgage licensing system and registry in the form prescribed by the administrator or the administrator's designee.

(2) The administrator shall enforce the provisions of this act and the rules and regulations and interpretations adopted thereunder with respect to a creditor, unless the creditor's compliance is regulated exclusively or primarily by another state or federal agency.

(3) To keep the administrator's rules and regulations in harmony with the rules of administrators in other jurisdictions, the administrator, so far as is consistent with the purposes, policies and provisions of K.S.A. 16a-1-101 *et seq*., inclusive, and amendments thereto, may:

(a) Before adopting, amending and revoking rules and regulations, advise and consult with administrators in other jurisdictions; and

(b) in adopting, amending and revoking rules and regulations, take into consideration the rules of administrators in other jurisdictions.

(4) Except for refund of an excess charge, no liability is imposed under K.S.A. 16a-1-101 *et seq*., inclusive, and amendments thereto, for an act done or omitted in conformity with a rule and regulation or written administrative interpretation of the administrator in effect at the time of the act or omission notwithstanding that after the act or omission the rule and regulation or written administrative interpretation may be determined by judicial or other authority to be invalid for any reason.

(5) The administrator prior to December 1 of each year shall establish such fees as are authorized under the provisions of K.S.A. 16a-1-101 *et seq*., inclusive, and amendments thereto, for the ensuing calendar year in such amounts as the administrator may determine to be sufficient to meet the budget requirements of the administrator for each fiscal year.

History: L. 1973, ch. 85, § 97; L. 1976, ch. 98, § 2; L. 1981, ch. 93, § 17; L. 1992, ch. 80, § 3; L. 1999, ch. 107, § 28; L. 2005, ch. 144, § 18; L. 2009, ch. 29, § 21; July 1.

Revisor's Note: Office of consumer credit commissioner abolished and powers, duties and functions transferred to deputy commissioner for consumer and mortgage lending, see 75-1314 et seq.

KANSAS COMMENT, 2010:

1. The administrator is given broad power to make studies relative to the proper working of the U3C, to provide educational services for consumers, and to advise persons and groups as to their rights and obligations under the U3C. The various disclosure rules, rate limitations and other provisions of the U3C designed to protect the consumer cannot be fully effective unless consumers are aware of and understand their rights. Therefore, an essential part of the administrator's total responsibility is providing consumer education.
2. The administrator also is given the power to receive and act on consumer complaints. Those complaints can be expected to be an important basis for the invocation of the administrator's investigatory powers (K.S.A. 16a-6-106). The ability to file a complaint in addition may be a significant adjunct to the consumer's private right of action for violations (K.S.A. 16a-5-201) or for unconscionability (K.S.A. 16a-5-108) and, in appropriate cases, even an alternative to it. Appropriate cases might involve situations where, in the context of a single case, a violation will be difficult to establish, where the complaint involves an untested provision of the U3C, or where the amount at stake individually is not sufficient under the circumstances to prompt private action to cure a violation. Since the administrator is not under a duty to act in any particular instance, the administrator retains the discretion to act only in those cases where it is believed desirable to do so pursuant to policy considerations established from time to time by the administrator. In acting, the administrator may seek voluntary compliance or invoke the remedies provided in this part.
3. A number of provisions in the U3C specifically direct the administrator to adopt rules and regulations as a more reasonable approach than providing long and complex statutory provisions that are likely to prove too inflexible in practice. In addition, the need may well arise for rules and regulations to carry out many other specific provisions of the U3C. Indeed, almost any provision may need to be the subject of an interpretive rule, and procedural rules will be required in many instances to satisfy the requirements of administrative procedure statutes. Subsections (1)(e) and (f) grant the administrator authority to adopt, amend, and repeal rules and regulations and to issue and revoke written administrative interpretations in these circumstances.
4. Under subsection (2), enforcement of the U3C is delegated in part to those governmental agencies which are already supervising various classes of creditors covered by the U3C.
5. Under subsection (4), a person who acts in accordance with rules and regulations or the written administrative interpretation of the administrator incurs no liability with respect to such conduct even if the rules and regulations, or interpretations are later declared to be invalid, except that if a rule relating to charges is declared invalid, any excess charge made under the supposed authority of the invalid rule and regulation or interpretation may be recovered by the administrator for the consumers. See also K.S.A. 16a-5-201(9).
6. Subsection (5) directs the administrator to establish the various fees required under the U3C. See e.g., K.S.A. 16a-2-302 and 16a-6-203 and the Kansas comments to those sections.

Attorney General's Opinions:

- Supervised lender fees. 80-236.
- Authority of legislature to transfer money from special revenue funds into state general fund. 2002-45.

K.S.A. 16a-6-105. (UCCC) Administrative powers with respect to supervised financial organizations.

(1) With respect to supervised financial organizations, the powers of examination and investigation and administrative enforcement shall be exercised by the official or agency to whose supervision the organization is subject. Should a supervised financial organization become licensed hereunder, a report of that portion of each examination made by the supervisory official or agency of such organization relating to compliance with the provisions of chapter 16a of the Kansas Statutes Annotated, and amendments thereto, shall be filed with the administrator. All other powers of the administrator under this act may be exercised by the administrator with respect to a supervised financial organization except that compliance with truth in lending shall be governed as set forth in K.S.A. 16a-6-104(2), and amendments thereto.

(2) If the administrator receives a complaint or other information concerning noncompliance with this act by a supervised financial organization, the administrator shall inform the official or agency having supervisory authority over the organization concerned. The administrator may request information about supervised financial organizations from the officials or agencies supervising them. If such officials or agencies have cause to believe the license of any supervised financial organization subject to their supervision is subject to suspension or revocation for any reason stated in K.S.A. 16a-2-303, and amendments thereto, such official or agency shall notify the administrator and assist the administrator in the enforcement of this act.

(3) The administrator and any official or agency of this state having supervisory authority over a supervised financial organization are authorized and directed to consult and assist one another in maintaining compliance with the provisions of K.S.A. 16a-1-101 *et seq*., and amendments thereto. They may jointly pursue investigations, prosecute suits, and take other official action, as they deem appropriate, if either of them otherwise is empowered to take the action.

History: L. 1973, ch. 85, § 98; L. 1980, ch. 76, § 10; L. 1992, ch. 46, § 3; L. 1999, ch. 107, § 29; July 1.

KANSAS COMMENT, 2000:

1. Supervised financial organizations are, by definition, subject to supervision by an official or agency of the United States or by an agency of Kansas or another state. See K.S.A. 16a-1-301(44). The powers of examination and investigation and administrative enforcement under the U3C are delegated to that official or agency rather than to the administrator, unless the administrator is also the supervising official or agency. All other powers of the administrator,

including rule making and initiation of judicial action, may be exercised by the administrator with respect to supervised financial organizations.

2. Subsections (2) and (3) provide for exchange of information and for cooperation between the administrator under the U3C and the supervisory authorities of supervised financial institutions. Subsection (3) goes further and requires the administrator and the state agency having supervision over supervised financial organizations to consult with and assist each other in carrying out their duties under the U3C. Compare the administrator's obligation to consult with and assist the insurance commissioner under K.S.A. 16a-4-111.

K.S.A. 16a-6-106. (UCCC) Examination and investigatory powers; costs.

(1) The administrator may:

(a) Conduct examinations or investigations within or outside of this state as necessary to determine whether any license should be granted, denied or revoked or whether any person has violated or is about to violate any provision of this act or any rule and regulation, administrative interpretation, or order hereunder, or to aid in the enforcement of this act or in the prescribing of forms or adoption of rules and regulations; and

(b) require or permit any person to file a statement in writing, under oath or otherwise as the administrator determines, of all the facts and circumstances concerning any violation of this act or any rule and regulation, administrative interpretation or order hereunder.

(2) All examination material shall be confidential by law and privileged and shall not be subject to the open records act, subpoena and discovery or admissible in evidence in any private civil action. The provisions of this subsection providing for the confidentiality of public records shall expire on July 1, 2030, unless the legislature reviews and reenacts such provisions in accordance with K. S.A. 45-229, and amendments thereto, prior to July 1, 2030.

(3) For the purpose of any examination, investigation or proceeding under this act, the administrator or any officer designated by the administrator 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.

(4) In case of contumacy by, or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the administrator, may issue to that person an order requiring the person to appear before the administrator, or the officer designated by the administrator, there, to produce documentary evidence if so ordered

or to give evidence touching the matter under investigation or in question. Any failure to obey the order of the court may be punished by the court as a contempt of court.

(5) No person is excused from attending and testifying or from producing any document or record before the administrator or in obedience to the subpoena of the administrator or any officer designated by the administrator or in any proceeding instituted by the administrator.

(6) The administrator may issue and apply to enforce subpoenas in this state at the request of another state if the activities constituting an alleged violation for which the information is sought would be a violation of the consumer credit code if the activities had occurred in this state.

(7) If the person's records are located outside this state, the person shall either make them available to the administrator at a convenient location within this state or, at the administrator's discretion, pay the reasonable and necessary expenses for the administrator or such administrator's representative to examine them at the place where they are maintained. The administrator may designate representatives, including comparable officials of the state in which the records are located, to inspect the records on the administrator's behalf.

(8) The administrator may charge as costs of investigation or examination all reasonable expenses, including a per diem and actual travel and lodging expenses to be paid by the party or parties under investigation or examination. The administrator may maintain an action in any court to recover such costs.

(9) The administrator may enter into an informal agreement at any time with a person to resolve a matter arising under this act, rules and regulations adopted pursuant thereto or an order issued pursuant to this act. The adoption of an informal agreement authorized by this subsection shall not be subject to the provisions of K.S.A. 77-501 et seq. or 77-601 et seq., and amendments thereto. Any informal agreement authorized by this subsection shall not be considered an order or other agency action and shall be considered confidential examination material.

History: L. 1973, ch. 85, § 99; L. 1999, ch. 107, § 30; July 1.

KANSAS COMMENT, 2000:

1. This section was substantially rewritten by legislation adopted in 1999 and now gives the administrator very extensive investigative powers. The administrator is given authority to issue and enforce subpoenas in Kansas at the request of the consumer credit administrator of another state and is given the authority to examine out-of-state records.
2. Subsection (7) provides for recovery by the administrator of investigatory costs.

Attorney General's Opinions:

- Finance charges; additional charges not included therein. 81-209.

K.S.A. 16a-6-108. Enforcement of act; cease and desist orders; penalties; appeals.

(1) If the administrator determines after notice and opportunity for a hearing 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, order or administrative interpretation hereunder, including, but not limited to, refusal or failure to provide information requested by the administrator, the administrator by order may require that such person cease and desist from the unlawful act or practice and take such affirmative action as in the judgment of the administrator will carry out the purposes of this act.

(2) If the administrator makes written findings of fact that the public interest will be irreparably harmed by delay in issuing an order under subsection (1), the administrator may issue an emergency cease and desist order. Such order shall be subject to the same procedures as an emergency order issued under K.S.A. 77-536, and amendments thereto. Upon the entry of such an order the administrator shall promptly notify the person subject to the order that it has been entered, of the reasons and that upon written request the matter will be set for a hearing which shall be conducted in accordance with the provisions of the Kansas administrative procedure act. If no hearing is requested and none is ordered by the administrator, the order will remain in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to the person subject to the order, shall by written findings of fact and conclusion of law vacate, modify or make permanent the order.

(3) If the administrator reasonably believes that a person has violated this act or a rule and regulation, order or administrative interpretation of the administrator under this act, the administrator, in addition to any specific power granted under this act, after notice and hearing in an administrative proceeding, unless the right to notice and hearing is waived by the person against whom the sanction is imposed, may require any or all of the following:

(a) Censure the person if the person is licensed under this act;

(b) issue an order against an applicant, supervised loan licensee, consumer credit filer or other person who knowingly violates this act or a rule and regulation, order or administrative interpretation of the administrator under this act, including, but not limited to, refusal or failure to provide information requested by the administrator, imposing a civil penalty up to a maximum of $5,000 for each violation. If any person is found to have knowingly or willfully 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, in addition to any civil penalty otherwise provided by law, the administrator may impose an additional penalty not to exceed $5,000 for each such violation;

(c) revoke or suspend the person's license or registration or bar the person from subsequently applying for a license or registration under this act; or

(d) 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.

(4) Any person aggrieved by a final order of the administrator may obtain a review of the order in accordance with the provisions of the Kansas judicial review act.

History: L. 1973, ch. 85, § 101; L. 1986, ch. 318, § 21; L. 1999, ch. 107, § 31; L. 2005, ch. 144, § 19; L. 2009, ch. 29, § 22; L. 2010, ch. 17, § 36; July 1.

KANSAS COMMENT, 2010:

The Kansas Comment, 2000 in the K.S.A. bound volume is no longer valid.

Attorney General's Opinions:

- Finance charges; additional charges not included therein. 81-209.

K.S.A. 16a-6-109. (UCCC) Assurance of discontinuance.

If it is claimed that a person has engaged in conduct subject to an order by the administrator or by a court , the administrator may accept an assurance in writing that the person will not engage in the conduct in the future. Failure to abide by the assurance of discontinuance shall be evidence that the person engaged in the prior conduct described in the assurance.

History: L. 1973, ch. 85, § 102; Jan. 1, 1974.

KANSAS COMMENT, 2010:

This section provides a method for resolving controversies without formal proceedings that involve conduct which is alleged to contravene the provisions of the U3C. Considerable flexibility is granted to the administrator in formulating the terms of any assurance entered into. If the person giving an assurance fails to comply with its terms, the assurance is admissible as evidence, either in a proceeding before the administrator or in the courts, that the person giving the assurance actually engaged in the conduct specified therein.

K.S.A. 16a-6-110. (UCCC) Injunctions against violations of act.

The administrator may bring a civil action to restrain a person from violating the provisions of K.S.A. 16a-1-101 *et seq*., and amendments thereto, or any rules or regulations adopted thereunder and for other appropriate relief.

History: L. 1973, ch. 85, § 103; Jan. 1, 1974.

KANSAS COMMENT, 2010:
In an action under this section the administrator, in addition to relief appropriate under other law of this state, may seek relief under K.S.A. 16a-6-112 and 16a-6-113.

Attorney General's Opinions:
- Finance charges; additional charges not included therein. 81-209.

K.S.A. 16a-6-111. (UCCC) Injunctions against unconscionable agreements and fraudulent or unconscionable conduct.

(1) The administrator may bring a civil action to restrain a creditor or a person acting on such creditor's or person's behalf from engaging in a course of:

(a) Making or enforcing unconscionable terms or provisions of consumer credit transactions;

(b) fraudulent or unconscionable conduct in inducing consumers to enter into consumer credit transactions.

(2) In an action brought pursuant to this section the court may grant relief only if the trier of the fact finds that the:

(a) Respondent has made unconscionable agreements or has engaged or is likely to engage in a course of fraudulent or unconscionable conduct;

(b) agreements or conduct of the respondent has caused or is likely to cause injury to consumers; and

(c) respondent has been able to cause or will be able to cause the injury primarily because the transactions involved are credit transactions.

(3) In applying this section, consideration shall be given to each of the following factors, among others:

(a) Belief by the creditor at the time consumer credit transactions are entered into that there was no reasonable probability of payment in full of the obligation by the consumer;

(b) in the case of consumer credit sales or consumer leases, knowledge by the seller or lessor at the time of the sale or lease of the inability of the buyer or lessee to receive substantial benefits from the property or services sold or leased;

(c) in the case of consumer credit sales or consumer leases, gross disparity between the price of the property or services sold or leased and the value of the property or services measured by the price at which similar property or services are readily obtainable in credit transactions by like buyers or lessees;

(d) the fact that the creditor contracted for or received separate charges for insurance with respect to consumer credit sales or consumer loans with the effect of making the sales or loans, considered as a whole, unconscionable; and

(e) the fact that the respondent has knowingly taken advantage of the inability of the consumer reasonably to protect such consumer's interests by reason of physical or mental infirmities, ignorance, illiteracy, inability to understand the language of the agreement or similar factors.

(4) In an action brought pursuant to this section, a charge or practice expressly permitted by this act is not in itself unconscionable.

History: L. 1973, ch. 85, § 104; Jan. 1, 1974.

KANSAS COMMENT, 2010:

1. This section permits the administrator to bring suit to enjoin a person to whom this part applies from engaging in a course of conduct specified in subsections (1)(a) or (b). Those subsections cover two different areas of unconscionable conduct:

   (1) unconscionable contract terms, and

   (2) fraudulent or unconscionable conduct in inducing consumers to enter into consumer credit transactions.

   The former might be called "substantive unconscionability" and the latter "procedural unconscionability."

2. The purpose of this section is to afford the administrator a means of dealing with new patterns of fraudulent or unconscionable conduct unforeseen and, perhaps, unforeseeable at the writing of the U3C.

3. Subsection (3) lists a number of specific factors to be considered on the issue of unconscionability. The following are illustrative of individual transactions which, if engaged in by or on behalf of a creditor, would entitle the administrator to injunctive relief under this section:

   Under subsection (3)(a), a sale of goods to a low income consumer without expectation of payment but with the expectation of repossessing the goods sold and reselling them at a profit;

   Under subsection (3)(b), a sale of an English language encyclopedia set to a person who speaks only Spanish, or a sale of two expensive vacuum cleaners to two poor families sharing the same apartment and one carpet;

   Under subsection (3)(c), a home solicitation sale of a set of cookware or flatware for $375 in an area where a set of comparable quality is readily available on credit in stores for $125 or less;

   Under subsection (3)(e), a sale of goods on terms known by the seller to be disadvantageous to the consumer where the written agreement is in English, the consumer is literate only in Spanish,

the transaction was negotiated orally in Spanish by the seller's salesman, and the written agreement was neither translated nor explained to the consumer.

The criteria listed in subsection (3) to a large extent parallel those found in the KCPA (K.S.A. 50-627). Reference should be made to the comment under that provision for additional examples of conduct which could also violate this section. See also the Kansas comment to K.S.A. 16a-5-108.

4. Subsection (4) prohibits a finding that a charge or practice expressly permitted by the U3C is in itself unconscionable. However, even though a practice or charge is authorized by the U3C, the totality of a particular creditor's conduct may show that the practice or charge is part of an unconscionable course of conduct. Therefore, in determining unconscionability, the creditor's total conduct, including that part of the creditor's conduct which is in accordance with the provisions of the U3C, may be considered.
5. For cases illustrating the prior application of the doctrine of unconscionability in private actions, see the Kansas comment to K.S.A. 16a-5-108. The doctrine of unconscionability was applied in an action by a public official in State by *Lefkowitz v. ITM, Inc.*, 52 Misc.2d 39, 275 N.Y.S.2d 303 (Sup. Ct. 1966). See also *State v. Avco Financial Service*, 70 A.D.2d 859, 418 N.Y.S.2d 52 (1979), rev'd 50 N.Y.S.2d 383, 429 N.Y.S.2d 181, 406 N.E.2d 1075 (1980).

Attorney General's Opinions:

- Limitations on consumer's liability; balloon payments; denial of right to refinance. 82-143.

K.S.A. 16a-6-112. (UCCC) Temporary relief.

With respect to an action brought to enjoin violations of K.S.A. 16a-1-101 *et seq*., and any amendments thereto, or unconscionable agreements or fraudulent or unconscionable conduct, the administrator may petition the court for appropriate temporary relief against a respondent, pending final determination of proceedings. If the court finds after a hearing held upon notice to the respondent that there is reasonable cause to believe that the respondent is engaging in or is likely to engage in conduct sought to be restrained, it may grant any temporary relief or restraining order it deems appropriate.

History: L. 1973, ch. 85, § 105; Jan. 1, 1974.

KANSAS COMMENT, 2000:

This section permits the administrator to seek appropriate temporary relief in connection with actions brought pursuant to K.S.A. 16a-6-110 and 16a-6-111, and defines the circumstances under which such relief may be granted.

K.S.A. 16a-6-113. (UCCC) Civil actions by administrator.

(1) After demand, the administrator may bring a civil action against a creditor for all amounts of money, other than penalties, which a consumer or class of consumers has a right to recover explicitly granted by the provisions of K.S.A. 16a-1-101 *et seq*., and

amendments thereto. The court shall order amounts recovered or recoverable under this subsection paid to each consumer or set off against such consumer's obligation. A consumer's action, other than a class action, takes precedence over a prior or subsequent action by the administrator with respect to the claim of that consumer. A consumer's class action takes precedence over a subsequent action by the administrator with respect to claims common to both actions but intervention by the administrator is authorized. An administrator's action on behalf of a class of consumers takes precedence over a consumer's subsequent class action with respect to claims common to both actions. When an action takes precedence over another action under this subsection, the other action may be stayed while the preceding action is pending and dismissed if the preceding action is dismissed with prejudice or results in a final judgment granting or denying the claim asserted in the preceding action.

(2) The administrator may bring a civil action against a creditor or a person acting on such creditor's or person's behalf to recover a civil penalty for willfully violating this act, and if the court finds that the defendant has engaged in a course of repeated and willful violations of this act, it may assess a civil penalty of no more than $5,000.00 per violation. Any civil action under this subsection shall be brought within two years following the violation.

History: L. 1973, ch. 85, § 106; Jan. 1, 1974.

KANSAS COMMENT, 2010:

1. The U3C explicitly grants a right of action to a consumer to recover actual damages and penalties for the violation of a number of its provisions. See K.S.A. 16a-5-201. In addition, subsection (1) of this section allows the administrator, after demand, to bring a civil action on behalf of one or more individual consumers in such cases, except for the recovery of penalties, in contemplation that in some number of these cases the administrator may be the only person with the necessary informational or monetary resources to prosecute an action properly, may be the only person who can adequately represent a group of consumers or, for other reasons, may be an appropriate person to litigate the question involved. If a consumer brings an action on behalf of himself or herself, that action takes precedence, whether initiated before or after the administrator's action. If the consumer brings a class action, it takes precedence if it is brought before an action by the administrator with respect to claims common to both actions, but the administrator is given the authority to intervene. If the administrator's action on behalf of a class of consumers is brought prior to that of the consumer, the administrator's action takes precedence with respect to claims common to both actions.
2. An action for a civil penalty under subsection (2) may be in lieu of or in addition to an action under subsection (1). The civil penalty under subsection (2) may be recovered for any violation of the U3C, including unconscionable or fraudulent conduct under K.S.A. 16a-6-111. The amount of the penalty to be imposed under subsection (2) is in the discretion of the court, but may not exceed $5,000; a penalty may be imposed only if it is found that the defendant has engaged in a course of repeated and willful violations of the U3C. Since this subsection confers a right of recovery on the administrator in that capacity, it prescribes its own statute of limitations. An unintentional and bona fide error defense is inapplicable since recovery can only be had for repeated and intentional violations. Contrast the standards for recovering civil penalties in private

actions under K.S.A. 16a-5-201 and 16a-5-203 and in administrative proceedings under K.S.A. 16a-6-108(3)(b).

Attorney General's Opinions:
- Recovery by the administrator. 80-122.
- Finance charges; additional charges not included therein. 81-209.

K.S.A. 16a-6-115. (UCCC) Consumer's remedies not affected.

The grant of powers to the administrator in this article does not affect remedies available to consumers under K.S.A. 16a-1-101 et seq., and any amendments thereto, or under other principles of law or equity.

History: L. 1973, ch. 85, § 107; Jan. 1, 1974; July 1, 2024.

KANSAS COMMENT, 2010:

1. It is not the intention of the grant of powers to the administrator or of any of the other provisions of the U3C dealing with consumers' remedies to diminish in any way the availability of consumers' remedies under other principles of law or equity. For example, the individual consumer has a cause of action under K.S.A. 16a-5-201(3) and (4) to recover any charges in excess of those permitted in the U3C and to recover a penalty in certain cases, and the administrator may also bring an action under K.S.A. 16a-6-113 to recover excess charges on behalf of consumers. Whether a similar action by private parties exists depends upon Kansas law with respect to class actions (K.S.A. 60-223). The U3C does not specifically authorize such class actions for excess charges nor does it preclude them.
2. Various other consumers' remedies provided by other applicable law are not affected by the U3C. Examples include the UCC provisions concerning the buyer's remedies such as revocation of acceptance of goods delivered (K.S.A. 84-2-608), the right to cancel the contract and to take a security interest in the goods delivered (K.S.A. 84-2-711), the right to incidental and consequential damages (K.S.A. 84-2-715), and remedies for fraud (K.S.A. 84-2-721). So, too, the limitations on contract provided for in the UCC in regard to penalties, liquidated damages, and limitations of remedies (K.S.A. 84-2-718 and 84-2-719) continue to apply to transactions governed by the U3C. Finally, remedies provided under such laws as the KCPA and the Kansas Lemon Law, K.S.A. 50-645 and 50-646, are not affected.

K.S.A. 16a-6-116. (UCCC) Venue.

The administrator may bring actions or proceedings in a court in a county in which an act on which the action or proceeding is based occurred or in a county in which respondent resides or transacts business.

History: L. 1973, ch. 85, § 108; Jan. 1, 1974.

KANSAS COMMENT, 2010:

Venue for administrative actions under the U3C is made broad in order to encourage public enforcement of it.

Part 2

NOTIFICATION AND FEES

K.S.A. 16a-6-201. (UCCC) Applicability.

(1) This part applies to any creditor engaged in this state in entering into consumer credit transactions and to any person who accepts assignments of and undertakes collection of payments from or accepts assignments of and enforces rights against debtors arising from these transactions.

(2) This subsection shall not apply to:

(a) Supervised financial organizations; or

(b) supervised loan licensees or those required to be licensed unless the entity:

(i) Enters into consumer credit sales or consumer leases;

(ii) assigns or accepts assignments of consumer credit sales or consumer leases; or

(iii) attorneys or collection agencies that receive payment for collection purposes.

History: L. 1973, ch. 85, § 109; L. 1981, ch. 93, § 18; L. 1993, ch. 200, § 14; L. 2005, ch. 144, § 20; L. 2009, ch. 29, § 24; July 1.

KANSAS COMMENT, 2010:

1. All creditors engaged in entering into consumer credit transactions in Kansas must file a notification under K.S.A. 16a-6-202, except supervised financial organizations such as banks and savings and loan associations. As to when a creditor enters into a consumer credit transaction in Kansas, see K.S.A. 16a-1-201 and its broad extra-territorial application.
2. Assignees of consumer obligations must file notification under K.S.A. 16a-6-202.

K.S.A. 16a-6-202. (UCCC) Notification.

(1) Any person subject to K.S.A. 16a-6-201, and amendments thereto, shall file notice with the administrator within 30 days after commencing business in this state, and, thereafter, in accordance with rules and regulations adopted by the administrator.

(2) If information in a filing becomes inaccurate, the consumer credit filer shall file an amended filing as prescribed by rules and regulations adopted by the administrator.

History: L. 1973, ch. 85, § 110; L. 1988, ch. 85, § 12; L. 1999, ch. 107, § 33; July 1.

KANSAS COMMENT, 2010:
The Kansas Comment, 2000 in the K.S.A. bound volume is no longer valid.

K.S.A. 16a-6-203. Fees.

(1) A consumer credit filer shall on or before August 31 of each year pay to the administrator an annual fee in an amount established pursuant to K.S.A. 16a-6-104(5), and amendments thereto, for each business location for that year.

(2) Consumer credit filers who are sellers, lessors or lenders shall pay an additional fee at the time and in the manner stated in subsection (1), in an amount established pursuant to K.S.A. 16a-6-104(5), and amendments thereto.

(3) Consumer credit filers who are assignees shall pay an additional fee at the time and in the manner stated in subsection (1), in an amount established pursuant to K.S.A. 16a-6-104(5), and amendments thereto.

History: L. 1973, ch. 85, § 111; L. 1976, ch. 98, § 3; L. 1978, ch. 73, § 1; L. 2000, ch. 27, § 5; L. 2005, ch. 144, § 21; L. 2009, ch. 29, § 25; July 1.

KANSAS COMMENT, 2010:
1. Any person required to file a notification under this part must pay an annual fee, as established by the administrator, for each business location. The fee must be paid on or before April 30 each year. The purpose of the fee structure is to make the U3C self-supporting, and the fees are left to the administrator to provide more flexibility. All creditors extending consumer credit in Kansas are governed by the U3C and should share in financing the cost of its administration. The fees will normally be set at an amount which will produce funds sufficient for the adequate administration of the U3C.
2. In addition to the annual fee for each business location, subsection (2) provides that persons who are sellers, lessors, or lenders must pay an additional fee for each $100,000, or part thereof, of the average unpaid balances, including unpaid scheduled periodic payments under consumer leases, of obligations arising from consumer credit transactions entered into by such creditor in Kansas and held on the last day of each calendar month during the preceding calendar year. The

average of the unpaid balances on the last day of each month during the year has been chosen as a convenient basis for calculating additional fees since creditors normally maintain records of these figures and they are easily audited by the administrator.

3. An assignee required to file notification must, under subsection (3), pay an additional fee for each $100,000, or part thereof, of the average unpaid balances of the obligations arising from consumer credit transactions entered into in Kansas taken by such assignee through assignment and held on the last day of each calendar month during the preceding calendar year.
4. A seller, lessor or lender entering into consumer credit transactions in Kansas cannot escape liability for the fees imposed by subsection (2) by assigning the resulting obligations to an assignee who has not filed notification. Subsection (2) imposes a liability for the fees on the seller, lessor or lender, if an immediate or remote assignee has not filed notification, and a presumption is created on the basis of which the fees can be computed.

Attorney General's Opinions:

- Authority of legislature to transfer money from special revenue funds into state general fund. 2002-45.

Part 4

ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

K.S.A. 16a-6-401. (UCCC) Applicability and scope.

This part applies to the administrator, prescribes the procedures to be observed by the administrator in exercising such powers under K.S.A. 16a-1-101 *et seq*., and any amendments thereto, and supplements the powers and functions of the administrator under K.S.A 16a-1-101 *et seq*., and amendments thereto. Subject to specific provisions found in KS.A 16a-1-101 *et seq*., and amendments thereto, the exercise of powers by the administrator shall be subject to the adoption of rules and regulations pursuant to K.S.A 77-415 *et seq*., and amendments thereto, the Kansas administrative procedure act, K.S.A 77-501 *et seq*., and amendments thereto, and the Kansas judicial review act, K.S.A 77-601 *et seq.,* and amendments thereto.

History: L. 1973, ch. 85, § 116; Jan. 1, 1974.

KANSAS COMMENT, 2000:

1. This part was patterned after the uniform law commissioners' 1961 revised model state administrative procedure act. It was intended for adoption only in those states which had not enacted an adequate administrative procedure act which would apply to the actions of the administrator under the U3C. In 1973, when the U3C was originally adopted in Kansas, Kansas had no administrative procedure act, and so the provisions of this part were adopted. In 1984, Kansas enacted a comprehensive administrative procedure act, K.S.A. 77-501 et seq. (KAPA), which was not based on the 1961 revised model act, but instead on the more modern 1981 revised state model administrative procedure act. As a result, the KAPA does not much resemble this part of the U3C. While this might have created problems of statutory interpretation, the KAPA, at K.S.A. 77-503, states that its provisions apply only to the extent that other statutes expressly so provide. Only one section of the U3C, K.S.A. 16a-6-410, has been amended to refer to the

KAPA. As a result, the procedures spelled out in this part, rather than the KAPA, will apply generally to the actions of the administrator.

2. Many of the sections in this part pertain primarily to rulemaking, and these sections often refer to article 4 of chapter 77 of K.S.A. Those provisions do not, of themselves, constitute a comprehensive administrative procedure act, but they do contain a number of guidelines for adoption of rules and regulations by Kansas administrative agencies.
3. This part also applies to action taken by the Kansas commissioner of insurance under article 4 of the U3C. See K.S.A. 16a-4-112(2).

K.S.A. 16a-6-403. (UCCC) Public information; adoption of rules; availability of rules and orders.

(1) In addition to other rule-making requirements the administrator may:

(a) Adopt as a rule a description of the organization of the administrator's office, stating the general course and method of the operations of the office and the methods whereby the public may obtain information or make submissions or requests;

(b) adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the administrator or by the office;

(c) make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted or used by the administrator; and

(d) make available for public inspection all final orders, decisions and opinions.

(2) No rule, order or decision of the administrator is valid or effective against any person or party, nor may it be invoked by the administrator for any purpose, until it has been made available for public inspection as herein required. This provision is not applicable in favor of any person or party who has actual knowledge thereof.

History: L. 1973, ch. 85, § 118; L. 1981, ch. 95, § 2; July 1.

KANSAS COMMENT, 2010:

The Kansas Comment, 2000 in the K.S.A. bound volume is no longer valid.

KANSAS ADMINISTRATIVE REGULATIONS

Agency 75 – OFFICE OF THE STATE BANK COMMISSIONER

Article 6 – UNIFORM CONSUMER CREDIT CODE

75-6-1	Making transactions outside of the scope of the Kansas uniform consumer credit code subject to same.
75-6-9	Additional charges.
75-6-23	[16a-3-305(1)] No assignment of earnings.
75-6-26	Federal consumer credit laws.
75-6-30	Application; place of business.
75-6-31	Bond requirements.
75-6-32	Notification.
75-6-35	Net worth requirements.
75-6-36	Prelicensing and continuing education; requirements.
75-6-37	Prelicensure testing.
75-6-38	Record retention.

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

Article 1 – ADJUSTABLE RATE NOTES

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

Agency 40 – Joint Regulation – Insurance Department

Article 5 – CREDIT INSURANCE

40-5-6	Credit insurance; property and liability; insurance sold in connection with the uniform consumer credit code; types.
40-5-8	Same; vendors single interest.
40-5-9	Credit insurance; fire, casualty and allied lines; mortgagors and mortgagees; conditional sales vendors; and vendors; requirements.
40-5-10	Credit insurance; fire and extended coverage; issuance for single indivisible premium; requirements.
40-5-12	Consumer credit insurance; termination of coverage; prohibited contractual provisions.
40-5-102	Consumer credit insurance; definitions.
40-5-103	Same; rights and treatment of consumers.
40-5-104	Same; coverage without separate charge.
40-5-105	Same; filing requirements.
40-5-107	Same; credit insurance rates and forms.
40-5-108	Same; refunds.
40-5-109	Same; experience reports.
40-5-110	Same; supervision of credit insurance operations.

KANSAS ADMINISTRATIVE REGULATIONS

Agency 75 – OFFICE OF THE STATE BANK COMMISSIONER

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 un1iform 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. [16a-3-305(1)] 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 – Joint Regulation – 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.)

KANSAS STATUTES

Chapter 48 – MILITIA, DEFENSE AND PUBLIC SAFETY

Article 34 – LICENSEES IN MILITARY SERVICE

48-3406 Expedited state licensure procedure if licensed, registered or certified in another state for military servicemembers, military spouses or individuals who have established or intend to establish residency in this state; temporary emergency licenses; electronic credentials; reports by licensing bodies.

KANSAS STATUTES

Chapter 48 – MILITIA, DEFENSE AND PUBLIC SAFETY

Article 34 – LICENSEES IN MILITARY SERVICE

K.S.A. 48-3406. Expedited state licensure procedure if licensed, registered or certified in another state for military servicemembers, military spouses or individuals who have established or intend to establish residency in this state; temporary emergency licenses; electronic credentials; reports by licensing bodies.

(a) For the purposes of this section:

(1) "Applicant" means an individual who is:

(A) A military spouse or military servicemember who resides or plans to reside in this state due to the assignment military station of the individual or the individual's spouse; or

(B) an individual who has established or intends to establish residency in this state.

(2) "Complete application" means the licensing body has received all forms, fees, documentation, a signed affidavit stating that the application information, including necessary prior employment history, is true and accurate and any other information required or requested by the licensing body for the purpose of evaluating the application, consistent with this section and the rules and regulations adopted by the licensing body pursuant to this section. If the licensing body has received all such forms, fees, documentation and any other information required or requested by the licensing body, an application shall be deemed to be a complete application even if the licensing body has not yet received a criminal background report from the Kansas bureau of investigation. An application by a military spouse of an active military servicemember shall be considered a "complete application" without the submission of fees, pursuant to the provisions of subsection (u).

(3) "Electronic credential" or "electronic certification, license or registration" means an electronic method by which a person may display or transmit to another person information that verifies the status of a person's certification, licensure, registration or permit as authorized by a licensing body and is equivalent to a paper-based certification, license, registration or permit.

(4) "Licensing body" means an official, agency, board or other entity of the state which authorizes individuals to practice a profession in this state and issues a license, registration, certificate, permit or other authorization to an individual so authorized.

(5) "Military servicemember" means a current member of any branch of the United States armed services, United States military reserves or national guard of any state or a former member with an honorable discharge.

(6) "Military spouse" means the spouse of a military servicemember.

(7) “Person” means a natural person.

(8) "Private certification" means a voluntary program in which a private organization grants nontransferable recognition to an individual who meets personal qualifications and standards relevant to performing the occupation as determined by the private organization.

(9) "Scope of practice" means the procedures, actions, processes and work that a person may perform under a government issued license, registration or certification.

(10) "Verification system" means an electronic method by which the authenticity and validity of electronic credentials are verified.

(b) Notwithstanding any other provision of law, any licensing body shall, upon submission of a complete application, issue a paper-based and verified electronic license, registration or certification to an applicant as provided by this section, so that the applicant may lawfully practice the person's occupation. Any licensing body may satisfy any requirement under this section to provide a paper-based license, registration, certification or permit in addition to an electronic license, registration, certification or permit by issuing such electronic credential to the applicant in a format that permits the applicant to print a paper copy of such electronic credential. Such paper copy shall be considered a valid license, registration, certification or permit for all purposes.

(c) An applicant who holds a valid current license, registration or certification in another state, district or territory of the United States shall receive a paper-based and verified electronic license, registration or certification:

(1) If the applicant qualifies under the applicable Kansas licensure, registration or certification by endorsement, reinstatement or reciprocity statutes, then pursuant to applicable licensure, registration or certification by endorsement, reinstatement or reciprocity statutes of the licensing body of this state for the license, registration or certification within 15 days from the date a complete application was submitted if the applicant is a military servicemember or military spouse or within 45 days from the date a complete application was submitted for all other applicants; or

(2) if the applicant does not qualify under the applicable licensure, registration or certification by endorsement, reinstatement or reciprocity statutes of the licensing body of this state, or if the Kansas professional practice act does not have licensure, registration or certification by endorsement, reinstatement or reciprocity statutes, then

the applicant shall receive a license, registration or certification as provided herein if, at the time of application, the applicant:

(A) Holds a valid current license, registration or certification in another state, district or territory of the United States with licensure, registration or certification requirements that the licensing body determines authorize a similar scope of practice as those established by the licensing body of this state, or holds a certification issued by another state for practicing the occupation but this state requires an occupational license, and the licensing body of this state determines that the certification requirements certify a similar scope of practice as the licensing requirements established by the licensing body of this state;

(B) has worked for at least one year in the occupation for which the license, certification or registration is sought;

(C) has not committed an act in any jurisdiction that would have constituted grounds for the limitation, suspension or revocation of the license, certificate or registration, or that the applicant has never been censured or had other disciplinary action taken or had an application for licensure, registration or certification denied or refused to practice an occupation for which the applicant seeks licensure, registration or certification;

(D) has not been disciplined by a licensing, registering, certifying or other credentialing entity in another jurisdiction and is not the subject of an unresolved complaint, review procedure or disciplinary proceeding conducted by a licensing, registering, certifying or other credentialing entity in another jurisdiction nor has surrendered their membership on any professional staff in any professional association or society or faculty for another state or jurisdiction while under investigation or to avoid adverse action for acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action in a Kansas practice act;

(E) does not have a disqualifying criminal record as determined by the licensing body of this state under Kansas law;

(F) provides proof of solvency, financial standing, bonding or insurance if required by the licensing body of this state, but only to the same extent as required of any applicant with similar credentials or experience;

(G) pays any fees required by the licensing body of this state; and

(H) submits with the application a signed affidavit stating that the application information, including necessary prior employment history, is true and accurate.

Upon receiving a complete application and the provisions of subsection (c)(2) apply and have been met by the applicant, the licensing body shall issue the license, registration or

certification within 15 days from the date a complete application was submitted by a military servicemember or military spouse, or within 45 days from the date a complete application was submitted by an applicant who is not a military servicemember or military spouse, to the applicant on a probationary basis, but may revoke the license, registration or certification at any time if the information provided in the application is found to be false. The probationary period shall not exceed six months. Upon completion of the probationary period, the license, certification or registration shall become a non-probationary license, certification or registration.

(d) Any applicant who has not been in the active practice of the occupation during the two years preceding the application for which the applicant seeks a license, registration or certification under subsection (c)(2) may be required to complete such additional testing, training, monitoring or continuing education as the Kansas licensing body may deem necessary to establish the applicant's present ability to practice in a manner that protects the health and safety of the public, as provided by subsection (j).

(e) Upon submission of a complete application, an applicant may receive an occupational license, registration or certification based on the applicant's work experience in another state, if the applicant:

(1) Worked in a state that does not use an occupational license, registration, certification or private certification to regulate an occupation, but this state uses an occupational license, registration or certification to regulate the occupation;

(2) worked for at least three years in the occupation during the four years immediately preceding the application; and

(3) satisfies the requirements of subsection (c)(2)(C) through (H).

(f) Upon submission of a complete application, an applicant may receive an occupational license, registration or certification under subsection (b) based on the applicant's holding of a private certification and work experience in another state, if the applicant:

(1) Holds a private certification and worked in a state that does not use an occupational license or government certification to regulate an occupation, but this state uses an occupational license or government certification to regulate the occupation;

(2) worked for at least two years in the occupation;

(3) holds a current and valid private certification in the occupation;

(4) is held in good standing by the organization that issued the private certification; and

(5) satisfies the requirements of subsection (c)(2)(C) through (H).

(g) An applicant licensed, registered or certified under this section shall be entitled to the same rights and subject to the same obligations as are provided by the licensing body for Kansas residents, except that revocation or suspension of an applicant's license, registration or certificate in the applicant's state of residence or any jurisdiction in which the applicant held a license, registration or certificate shall automatically cause the same revocation or suspension of such applicant's license, registration or certificate in Kansas. No hearing shall be granted to an applicant where such applicant's license, registration or certificate is subject to such automatic revocation or suspension, except for the purpose of establishing the fact of revocation or suspension of the applicant's license, registration or certificate by the applicant's state of residence or jurisdiction in which the applicant held a license, registration or certificate.

(h) In the event the licensing body determines that the license, registration or certificate currently held by an applicant under subsection (c)(2) or the work experience or private credential held by an applicant under subsections (e) or (f), who is a military spouse or military servicemember does not authorize a similar scope of practice as the license, registration or certification issued by the licensing body of this state, the licensing body shall issue a temporary permit for a limited period of time to allow the applicant to lawfully practice the applicant's occupation while completing any specific requirements that are required in this state for licensure, registration or certification that were not required in the state, district or territory of the United States in which the applicant was licensed, registered, certified or otherwise credentialed, unless the licensing body finds, based on specific grounds, that issuing a temporary permit would jeopardize the health and safety of the public.

(i) In the event the licensing body determines that the license, registration or certification currently held by an applicant under subsection (c)(2) or the work experience or private credential held by an applicant under subsections (e) or (f), who is not a military spouse or military servicemember, does not authorize a similar scope of practice as the license, registration or certification issued by the licensing body of this state, the licensing body may issue a temporary permit for a limited period of time to allow the applicant to lawfully practice the applicant's occupation while completing any specific requirements that are required in this state for licensure, registration or certification that was not required in the state, district or territory of the United States in which the applicant was licensed, registered, certified or otherwise credentialed, unless the licensing body finds, based on specific grounds, that issuing a temporary permit would jeopardize the health and safety of the public.

(j) Any testing, continuing education or training requirements administered under subsection (d), (h) or (i) shall be limited to Kansas law that regulates the occupation and that are materially different from or additional to the law of another state, or shall be limited to any materially different or additional body of knowledge or skill required for the occupational license, registration or certification in Kansas.

(k) A licensing body may grant licensure, registration, certification or a temporary permit to any person who meets the requirements under this section but was separated from such

military service under less than honorable conditions or with a general discharge under honorable conditions.

(l) Nothing in this section shall be construed to apply in conflict with or in a manner inconsistent with federal law or a multistate compact, or a rule or regulation or a reciprocal or other applicable statutory provision that would allow an applicant to receive a license. Nothing in this section shall be construed as prohibiting a licensing body from denying any application for licensure, registration or certification, or declining to grant a temporary or probationary license, if the licensing body determines that granting the application may jeopardize the health and safety of the public.

(m) Nothing in this section shall be construed to be in conflict with any applicable Kansas statute defining the scope of practice of an occupation. The scope of practice as provided by Kansas law shall apply to applicants under this section.

(n) Notwithstanding any other provision of law, during a state of emergency declared by the legislature, a licensing body may grant a temporary emergency license to practice any profession licensed, certified, registered or regulated by the licensing body to an applicant whose qualifications the licensing body determines to be sufficient to protect health and safety of the public and may prohibit any unlicensed person from practicing any profession licensed, certified, registered or regulated by the licensing body.

(o) Not later than January 1, 2025, licensing bodies shall provide paper-based and verified electronic credentials to persons regulated by the licensing body. A licensing body may prescribe the format or requirements of the electronic credential to be used by the licensing body. Any statutory or regulatory requirement to display, post or produce a credential issued by a licensing body may be satisfied by the proffer of an electronic credential authorized by the licensing body. A licensing body may use a third-party electronic credential system that is not maintained by the licensing body.

(p) On or before January 1, 2025, and subject to appropriations therefore, the secretary of administration shall develop and implement a uniform or singular license verification portal for the purpose of verifying or reporting license statuses such as credentials issued, renewed, revoked or suspended by licensing bodies or that have expired or otherwise changed in status. The secretary of administration may utilize the services or facilities of a third party for the central electronic record system. The central electronic record system shall comply with the requirements adopted by the information technology executive council pursuant to K.S.A. 75-7203, and amendments thereto. Beginning January 1, 2025, each licensing body shall be able to integrate with the uniform or singular license verification portal in the manner and format required by the secretary of administration indicating any issuance, renewal, revocation, suspension, expiration or other change in status of an electronic credential that has occurred. No charge for the establishment or maintenance of the uniform or singular license verification portal shall be imposed on any licensing body or any person with a license, registration, certification or permit issued by a licensing body. The centralized electronic credential data management systems shall include an instantaneous verification system that is operated by the licensing body's

respective secretary, or the secretary's designee, or the secretary's third-party agent on behalf of the licensing body for the purpose of instantly verifying the authenticity and validity of electronic credentials issued by the licensing body. Centralized electronic credential data management systems shall maintain an auditable record of credentials issued by each licensing body

(q) Nothing in this section shall be construed as prohibiting or preventing a licensing body from developing, operating, maintaining or using a separate electronic credential system of the licensing body or of a third party in addition to making the reports to the central electronic record system required by subsection (p) or participating in a multistate compact or a reciprocal licensure, registration or certification process as long as the separate electronic credential system of the licensing body integrates with the uniform or singular license verification portal.

(r) Each licensing body shall adopt rules and regulations necessary to implement and carry out the provisions of this section.

(s) This section shall not apply to the practice of law or the regulation of attorneys pursuant to K.S.A. 7-103, and amendments thereto, or to the certification of law enforcement officers pursuant to the Kansas law enforcement training act, K.S.A. 74-5601 et seq., and amendments thereto.

(t) The state board of healing arts and the state board of technical professions, with respect to an applicant who is seeking a license to practice professional engineering or engage in the practice of engineering, as defined in K.S.A. 74-7003, and amendments thereto, may deny an application for licensure, registration or certification, or decline to grant a temporary or probationary license, if the board determines the applicant's qualifications are not substantially equivalent to those established by the board. Such boards shall not otherwise be exempt from the provisions of this act.

(u) Notwithstanding any other provision of law to the contrary, applicants who are military spouses of active military service members shall be exempt from all fees assessed by any licensing body to obtain an occupational credential in Kansas and renew such credential including initial or renewal application, licensing, registration, certification, endorsement, reciprocity or permit fees and any criminal background report fees, whether assessed by the licensing body or another agency. Licensing bodies shall adopt rules and regulations to implement the provisions of this subsection.

(v) This section shall apply to all licensing bodies not excluded under subsection (s), including, but not limited to:

(1) The abstracters' board of examiners;

(2) the board of accountancy;

(3) the board of adult care home administrators;

(4) the secretary for aging and disability services, with respect to K.S.A. 65-5901 et seq. and K.S.A. 65-6503 et seq., and amendments thereto;

(5) the Kansas board of barbering;

(6) the behavioral sciences regulatory board;

(7) the Kansas state board of cosmetology;

(8) the Kansas dental board;

(9) the state board of education;

(10) the Kansas board of examiners in fitting and dispensing of hearing instruments;

(11) the board of examiners in optometry;

(12) the state board of healing arts, as provided by subsection (r);

(13) the secretary of health and environment, with respect to K.S.A. 82a-1201 et seq., and amendments thereto;

(14) the commissioner of insurance, with respect to K.S.A. 40-241 and 40-4901 et seq., and amendments thereto;

(15) the state board of mortuary arts;

(16) the board of nursing;

(17) the state board of pharmacy;

(18) the Kansas real estate commission;

(19) the real estate appraisal board;

(20) the state board of technical professions, as provided by subsection (r); and

(21) the state board of veterinary examiners.

(w) All proceedings pursuant to this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act and shall be reviewable in accordance with the Kansas judicial review act.

(x) Commencing on July 1, 2021, and each year thereafter, each licensing body listed in subsection (s)(1) through (21) shall provide a report for the period of July 1 through

June 30 to the director of legislative research by August 31 of each year, providing information requested by the director of legislative research to fulfill the requirements of this subsection. The director of legislative research shall develop the report format, prepare an analysis of the reports and submit and present the analysis to the office of the governor, the committee on commerce, labor and economic development of the house of representatives, the committee on commerce of the senate, the committee on appropriations of the house of representatives and the committee on ways and means of the senate by January 15 of the succeeding year. The director's report may provide any analysis the director deems useful and shall provide the following items, detailed by applicant type, including military servicemember, military spouse and non-military individual:

(1) The number of applications received under the provisions of this section;

(2) the number of applications granted under this section;

(3) the number of applications denied under this section;

(4) the average time between receipt of the application and completion of the application;

(5) the average time between receipt of a complete application and issuance of a license, certification or registration; and

(6) identification of applications submitted under this section where the issuance of credentials or another determination by the licensing body was not made within the time limitations pursuant to this section and the reasons for the failure to meet such time limitations.

All information shall be provided by the licensing body to the director of legislative research in a manner that maintains the confidentiality of all applicants and in aggregate form that does not permit identification of individual applicants.

History: L. 2012, ch. 1, § 1; L. 2013, ch. 95, § 2; L. 2015, ch. 76, § 9; L. 2021, ch. 70, § 1; L. 2023, ch. 61, § 2; July 1.

KANSAS STATUTES

Chapter 50 – UNFAIR TRADE AND CONSUMER PROTECTION

Article 11 – CREDIT SERVICES ORGANIZATIONS

KANSAS STATUTES

Chapter 50 – UNFAIR TRADE AND CONSUMER PROTECTION

Article 11 – CREDIT SERVICES ORGANIZATIONS

K.S.A. 50-1116. Kansas credit services organization act; citation; scope.

(a) K.S.A. 50-1116 through 50-1135, and amendments thereto, shall be known and may be cited as the Kansas credit services organization act.

(b) Any individual licensed to practice law in this state acting within the course and scope of such individual's practice as an attorney, and such individual's law firm, shall be exempt from the provisions in this act.

History: L. 2004, ch. 22, § 1; L. 2012, ch. 161, § 16; May 31.

K.S.A. 50-1117. Same; definitions.

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, 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.

(j) "Trust account" means an account established by the applicant or licensee in a federally insured financial institution used to hold funds paid by consumers to a credit services organization for designation indicating the funds in the account are:

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

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

History: L. 2004, ch. 22, § 2; L. 2012, ch. 161, § 17; L. 2017, ch. 52, § 13; July 1.

K.S.A. 50-1118. Same; licensing required to conduct credit services organization business; application.

(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 licensing from the commissioner. Any person required to be licensed as a credit services organization shall submit to the commissioner an application for licensing on forms prescribed and provided by the commissioner. The application for licensing shall include:

(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) 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 licensing shall be accompanied by a nonrefundable fee which shall be established by the commissioner through the adoption of rules and regulations.

(c) The application shall be approved and a nontransferable and non-assignable 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 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 license issued under this section shall expire on April 30 of each year. A license shall be renewed by filing with the commissioner, at least 30 days prior to the expiration of the 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 nonrefundable renewal fee which shall be established by rules and regulations of the commissioner.

(e) If the commissioner fails to issue a 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.

History: L. 2004, ch. 22, § 3; L. 2017, ch. 52, § 14; July 1.

K.S.A. 50-1119. Same; bond; requirements.

Each applicant or 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 licensee's faithful performance of all duties and obligations of a 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 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 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.

History: L. 2004, ch. 22, § 4; L. 2017, ch. 52, § 15; July 1.

K.S.A. 50-1120. Same; duties of licensee.

No person required to be licensed by this act shall engage in debt management services unless:

(a) The licensee has provided the consumer with a credit education program designed to improve the financial literacy of the consumer.

(b) The 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 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. For purposes of the initial 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 licensee reasonably expects:

(A) To participate in the debt management services agreement; and

(B) not to participate in the debt management services agreement.

(c) The 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 licensee. Such agreement shall be in at least 12 point type, signed and dated by the consumer and licensee and include:

(1) The full legal name, doing business as "dba" name, address and phone number of the 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;

(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 licensee;

(5) a schedule of payments, including the amount and due date of each payment, that the consumer must make to the licensee for disbursement to such consumer's creditors;

(6) a list of each participating creditor of the consumer to which payments will be made by the 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;

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

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

(9) a disclosure that the 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;

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

(11) a disclosure that, by executing the debt management services agreement, the consumer authorizes any financial institution in which the 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

(12) a notice substantially similar to the following: "The Kansas Office of the State Bank Commissioner accepts questions and complaints from consumers regarding (name and license number of 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.

History: L. 2004, ch. 22, § 5; L. 2017, ch. 52, § 16; July 1.

K.S.A. 50-1121. Same; prohibited acts.

No person required to be 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 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.

(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 the services of a credit services organization to Kansas consumers without first obtaining proper 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 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.

(m) Give a reward, bonus, premium, commission or any other consideration for the referral of a consumer to the 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 licensee, or a director, manager or officer of such licensee, be a director, manager, officer or owner of any creditor or a subsidiary of any such creditor, that is receiving or will receive payments from the licensee on behalf of a consumer with whom the 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.

History: L. 2004, ch. 22, § 6; L. 2017, ch. 52, § 17; July 1.

K.S.A. 50-1122. Same; registrant's duties regarding certain funds paid to licensee.

(a) Within four calendar days after receipt of any funds paid to the licensee by or on behalf of a consumer for disbursement to such consumer's creditors, a licensee shall deposit such funds in a trust account established for the benefit of consumers;

(b) A licensee shall:

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

(2) disburse any funds paid by or on behalf of a consumer to such consumer's creditors within 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 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 licensee.

(d) A licensee shall not commingle any trust account established for the benefit of consumers with any operating accounts of the licensee.

History: L. 2004, ch. 22, § 7; L. 2017, ch. 52, § 18; July 1.

K.S.A. 50-1123. Same; licensee's report to consumer; required contents.

A 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 licensee. The report shall include:

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

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

(c) total payoff amount or an estimated balance due to each creditor on any debt owed by the consumer;

(d) fees paid to the licensee by the consumer; and

(e) amount held in the trust account on behalf of the consumer, or statement that no amount is currently held.

History: L. 2004, ch. 22, § 8; L. 2017, ch. 52, § 19; July 1.

K.S.A. 50-1124. Same; licensee's report to state bank commissioner; when required; contents; information confidential.

(a) (1) On or before April 1, of each year, each licensee shall file with the commissioner an annual report relating to credit services organization business conducted by the 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 of any of the following events, a licensee shall file a written report with the commissioner describing the event and its expected impact on the licensee's business:

(1) The filing for bankruptcy or reorganization by the licensee;

(2) the institution of a revocation, suspension or other proceeding against the licensee by a governmental authority that is related to the licensee's credit services organization business in any state;

(3) a felony conviction of the 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 licensee fails to make any report required by this section to the commissioner, the commissioner may require the licensee to pay a late penalty of $100 for each day the report is overdue.

History: L. 2004, ch. 22, § 9; L. 2017, ch. 52, § 20; July 1.

K.S.A. 50-1125. Same; records; retention; inspection.

(a) Each 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 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 licensee's records are located outside this state, the 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.

History: L. 2004, ch. 22, § 10; L. 2017, ch. 52, § 21; July 1.

K.S.A. 50-1126. Same; fees charged by licensee; when allowed.

(a) No 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 subsection (b)(5), until after the 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 licensee may:

(1) Charge a one-time consultation fee not exceeding $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 $40 per month, or $5 per month for each creditor of a consumer that is listed in the debt management services agreement between the 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 licensee under the debt management services agreement;

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

(5) charge the consumer a reasonable fee for providing reverse mortgage counseling, bankruptcy counseling, student loan counseling, other counseling services authorized by the commissioner, an educational program, or materials and supplies;

(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.

(d) No licensee shall:

(1) Charge an additional fee to a consumer, if the consumer enters into a debt management services agreement with the 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 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 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 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 licensee shall return the amount of the unauthorized fees, charges, funds or payments to the consumer.

History: L. 2004, ch. 22, § 11; L. 2017, ch. 52, § 22; July 1.

K.S.A. 50-1127. Same; denial, suspension, revocation or refusal to renew license; notice.

The commissioner may deny, suspend, revoke or refuse to renew a 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 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 licensee has failed to file and maintain the surety bond required under this act;

(c) the applicant or licensee is insolvent;

(d) the applicant or 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, licensee or any officer, director, member, owner, partner, principal or debt management counselor thereof has been convicted of any crime;

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

(g) the applicant, licensee or an employee of the applicant or 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 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 licensed;

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

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

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

History: L. 2004, ch. 22, § 12; L. 2017, ch. 52, § 23; July 1.

K.S.A. 50-1128. Same; state bank commissioner; powers and duties.

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 operations, books and records of a credit services organization, as the commissioner deems necessary to aid in the enforcement of this act.

(1) The commissioner, or the commissioner's designee, shall have free and reasonable access to the offices, places of business and all records of the 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.

(2) The commissioner may charge reasonable costs 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) To order any 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) (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 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 proceeding 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.

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

(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.

(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.

(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.

(i) Require fingerprinting of any licensee, agent acting on behalf of a 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 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 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.

History: L. 2004, ch. 22, § 13; L. 2017, ch. 52, § 24; July 1.

K.S.A. 50-1129. Same; cease and desist orders; civil fines.

(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

(6) that the person be barred from subsequently applying for 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.

History: L. 2004, ch. 22, § 14; L. 2017, ch. 52, § 25; July 1.

K.S.A. 50-1130. Same; subpoenas.

(a) In case of contumacy by, or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the commissioner, may issue to that person an order requiring the person to appear before the commissioner, or the officer designated by the commissioner, there, to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Any failure to obey the order of the court may be punished by the court as a contempt of court.

(b) No person shall be excused from attending and testifying or from producing any document or record before the commissioner or in obedience to the subpoena of the commissioner or the commissioner's designee, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture. No individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which such person is compelled, after claiming privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

History: L. 2004, ch. 22, § 15; July 1.

K.S.A. 50-1131. Same; criminal penalty.

Any person violating the provisions of this act or any rule and regulation promulgated thereunder upon conviction shall be guilty of a class B nonperson misdemeanor.

History: L. 2004, ch. 22, § 16; July 1.

K.S.A. 50-1132. Same; construction; application of consumer protection act.

Any violation of this act or any rule and regulation promulgated thereunder is a deceptive act or practice under the Kansas consumer protection act. Any remedy provided by this act shall be construed to be in addition to other remedy provided by the Kansas consumer protection act.

History: L. 2004, ch. 22, § 17; July 1.

K.S.A. 50-1133. Same; private remedies.

(a) Any consumer injured by a violation of this act or any rule and regulation promulgated thereunder may bring an action for recovery of damages. The damages awarded may not be less than the amount paid by the consumer to the credit services organization plus reasonable attorney fees and court costs.

(b) The consumer may also be awarded punitive damages.

History: L. 2004, ch. 22, § 18; July 1.

K.S.A. 50-1134. Same; injunction.

The commissioner, attorney general, county or district attorney or a consumer may bring an action in a district court to enjoin any violation of this act or any rule and regulation promulgated thereunder.

History: L. 2004, ch. 22, § 19; July 1.

K.S.A. 50-1135. Same; fees collected by commissioner.

All fees collected by the commissioner pursuant to this act shall be subject to the provisions of K.S.A. 75-1308 and amendments thereto.

History: L. 2004, ch. 22, § 20; July 1.

KANSAS ADMINISTRATIVE REGULATIONS

Agency 17 – OFFICE OF THE STATE BANK COMMISSIONER

Article 25 – CREDIT SERVICES ORGANIZATIONS

17-25-1 Registration and renewal fees.

KANSAS ADMINISTRATIVE REGULATIONS

Agency 17 – OFFICE OF THE STATE BANK COMMISSIONER

Article 25 – CREDIT SERVICES ORGANIZATIONS

K.A.R. 17-25-1. Registration and renewal fees.

When filing any application or renewal pursuant to the Kansas credit services organization act, K.S.A. 50-1116 et seq. and amendments thereto, each applicant or registrant shall remit to the office of the state bank commissioner the applicable nonrefundable fee, as follows:

(a) Application for initial registration $400

(b) Renewal application for registration.....$150

(Authorized by K.S.A. 50-1118 and K.S.A. 50-1128; implementing K.S.A. 50-1118; effective April 4, 2008; amended Sept. 26, 2014.)

DEPARTMENT OF DEFENSE REGULATIONS

32 C.F.R. Part 232
Limitations on Terms of Consumer Credit Extended to Service Members and Dependents

DEPARTMENT OF DEFENSE REGULATIONS

32 C.F.R. Part 232
Limitations on Terms of Consumer Credit Extended to Service Members and Dependents

(Authorized by 10 U.S.C. § 987; Created by 80 FR 43606, effective July 22, 2015)

§ 232.1 Authority, purpose, and coverage.

(a) Authority. This part is issued by the Department of Defense to implement 10 U.S.C. 987.

(b) Purpose. The purpose of this part is to impose limitations on the cost and terms of certain extensions of credit to Service members and their dependents, and to provide additional protections relating to such transactions in accordance with 10 U.S.C. 987.

(c) Coverage. This part defines the types of transactions involving "consumer credit," a "creditor," and a "covered borrower" that are subject to the regulation, consistent with the provisions of 10 U.S.C. 987. In addition, this part:

(1) Provides the maximum allowable amount of all charges, and the types of charges, that may be associated with a covered extension of consumer credit;

(2) Requires a creditor to provide to a covered borrower a statement of the Military Annual Percentage Rate, or MAPR, before or at the time the borrower becomes obligated on the transaction or establishes an account for the consumer credit. The statement required by § 232.6(a)(1) differs from and is in addition to the disclosures that must be provided to consumers under the Truth in Lending Act;

(3) Provides for the method a creditor must use in calculating the MAPR; and

(4) Contains such other criteria and limitations as the Secretary of Defense has determined appropriate, consistent with the provisions of 10 U.S.C. 987.

§ 232.2 Applicability; examples.

(a) (1) Applicability. This part applies to consumer credit extended by a creditor to a covered borrower, as those terms are defined in this part. Nothing in this part applies to a credit transaction or account relating to a consumer who is not a covered borrower at the time he or she becomes obligated on a credit transaction or establishes an account for credit. Nothing in this part applies to a credit transaction or account relating to a consumer (which otherwise would be consumer credit) when the consumer no longer is a covered borrower.

(2) Examples—

(i) Covered borrower. Consumer A is a member of the armed forces but not serving on active duty, and holds an account for closed-end credit with a financial institution. After establishing the closed-end credit account, Consumer A is ordered to serve on active duty, thereby becoming a covered borrower, and soon thereafter separately establishes an open-end line of credit for personal purposes (which is not subject to any exception or temporary exemption) with the financial institution. This part applies to the open-end line of credit, but not to the closed-end credit account.

(ii) Not a covered borrower. Same facts as described in paragraph (a)(2)(i) of this section. One year after establishing the open-end line of credit, Consumer A ceases to serve on active duty. This part never did apply to the closed-end credit account, and because Consumer A no longer is a covered borrower, this part no longer applies to the open-end line of credit.

(b) Examples. The examples in this part are not exclusive. To the extent that an example in this part implicates a term or provision of Regulation Z (12 CFR part 1026), issued by the Consumer Financial Protection Bureau to implement the Truth in Lending Act, Regulation Z shall control the meaning of that term or provision.

§ 232.3 Definitions.

As used in this part:

(a) Affiliate means any person that controls, is controlled by, or is under common control with another person.

(b) Billing cycle has the same meaning as "billing cycle" in Regulation Z.

(c) Bureau means the Consumer Financial Protection Bureau.

(d) Closed-end credit means consumer credit (but for the conditions applicable to consumer credit under this part) other than consumer credit that is "open-end credit" as that term is defined in Regulation Z.

(e) Consumer means a natural person.

(f) (1) Consumer credit means credit offered or extended to a covered borrower primarily for personal, family, or household purposes, and that is:

(i) Subject to a finance charge; or

(ii) Payable by a written agreement in more than four installments.

(2) Exceptions. Notwithstanding paragraph (f)(1) of this section, consumer credit does not mean:

(i) A residential mortgage, which is any credit transaction secured by an interest in a dwelling, including a transaction to finance the purchase or initial construction of the dwelling, any refinance transaction, home equity loan or line of credit, or reverse mortgage;

(ii) Any credit transaction that is expressly intended to finance the purchase of a motor vehicle when the credit is secured by the vehicle being purchased;

(iii) Any credit transaction that is expressly intended to finance the purchase of personal property when the credit is secured by the property being purchased;

(iv) Any credit transaction that is an exempt transaction for the purposes of Regulation Z (other than a transaction exempt under 12 CFR 1026.29) or otherwise is not subject to disclosure requirements under Regulation Z; and

(v) Any credit transaction or account for credit for which a creditor determines that a consumer is not a covered borrower by using a method and by complying with the recordkeeping requirement set forth in § 232.5(b).

(g) (1) Covered borrower means a consumer who, at the time the consumer becomes obligated on a consumer credit transaction or establishes an account for consumer credit, is a covered member (as defined in paragraph (g)(2) of this section) or a dependent (as defined in paragraph (g)(3) of this section) of a covered member.

(2) The term "covered member" means a member of the armed forces who is serving on—

(i) Active duty pursuant to title 10, title 14, or title 32, United States Code, under a call or order that does not specify a period of 30 days or fewer; or

(ii) Active Guard and Reserve duty, as that term is defined in 10 U.S.C. 101(d)(6).

(3) The term "dependent" with respect to a covered member means a person described in subparagraph (A), (D), (E), or (I) of 10 U.S.C. 1072(2).

(4) Notwithstanding paragraph (g)(1) of this section, covered borrower does not mean a consumer who (though a covered borrower at the time he or she became obligated on a consumer credit transaction or established an account for consumer credit) no longer is a covered member (as defined in paragraph (g)(2) of this section) or a dependent (as defined in paragraph (g)(2) of this section) of a covered member.

(h) Credit means the right granted to a consumer by a creditor to defer payment of debt or to incur debt and defer its payment.

(i) Creditor, except as provided in § 232.8(a), (f), and (g), means a person who is:

(1) Engaged in the business of extending consumer credit; or

(2) An assignee of a person described in paragraph (i)(1) of this section with respect to any consumer credit extended.

(3) For the purposes of this definition, a creditor is engaged in the business of extending consumer credit if the creditor considered by itself and together with its affiliates meets the transaction standard for a "creditor" under Regulation Z with respect to extensions of consumer credit to covered borrowers.

(j) Department means the Department of Defense.

(k) Dwelling means a residential structure that contains one to four units, whether or not the structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and manufactured home.

(l) Electronic fund transfer has the same meaning as in the regulation issued by the Bureau to implement the Electronic Fund Transfer Act, as amended from time to time (12 CFR part 1005).

(m) Federal credit union has the same meaning as "Federal credit union" in the Federal Credit Union Act (12 U.S.C. 1752(1)).

(n) Finance charge has the same meaning as "finance charge" in Regulation Z.

(o) Insured depository institution has the same meaning as "insured depository institution" in the Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

(p) Military annual percentage rate (MAPR). The MAPR is the cost of the consumer credit expressed as an annual rate, and shall be calculated in accordance with § 232.4(c).

(q) Open-end credit means consumer credit that (but for the conditions applicable to consumer credit under this part) is "open-end credit" under Regulation Z.

(r) Person means a natural person or organization, including any corporation, partnership, proprietorship, association, cooperative, estate, trust, or government unit.

(s) Regulation Z means any rules, or interpretations thereof, issued by the Bureau to implement the Truth in Lending Act, as amended from time to time, including any interpretation or approval issued by an official or employee duly authorized by the Bureau to issue such interpretations or approvals. However, for any provision of this part requiring a creditor to comply with Regulation Z, a creditor who is subject to Regulation Z (12 CFR part 226) issued by the Board of Governors of the Federal Reserve System must continue to comply

with 12 CFR part 226. Words that are not defined in this part have the same meanings given to them in Regulation Z (12 CFR part 1026) issued by the Bureau, as amended from time to time, including any interpretation thereof by the Bureau or an official or employee of the Bureau duly authorized by the Bureau to issue such interpretations. Words that are not defined in this part or Regulation Z, or any interpretation thereof, have the meanings given to them by State or Federal law.

(t) Short-term, small amount loan means a closed-end loan that is—

(1) Subject to and made in accordance with a Federal law (other than 10 U.S.C. 987) that expressly limits the rate of interest that a Federal credit union or an insured depository institution may charge on an extension of credit, provided that the limitation set forth in that law is comparable to a limitation of an annual percentage rate of interest of 36 percent; and

(2) Made in accordance with the requirements, terms, and conditions of a rule, prescribed by the appropriate Federal regulatory agency (or jointly by such agencies), that implements the Federal law described in paragraph (t)(1) of this section, provided further that such law or rule contains—

(i) A fixed numerical limit on the maximum maturity term, which term shall not exceed 9 months; and

(ii) A fixed numerical limit on any application fee that may be charged to a consumer who applies for such closed-end loan.

§ 232.4 Terms of consumer credit extended to covered borrowers.

(a) General conditions. A creditor who extends consumer credit to a covered borrower may not require the covered borrower to pay an MAPR for the credit with respect to such extension of credit, except as:

(1) Agreed to under the terms of the credit agreement or promissory note;

(2) Authorized by applicable State or Federal law; and

(3) Not specifically prohibited by this part

(b) Limit on cost of consumer credit. A creditor may not impose an MAPR greater than 36 percent in connection with an extension of consumer credit that is closed-end credit or in any billing cycle for open-end credit.

(c) Calculation of the MAPR.—

(1) Charges included in the MAPR. The charges for the MAPR shall include, as applicable to the extension of consumer credit:

(i) Any credit insurance premium or fee, any charge for single premium credit insurance, any fee for a debt cancellation contract, or any fee for a debt suspension agreement;

(ii) Any fee for a credit-related ancillary product sold in connection with the credit transaction for closed-end credit or an account for open-end credit; and

(iii) Except for a bona fide fee (other than a periodic rate) which may be excluded under paragraph (d) of this section:

(A) Finance charges associated with the consumer credit;

(B) Any application fee charged to a covered borrower who applies for consumer credit, other than an application fee charged by a Federal credit union or an insured depository institution when making a short-term, small amount loan, provided that the application fee is charged to the covered borrower not more than once in any rolling 12-month period; and

(C) Any fee imposed for participation in any plan or arrangement for consumer credit, subject to paragraph (c)(2)(ii)(B) of this section.

(iv) Certain exclusions of Regulation Z inapplicable. Any charge set forth in paragraphs (c)(1)(i) through (iii) of this section shall be included in the calculation of the MAPR even if that charge would be excluded from the finance charge under Regulation Z.

(2) Computing the MAPR—

(i) Closed-end credit. For closed-end credit, the MAPR shall be calculated following the rules for calculating and disclosing the "Annual Percentage Rate (APR)" for credit transactions under Regulation Z based on the charges set forth in paragraph (c)(1) of this section.

(ii) Open-end credit—

(A) In general. Except as provided in paragraph (c)(2)(ii)(B) of this section, for open-end credit, the MAPR shall be calculated following the rules for calculating the effective annual percentage rate for a billing cycle as set forth in § 1026.14(c) and (d) of Regulation Z (as if a creditor must comply with that section) based on the charges set forth in paragraph (c)(1) of this section. Notwithstanding § 1026.14(c) and (d) of Regulation Z, the amount of charges related to opening, renewing, or continuing an account must be

included in the calculation of the MAPR to the extent those charges are set forth in paragraph (c)(1) of this section.

(B) No balance during a billing cycle. For open-end credit, if the MAPR cannot be calculated in a billing cycle because there is no balance in the billing cycle, a creditor may not impose any fee or charge during that billing cycle, except that the creditor may impose a fee for participation in any plan or arrangement for that open-end credit so long as the participation fee does not exceed $100 per annum, regardless of the billing cycle in which the participation fee is imposed; provided, however, that the $100-per annum limitation on the amount of the participation fee does not apply to a bona fide participation fee imposed in accordance with paragraph (d) of this section.

(d) Bona fide fee charged to a credit card account—

(1) In general. For consumer credit extended in a credit card account under an open-end (not home-secured) consumer credit plan, a bona fide fee, other than a periodic rate, is not a charge required to be included in the MAPR pursuant to paragraph (c)(1) of this section. The exclusion provided for any bona fide fee under this paragraph (d) applies only to the extent that the charge by the creditor is a bona fide fee, and must be reasonable for that type of fee.

(2) Ineligible items. The exclusion for bona fide fees in paragraph (d)(1) of this section does not apply to—

(i) Any credit insurance premium or fee, including any charge for single premium credit insurance, any fee for a debt cancellation contract, or any fee for a debt suspension agreement; or

(ii) Any fee for a credit-related ancillary product sold in connection with the credit transaction for closed-end credit or an account for open-end credit.

(3) Standards relating to bona fide fees –

(i) Like-kind fees. To assess whether a bona fide fee is reasonable under paragraph (d)(1) of this section, the fee must be compared to fees typically imposed by other creditors for the same or a substantially similar product or service. For example, when assessing a bona fide cash advance fee, that fee must be compared to fees charged by other creditors for transactions in which consumers receive extensions of credit in the form of cash or its equivalent. Conversely, when assessing a foreign transaction fee, that fee may not be compared to a cash advance fee because the foreign transaction fee involves the service of exchanging the consumer's currency (e.g., a reserve currency) for the local currency demanded by a merchant for a good or service, and does not involve the provision of cash to the consumer.

(ii) Safe harbor. A bona fide fee is reasonable under paragraph (d)(1) of this section if the amount of the fee is less than or equal to an average amount of a fee for the same or a substantially similar product or service charged by 5 or more creditors each of whose U.S. credit cards in force is at least $3 billion in an outstanding balance (or at least $3 billion in loans on U.S. credit card accounts initially extended by the creditor) at any time during the 3-year period preceding the time such average is computed.

(iii) Reasonable fee. A bona fide fee that is higher than an average amount, as calculated under paragraph (d)(3)(ii) of this section, also may be reasonable under paragraph (d)(1) of this section depending on other factors relating to the credit card account. A bona fide fee charged by a creditor is not unreasonable solely because other creditors do not charge a fee for the same or a substantially similar product or service.

(iv) Indicia of reasonableness for a participation fee. An amount of a bona fide fee for participation in a credit card account may be reasonable under paragraph (d)(1) of this section if that amount reasonably corresponds to the credit limit in effect or credit made available when the fee is imposed, to the services offered under the credit card account, or to other factors relating to the credit card account. For example, even if other creditors typically charge $100 per annum for participation in credit card accounts, a $400 fee nevertheless may be reasonable if (relative to other accounts carrying participation fees) the credit made available to the covered borrower is significantly higher or additional services or other benefits are offered under that account.

(4) Effect of charging fees on bona fide fees—

(i) Bona fide fees treated separately from charges for credit insurance products or credit-related ancillary products. If a creditor imposes a fee described in paragraph (c)(1) of this section and imposes a finance charge to a covered borrower, the total amount of the fee(s) and finance charge(s) shall be included in the MAPR pursuant to paragraph (c) of this section, and the imposition of any fee or finance charge described in paragraph (c)(1) of this section shall not affect whether another type of fee may be excluded as a bona fide fee under this paragraph (d).

(ii) Effect of charges for non-bona fide fees. If a creditor imposes any fee (other than a periodic rate or a fee that must be included in the MAPR pursuant to paragraph (c)(1) of this section) that is not a bona fide fee and imposes a finance charge to a covered borrower, the total amount of those fees, including any bona fide fees, and other finance charges shall be included in the MAPR pursuant to paragraph (c) of this section.

(iii) Examples.

(A) In a credit card account under an open-end (not home-secured) consumer credit plan during a given billing cycle, Creditor A imposes on a covered borrower a fee for a debt cancellation product (as described in paragraph (c)(1)(i) of this section), a finance charge (as described in paragraph (c)(1)(iii)(A)), and a bona fide foreign transaction fee that qualifies for the exclusion under this paragraph (d). Only the fee for the debt cancellation product and the finance charge must be included when calculating the MAPR.

(B) In a credit card account under an open-end (not home-secured) consumer credit plan during a given billing cycle, Creditor B imposes on a covered borrower a fee for a debt cancellation product (as described in paragraph (c)(1)(i) of this section), a finance charge (as described in paragraph (c)(1)(iii)(A)), a bona fide foreign transaction fee that qualifies for the exclusion under this paragraph (d), and a bona fide, but unreasonable cash advance fee. All of the fees—including the foreign transaction fee that otherwise would qualify for the exclusion under this paragraph (d)—and the finance charge must be included when calculating the MAPR.

(5) Rule of construction. Nothing in paragraph (d)(1) of this section authorizes the imposition of fees or charges otherwise prohibited by this part or by other applicable State or Federal law.

§ 232.5 Optional identification of covered borrower.

(a) No restriction on method for covered-borrower check. A creditor is permitted to apply its own method to assess whether a consumer is a covered borrower.

(b) Safe harbor—

(1) In general. A creditor may conclusively determine whether credit is offered or extended to a covered borrower, and thus may be subject to 10 U.S.C. 987 and the requirements of this part, by assessing the status of a consumer in accordance with this paragraph (b).

(2) Methods to check status of consumer—

(i) Department database—

(A) In general. To determine whether a consumer is a covered borrower, a creditor may verify the status of a consumer by using information relating to that consumer, if any, obtained directly or indirectly from the database maintained by the Department, available at https://www.dmdc.osd.mil/mla/welcome.xhtml. A search of the

Department's database requires the entry of the consumer's last name, date of birth, and Social Security number.

(B) Historic lookback prohibited. At any time after a consumer has entered into a transaction or established an account involving an extension of credit, a creditor (including an assignee) may not, directly or indirectly, obtain any information from any database maintained by the Department to ascertain whether a consumer had been a covered borrower as of the date of that transaction or as of the date that account was established.

(ii) Consumer report from a nationwide consumer reporting agency. To determine whether a consumer is a covered borrower, a creditor may verify the status of a consumer by using a statement, code, or similar indicator describing that status, if any, contained in a consumer report obtained from a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, or a reseller of such a consumer report (as each of those terms is defined in the Fair Credit Reporting Act (15 U.S.C. 1681a) and any implementing regulation (12 CFR part 1022)).

(3) Determination and recordkeeping; one-time determination permitted. A creditor who makes a determination regarding the status of a consumer by using one or both of the methods set forth in paragraph (b)(2) of this section shall be deemed to be conclusive with respect to that transaction or account involving consumer credit between the creditor and that consumer, so long as that creditor timely creates and thereafter maintains a record of the information so obtained. A creditor may make the determination described in this paragraph (b), and keep the record of that information obtained at that time, solely at the time—

(i) A consumer initiates the transaction or 30 days prior to that time;

(ii) A consumer applies to establish the account or 30 days prior to that time; or

(iii) The creditor develops or processes, with respect to a consumer, a firm offer of credit that (among the criteria used by the creditor for the offer) includes the status of the consumer as a covered borrower, so long as the consumer responds to that offer not later than 60 days after the time that the creditor had provided that offer to the consumer. If the consumer responds to the creditor's offer later than 60 days after the time that the creditor had provided that offer to the consumer, then the creditor may not rely upon its initial determination in developing or processing that offer, and, instead, may act on the consumer's response as if the consumer is initiating the transaction or applying to establish the account (as described in paragraph (b)(3)(i) or (ii) of this section).

§ 232.6 Mandatory loan disclosures.

(a) Required information. With respect to any extension of consumer credit (including any consumer credit originated or extended through the internet) to a covered borrower, a creditor shall provide to the covered borrower the following information before or at the time the borrower becomes obligated on the transaction or establishes an account for the consumer credit:

(1) A statement of the MAPR applicable to the extension of consumer credit;

(2) Any disclosure required by Regulation Z, which shall be provided only in accordance with the requirements of Regulation Z that apply to that disclosure; and

(3) A clear description of the payment obligation of the covered borrower, as applicable. A payment schedule (in the case of closed-end credit) or account-opening disclosure (in the case of open-end credit) provided pursuant to paragraph (a)(2) of this section satisfies this requirement.

(b) One-time delivery; multiple creditors.

(1) The information described in paragraphs (a)(1) and (a)(3) of this section are not required to be provided to a covered borrower more than once for the transaction or the account established for consumer credit with respect to that borrower.

(2) Multiple creditors. If a transaction involves more than one creditor, then only one of those creditors must provide the disclosures in accordance with this section. The creditors may agree among themselves which creditor may provide the information described in paragraphs (a)(1) and (a)(3) of this section.

(c) Statement of the MAPR—

(1) In general. A creditor may satisfy the requirement of paragraph (a)(1) of this section by describing the charges the creditor may impose, in accordance with this part and subject to the terms and conditions of the agreement, relating to the consumer credit to calculate the MAPR. Paragraph (a)(1) of this section shall not be construed as requiring a creditor to describe the MAPR as a numerical value or to describe the total dollar amount of all charges in the MAPR that apply to the extension of consumer credit.

(2) Method of providing a statement regarding the MAPR. A creditor may include a statement of the MAPR applicable to the consumer credit in the agreement with the covered borrower involving the consumer credit transaction. Paragraph (a)(1) of this section shall not be construed as requiring a creditor to include a statement of the MAPR applicable to an extension of consumer credit in any advertisement relating to the credit.

(3) Model statement. A statement substantially similar to the following statement may be used for the purpose of paragraph (a)(1) of this section: "Federal law provides important protections to members of the Armed Forces and their dependents relating to extensions of consumer credit. In general, the cost of consumer credit to a member of the Armed Forces and his or her dependent may not exceed an annual percentage rate of 36 percent. This rate must include, as applicable to the credit transaction or account: The costs associated with credit insurance premiums; fees for ancillary products sold in connection with the credit transaction; any application fee charged (other than certain application fees for specified credit transactions or accounts); and any participation fee charged (other than certain participation fees for a credit card account)."

(d) Methods of delivery—

(1) Written disclosures. The creditor shall provide the information required by paragraphs (a)(1) and (3) of this section in writing in a form the covered borrower can keep.

(2) Oral disclosures.

(i) In general. The creditor also shall orally provide the information required by paragraphs (a)(1) and (3) of this section.

(ii) Methods to provide oral disclosures. A creditor may satisfy the requirement in paragraph (d)(2)(i) of this section if the creditor provides—

(A) The information to the covered borrower in person; or

(B) A toll-free telephone number in order to deliver the oral disclosures to a covered borrower when the covered borrower contacts the creditor for this purpose.

(iii) Toll-free telephone number on application or disclosure. If applicable, the toll-free telephone number must be included on—

(A) A form the creditor directs the consumer to use to apply for the transaction or account involving consumer credit; or

(B) A written disclosure the creditor provides to the covered borrower, pursuant to paragraph (d)(1) of this section.

(e) When disclosures are required for refinancing or renewal of covered loan. The refinancing or renewal of consumer credit requires new disclosures under this section only when the transaction for that credit would be considered a new transaction that requires disclosures under Regulation Z.

§ 232.7 Preemption.

(a) Inconsistent laws. 10 U.S.C. 987 as implemented by this part preempts any State or Federal law, rule or regulation, including any State usury law, to the extent such law, rule or regulation is inconsistent with this part, except that any such law, rule or regulation is not preempted by this part to the extent that it provides protection to a covered borrower greater than those protections provided by 10 U.S.C. 987 and this part.

(b) Different treatment under State law of covered borrowers is prohibited. A State may not:

(1) Authorize creditors to charge covered borrowers rates of interest for any consumer credit or loans that are higher than the legal limit for residents of the State, or

(2) Permit the violation or waiver of any State consumer lending protection covering consumer credit that is for the benefit of residents of the State on the basis of the covered borrower's nonresident or military status, regardless of the covered borrower's domicile or permanent home of record, provided that the protection would otherwise apply to the covered borrower.

§ 232.8 Limitations.

Title 10 U.S.C. 987 makes it unlawful for any creditor to extend consumer credit to a covered borrower with respect to which:

(a) The creditor rolls over, renews, repays, refinances, or consolidates any consumer credit extended to the covered borrower by the same creditor with the proceeds of other consumer credit extended by that creditor to the same covered borrower. This paragraph shall not apply to a transaction when the same creditor extends consumer credit to a covered borrower to refinance or renew an extension of credit that was not covered by this paragraph because the consumer was not a covered borrower at the time of the original transaction. For the purposes of this paragraph, the term "creditor" means a person engaged in the business of extending consumer credit subject to applicable law to engage in deferred presentment transactions or similar payday loan transactions (as described in the relevant law), provided however, that the term does not include a person that is chartered or licensed under Federal or State law as a bank, savings association, or credit union.

(b) The covered borrower is required to waive the covered borrower's right to legal recourse under any otherwise applicable provision of State or Federal law, including any provision of the Servicemembers Civil Relief Act (50 U.S.C. App. 501 et seq.).

(c) The creditor requires the covered borrower to submit to arbitration or imposes other onerous legal notice provisions in the case of a dispute.

(d) The creditor demands unreasonable notice from the covered borrower as a condition for legal action.

(e) The creditor uses a check or other method of access to a deposit, savings, or other financial account maintained by the covered borrower, except that, in connection with a consumer credit transaction with an MAPR consistent with § 232.4(b), the creditor may:

(1) Require an electronic fund transfer to repay a consumer credit transaction, unless otherwise prohibited by law;

(2) Require direct deposit of the consumer's salary as a condition of eligibility for consumer credit, unless otherwise prohibited by law; or

(3) If not otherwise prohibited by applicable law, take a security interest in funds deposited after the extension of credit in an account established in connection with the consumer credit transaction.

(f) The creditor uses the title of a vehicle as security for the obligation involving the consumer credit, provided however, that for the purposes of this paragraph, the term "creditor" does not include a person that is chartered or licensed under Federal or State law as a bank, savings association, or credit union.

(g) The creditor requires as a condition for the extension of consumer credit that the covered borrower establish an allotment to repay the obligation. For the purposes of this paragraph only, the term "creditor" shall not include a "military welfare society," as defined in 10 U.S.C. 1033(b)(2), or a "service relief society," as defined in 37 U.S.C. 1007(h)(4).

(h) The covered borrower is prohibited from prepaying the consumer credit or is charged a penalty fee for prepaying all or part of the consumer credit.

§ 232.9 Penalties and remedies.

(a) Misdemeanor. A creditor who knowingly violates 10 U.S.C. 987 as implemented by this part shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(b) Preservation of other remedies. The remedies and rights provided under 10 U.S.C. 987 as implemented by this part are in addition to and do not preclude any remedy otherwise available under State or Federal law or regulation to the person claiming relief under the statute, including any award for consequential damages and punitive damages.

(c) Contract void. Any credit agreement, promissory note, or other contract with a covered borrower that fails to comply with 10 U.S.C. 987 as implemented by this part or which contains one or more provisions prohibited under 10 U.S.C. 987 as implemented by this part is void from the inception of the contract.

(d) Arbitration. Notwithstanding 9 U.S.C. 2, or any other Federal or State law, rule, or regulation, no agreement to arbitrate any dispute involving the extension of consumer credit to a covered borrower pursuant to this part shall be enforceable against any covered borrower, or any person who was a covered borrower when the agreement was made.

(e) Civil liability—

(1) In general. A person who violates 10 U.S.C. 987 as implemented by this part with respect to any person is civilly liable to such person for:

(i) Any actual damage sustained as a result, but not less than $500 for each violation;

(ii) Appropriate punitive damages;

(iii) Appropriate equitable or declaratory relief; and

(iv) Any other relief provided by law.

(2) Costs of the action. In any successful action to enforce the civil liability described in paragraph (e)(1) of this section, the person who violated 10 U.S.C. 987 as implemented by this part is also liable for the costs of the action, together with reasonable attorney fees as determined by the court.

(3) Effect of finding of bad faith and harassment. In any successful action by a defendant under this section, if the court finds the action was brought in bad faith and for the purpose of harassment, the plaintiff is liable for the attorney fees of the defendant as determined by the court to be reasonable in relation to the work expended and costs incurred.

(4) Defenses. A person may not be held liable for civil liability under paragraph (e) of this section if the person shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors, except that an error of legal judgment with respect to a person's obligations under 10 U.S.C. 987 as implemented by this part is not a bona fide error.

(5) Jurisdiction, venue, and statute of limitations. An action for civil liability under paragraph (e) of this section may be brought in any appropriate United States district court, without regard to the amount in controversy, or in any other court of competent jurisdiction, not later than the earlier of:

(i) Two years after the date of discovery by the plaintiff of the violation that is the basis for such liability; or

(ii) Five years after the date on which the violation that is the basis for such liability occurs.

§ 232.10 Administrative enforcement.

The provisions of this part, other than § 232.9(a), shall be enforced by the agencies specified in section 108 of the Truth in Lending Act (15 U.S.C. 1607) in the manner set forth in that section or under any other applicable authorities available to such agencies by law.

§ 232.11 Servicemembers Civil Relief Act protections unaffected.

Nothing in this part may be construed to limit or otherwise affect the applicability of section 207 and any other provisions of the Servicemembers Civil Relief Act (50 U.S.C. App. 527).

§ 232.12 Effective dates.

(a) In general. This regulation shall take effect October 1, 2015, except that, other than as provided in this section and in § 232.13(b)(1), nothing in this part shall apply to consumer credit that is extended to a covered borrower and consummated before October 3, 2016.

(b) Prior extensions of consumer credit. Consumer credit that is extended to a covered borrower and consummated any time between October 1, 2007, and October 3, 2016, is subject to the definitions, conditions, and requirements of this part as were established by the Department and effective on October 1, 2007.

(c) New extensions of consumer credit. Except as provided in paragraphs (d) and (e) of this section with respect to extensions of consumer credit under paragraph (b) of this section (and except as permitted by § 232.13(b)(1)), the requirements of this part that are effective as of October 1, 2015, shall apply only to a consumer credit transaction or account for consumer credit consummated or established on or after October 3, 2016.

(d) Provisions of 10 U.S.C. 987(d)(2). The amendments to 10 U.S.C. 987(d)(2) enacted in section 661(a) of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239, 126 Stat. 1785), as reflected in § 232.7(b), took effect on January 2, 2014.

(e) Civil liability remedies. The provisions set forth in § 232.9(e) shall apply with respect to consumer credit extended on or after January 2, 2013.

§ 232.13 Compliance dates.

(a) In general. Except as provided in paragraph (c) of this section, a creditor must comply with the requirements of this part, as may be applicable, with respect to a consumer credit transaction or account for consumer credit consummated or established on or after October 3, 2016, not later than that date.

(b) Safe harbors for identifying a covered borrower—

(1) New safe harbors. Section 232.5 shall apply October 3, 2016.

(2) Prior safe harbor valid until general compliance date. The provisions relating to the identification of a covered borrower set forth in § 232.5(a) of the regulation established by the Department and effective on October 1, 2007 (including the interpretation by the Department that provides an exception from the safe harbor for the creditor's knowledge that the applicant is a covered borrower) shall remain in effect until October 3, 2016.

(c) Limited exemption for credit card account; reservation of authority—

(1) In general. Notwithstanding § 232.3(f)(1) and subject to paragraph (c)(2) of this section, until October 3, 2017, consumer credit does not mean credit extended in a credit card account under an open-end (not home-secured) consumer credit plan.

(2) Authority to issue an order to extend exemption. The Secretary, or an official of the Department duly authorized by the Secretary, may, by order, extend the expiration of the exemption set forth in paragraph (c)(1) of this section, until a date not later than October 3, 2018.

ADMINISTRATIVE INTERPRETATIONS

In 2024, the following administrative interpretations issued under K.S.A. 16a-6-104(1)(f) remain in effect.

Current Administrative Interpretations

Administrative Interpretation No. 1001
Call or Demand Notes
December 1, 1992

A request has been made to the Consumer Credit Commissioner for an Administrative Interpretation concerning the inclusion of a demand feature in a non-real estate consumer installment loan agreement.

A demand or call provision is an acceleration clause which allows a lender to call monies due under the instrument at the will of the creditor.

The Kansas Uniform Consumer Credit Code section 16a-5-109 permits creditors to accelerate an agreement if:

(1) the consumer fails to make a payment as required by the agreement; or

(2) the prospect of payment, performance, or realization of collateral is significantly impaired; the burden of establishing the prospect of significant impairment is on the creditor.

Notwithstanding subsection (1) a creditor may not accelerate an agreement only for failure to make a required payment unless the consumer has been given the notice of right to cure as provided by 16a-5-110 and 16a-5-111.

The calling or demanding of payment in full following 24 months of a 48 month contract, for example, would trigger the consumer's right to finance the balloon payment at the same rate and terms as the original installment note (16a-3-308).

Demand notes will be allowed only when the agreements are ``interest only'' in which the consumer is required only to pay interest and not pay principal. Demand provisions in these types of transactions is entirely understandable, given the need of the creditor eventually to recover its principal.

Wm. F. Caton
Commissioner

Administrative Interpretation No. 1002
Refund of Credit Insurance Premiums
January 27, 1993; amended October 13, 1999

The purpose of this Administrative Interpretation is to clarify the requirements of K.S.A. 16a-4-108(3) in regard to the notices to be provided to consumers who may be eligible for a refund of credit insurance premiums.

Section 16a-4-108(3) states ". . . (3) Except as provided in subsection (2), the creditor shall promptly make or cause to be made an appropriate refund or credit to the consumer with respect to any separate charge made to him for insurance if (a) the insurance is not provided or is provided for a shorter term than that for which the charge to the consumer for insurance was computed; or (b) the insurance terminate prior to the end of the term for which it was written because of prepayment in full or otherwise . . ."

The phrase "promptly make or cause to be made" does not have a definition in the code and apparently has been misunderstood by creditors. For purposes of K.S.A. 16a-4-108(3), 30 days shall be considered a reasonable time within which to promptly make or cause to be made" a refund or credit to the consumer.

This interpretation outlines the Administrator's opinion of the appropriate format for notices to be sent to consumers in order to comply with the above quoted statute. The notices are required of creditors who have become an assignee of a consumer credit transaction which has separate prepaid charges for credit insurance which have been retained by the original creditor.

A creditor who accepts such a consumer credit transaction from an original creditor should notify the consumer within ten calendar days that they have been assigned the consumer credit transaction. If credit insurance was purchased, a notice in the following form will be deemed by the Administrator to satisfy the requirements of K.S.A. 16a-4-108:

> **"YOU HAVE PURCHASED CREDIT LIFE AND/OR DISABILITY INSURANCE IN CONNECTION WITH THE ABOVE-STATED CONSUMER CREDIT TRANSACTION."**
>
> **"PLEASE BE ADVISED THAT IF YOU PAY THE CONSUMER CREDIT TRANSACTION IN FULL BEFORE THE END OF THE TERM FOR WHICH IT WAS WRITTEN, YOU MAY BE ENTITLED TO A REFUND OR CREDIT FOR CREDIT INSURANCE PREMIUMS PAID."**
>
> **"TO OBTAIN YOUR REFUND, YOU MUST CONTACT THE ORIGINAL CREDITOR."**
>
> **"IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT THE OFFICE OF THE STATE BANK COMMISSIONER, DIVISION OF**

CONSUMER AND MORTGAGE LENDING AT 700 SW JACKSON, SUITE 300, TOPEKA, KANSAS 66603."

Upon prepayment of any consumer credit transaction described above, an additional notice must be made to the consumer with a copy sent to the original creditor. The notice should include the following:

1. DATE OF CONSUMER CREDIT TRANSACTION REPAYMENT.

2. NAME OF CONSUMER AND CONSUMER CREDIT TRANSACTION NUMBER.

3. A STATEMENT INDICATING THAT A POTENTIAL REFUND MAY BE DUE TO THE CONSUMER.

4. THE ORIGINAL CREDITOR'S NAME AND CURRENT ADDRESS.

5. A STATEMENT THAT THE ORIGINAL CREDITOR IS INITIALLY RESPONSIBLE FOR MAKING THE REFUND OF THE UNEARNED PREMIUM.

6. A STATEMENT INDICATING THE ORIGINAL CREDITOR MUST RETAIN WRITTEN PROOF OF THE REFUND.

7. A STATEMENT DIRECTING THE CONSUMER TO CONTACT THE OFFICE OF THE STATE BANK COMMISSIONER DIVISION OF CONSUMER AND MORTGAGE LENDING WITHIN THIRTY (30) DAYS IF THEY HAVE FAILED TO RECEIVE THEIR REFUND.

A sample notice is available upon request.

Creditors will be considered to have substantially complied with K.S.A. 16a-4-108 by providing to consumers the information outlined above. Failure by a creditor to comply with K.S.A. 16a-4-108(3) may result in action by the Administrator, including the possible imposition of a fine.

Kevin C. Glendening
Acting Deputy Commissioner
Division of Consumer and Mortgage Lending
Office of the State Bank Commissioner

SAMPLE NOTICES

A. INITIAL NOTICE

DATE OF NOTICE
RE: Loan Number
You have purchased credit life insurance in connection with the above stated loan.

Please be advised that if you pay the loan in full before the end of the term for which it was written, you may be entitled to a refund or credit for credit insurance premiums paid.

To obtain your refund, you must contact the original creditor.

If you have any questions, please contact the Office of the State Bank Commissioner, Division of Consumer and Mortgage Lending at 700 SW Jackson, Suite 300, Topeka, Kansas 66603.

B. NOTIFICATION OF POTENTIAL REFUND ON CREDIT INSURANCE DUE TO PREPAYMENT

DATE OF NOTICE
TO: BORROWER
RE: Loan Number
Date of Loan Prepayment

This is notification that there may be a refund or credit due to the above-named consumer for credit insurance premiums paid.

Because the loan identified above has been prepaid in full, there may be a refund due for credit insurance premiums that have already been paid for the full term of the loan.

According to Kansas law, a consumer shall receive a refund or a credit for any insurance premiums paid when the insurance terminates prior to the end of the term for which it was written because of prepayment of the loan. (See K.S.A. 16a-4-108)

Upon prepayment in full, the consumer must contact the dealer/originator of the loan and request payment of any funds due for credit insurance premiums paid. The dealer/originator of the loan may be contacted at the following address:

For examination purposes, the originator of the credit insurance must keep written proof that a refund has been properly made, and thus all obligations under law regarding this matter have been satisfied.

If the consumer does not receive a refund or credit due within thirty (30) days of their request, please contact the Office of the State Bank Commissioner, Division of Consumer and Mortgage Lending, at 700 SW Jackson, Suite 300, Topeka, Kansas 66603.

Administrative Interpretation No. 1003
Clarification of Charges on Discretionary Overdrafts by Financial Institutions
July 14, 1994; Amended October 13, 1999

This administrative interpretation is given to clarify whether overdraft charges imposed by financial institutions constitute a finance charge and subsequently are subject to the Kansas Uniform Consumer Credit Code (Code). This interpretation applies only to discretionary overdrafts allowed by the financial institution where there is not a prearranged agreement to extend credit by paying checks drawn on a customer's checking account where the checking account contains less funds than the amount of the check or checks presented for payment.

The definition of an overdraft does not clearly come under the definition of consumer loan as defined in 16a-1-301(17). Comments included in the Code on that section indicate that a consumer loan usually includes ". . .all loans under $25,000 made by professional lenders to individuals for personal, family or household purposes as long as they are payable in installments or a finance charge is imposed". Overdrafts could better be defined as "sale of services" as defined in 16a-1-301(40). Again, the Kansas Comments of the Code relating to the definition of "loan" provide a distinction between loans and sales, and state ". . .thus, forbearance of debt arising from sales or leases is not a loan transaction within this act . . ."

Kansas Regulation K.A.R. 75-6-26 requires creditors to disclose to consumers the information required by Truth-in-Lending Regulation Z, 12 CFR 226 et seq., including all appendices thereto as amended and in effect on September 1, 1999 (Reg Z) (authorized by and implementing K.S.A. 16a-1-301 and 16a-6-117). Reg Z, 226.4 (c) (3) ("charges excluded from the finance charge") states, "charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items an the imposition of the charge were previously agreed upon in writing". Official Staff Commentary on Reg Z further expresses the following opinion on 226.4 (c) (3), "a charge on an overdraft balance computed by applying a rate of interest to the amount of the overdraft is not a finance charge, even though the consumer agrees to the charge in the account agreement, unless the financial institution agrees in writing that it will pay such items".

Conclusions:

1. Discretionary overdrafts by a financial institution without a prearranged agreement to create an overdraft, although generally considered as extensions of credit, do not constitute a consumer loan as defined by the Code in K.S.A. 16a-1-301 (17).

2. Charges on overdrafts without a prearranged agreement, however calculated, do not constitute a finance charge as defined by the Code in K.S.A. 16a-1-301(22).

3. The Code is silent in regard to charges imposed on discretionary overdrafts by a financial institution. When the Code is silent, Reg Z is used for reference. Reg Z in paragraph 226.4(c) (3) specifically excludes charges on discretionary overdrafts from the definition of "Finance Charge".

Therefore, it is the interpretation of this office, based on the facts, interpretations and conclusions stated above, that transactions involving financial institutions' imposition of charges on discretionary overdrafts are not subject to the Kansas Uniform Consumer Credit Code.

Kevin C. Glendening
Acting Deputy Commissioner
Division of Consumer and Mortgage Lending
Office of the State Bank Commissioner

Amended Administrative Interpretation No. 1004
Guaranteed Asset Protection ("GAP")
April 30, 2019

(Note regarding April 2019 amendment: The OSBC's intent is to allow companies to phase in new forms and not require immediate compliance with the latest amendment to this AI. The OSBC expects those affected by the amendment to come into compliance as soon as possible, but the OSBC has set a definite time of January 1, 2020, for full compliance with AI 1004. Until that date, old forms that are otherwise compliant now, but do not include the new language, will be considered compliant and therefore the cost of GAP may continue to be excluded from the finance charge using such forms until January 1, 2020.)

Administrative Interpretation No. 1004 was issued October 20, 1994 and first amended August 7, 1997.
This Administrative Interpretation was further amended December 19, 2012, and again on April 30, 2019.

This Administrative Interpretation provides guidelines that must be followed for creditors to exclude the cost of Guaranteed Asset Protection ("GAP") waiver agreements from the calculation of the finance charge with consumer credit sales and closed-end consumer loans pursuant to the Uniform Consumer Credit Code. A GAP waiver agreement cancels or waives all or part of the outstanding balance due on a consumer's finance agreement in the event physical damage insurance does not pay the consumer's debt in full following a total loss or unrecovered theft of the vehicle. This Amended Administrative Interpretation is limited to GAP waiver products offered in connection with the finance agreement on a consumer vehicle. For purposes of this Amended Administrative Interpretation, "vehicle" means self-propelled or towed vehicles designed for personal use, including but not limited to automobiles, trucks, motorcycles, recreational vehicles, travel trailers, all-terrain vehicles, snowmobiles, and personal watercraft.

GAP waiver products may be offered to consumers and the charges for GAP products may continue to be excluded from the finance charge in Kansas provided the following conditions are met:

1. There must be a reasonable expectation that the condition will exist where the loan balance will exceed the fair market value of the vehicle at some point in time during the life of the loan in order for a creditor to offer GAP to the consumer. The price charged for GAP shall be subject to the principles of unconscionability expressed in K.S.A. 16a-5-108.

2. In accordance with the Truth in Lending Act and implementing regulations, as they may be amended from time to time, all GAP waiver agreements must:

    a. contain a written statement that GAP coverage is not required by the creditor;

    b. disclose the cost of the GAP product; and

c. have the consumer affirmatively sign a written request for GAP coverage after receiving the required disclosures.

3. In addition to the requirements of the Truth in Lending Act, all GAP waiver agreements shall contain the following provisions:

   a. The GAP waiver agreement must identify the name of the dealership or financial institution selling the GAP product and the GAP Administrator;

   b. The GAP waiver agreement remains a part of the finance agreement upon the assignment, sale, or transfer of such finance agreement by the creditor;

   c. The consumer must have no less than a 30-day unconditional right to cancel with a full refund of the purchase price of the GAP waiver agreement, provided no amounts have been waived pursuant to the agreement;

   d. The GAP waiver agreement must include, at a minimum, coverage of the physical damage insurance deductible up to $500; however, the GAP waiver agreement may cover deductibles in excess of $500;

   e. The GAP waiver agreement must include a warning in bold type that the GAP coverage may not cancel or waive the entire amount owing at the time of loss;

   f. The procedure the consumer must follow to obtain GAP waiver benefits under the terms and conditions of the GAP waiver agreement, including a telephone number and address where the consumer may apply for waiver benefits; and

   g. The GAP waiver agreement must contain a statement advising Kansas consumers how to contact the GAP provider with claims for GAP coverage, and that information shall be printed in bold font. The word "claims" shall be bolded and underlined. The form must also advise Kansas consumers that they may contact the Kansas Office of the State Bank Commissioner with complaints about their GAP waiver agreement at 700 S.W. Jackson, Suite300, Topeka, KS 66603, www.osbckansas.org/. The word "complaints" should be bolded and underlined.

4. The GAP waiver agreement must provide coverage, subject to conditions and exclusions identified in the agreement, for all physical damage claims or unrecovered theft that constitute a total loss. All conditions and exclusions to GAP coverage must be clearly and conspicuously disclosed in the GAP waiver agreement in easy to read language. A creditor or such other entity acting on the creditor's behalf shall not sell GAP coverage on a vehicle that does not meet the eligibility requirements of the GAP waiver agreement.

5. The amount waived or cancelled pursuant to the GAP waiver agreement shall be computed as the difference between the outstanding balance on the date of loss and the primary insurance carrier's determination of the Actual Cash Value of the vehicle. The GAP waiver agreement must clearly define the method used to determine the outstanding balance on the date of loss in a manner in which a consumer may reasonably be expected to understand, including disclosure of all items that will be excluded from the outstanding balance on the date of loss. (For example: delinquent or deferred payments, late payment charges, refundable items, etc.)

   The GAP waiver agreement must uniformly define the term "Actual Cash Value" as the value established by the primary insurance carrier. If there is no primary insurance coverage at the time of the loss, the market value of the vehicle will be determined by the National Automobile Dealers Association ("NADA") Official Used Car Guide or equivalent. Terms such as "Payable Loss" and "Constructive Total Loss" must be consistent with this method of calculating the GAP waiver benefit.

6. The initial creditor that offers a GAP waiver agreement must report the sale of, and forward funds received on all such waivers to the designated GAP Administrator identified in the GAP waiver agreement.

7. Each creditor must insure its GAP waiver obligations under a contractual liability insurance policy issued by an insurer licensed in this state. Additionally, each creditor must maintain copies, in paper or electronic form, of all GAP waiver agreements for a period of not less than three years following the termination of the agreement. GAP administrators must also be prepared to provide records as requested by the Administrator of the Uniform Consumer Credit Code.

Failure to meet the requirements of this Administrative Interpretation will require that the cost of the GAP product to be included in the finance charge and disclosed accordingly.

This Amended Administrative Interpretation applies to all GAP waiver agreements executed on and after May 15, 2019.

Tim Kemp
Acting Bank Commissioner & Administrator
Kansas Uniform Consumer Credit Code

Letter Regarding 2019 Amendment to Administrative Interpretation No. 1004

Kansas
Office of the State Bank Commissioner

700 S. W. Jackson
Suite 300
Topeka, KS 66603-3796

Phone: (785) 296-2266
Fax: (785) 296-6037
www.osbckansas.org

Tim Kemp, Acting Bank Commissioner

Laura Kelly, Governor

April 16, 2019

Ms. Athena E. Andaya
Deputy Attorney General
120 SW 10th Avenue, 2nd Floor
Topeka, KS 66612

Re: OSBC Administrative Interpretation 1004

Dear Athena:

Please find enclosed an amended Administrative Interpretation (AI) proposed by the Office of the State Bank Commissioner (OSBC). The OSBC is authorized to issue AIs pursuant to the Uniform Consumer Credit Code, K.S.A. 16a-6-104(1)(f), and our AIs must be approved by the Attorney General.

The proposed amendment is intended to address the influx of phone calls our office receives from all over the United States on GAP complaints. Because the current language of the AI requires GAP waiver agreements to include our phone number and GAP forms are mass produced throughout the country, our phone number is advertised to consumers throughout the United States as the resource for a consumer complaint relating to GAP. However, our jurisdiction is limited to addressing only Kansas consumers who have a GAP complaint.

The amendment removes the OSBC phone numbers from the form and instead directs the consumer to our website, which outlines the complaint process for consumers. We believe this method of informing the public will apprise them of our limited jurisdiction to actions arising in Kansas and reduce the number of phone calls we receive from individuals who we cannot help.

If you have any questions, please contact me at 296-1545 or Melissa.Wangemann@osbckansas.org. Thank you, Athena.

Sincerely,

Melissa A. Wangemann
General Counsel

Encl: Amended AI 1004

Administrative Interpretation No. 1005
The Sale of Credit Insurance After the Consummation of a Closed-End Consumer Credit Transaction or Open-End Consumer Line of Credit
December 13, 1994

The question has arisen whether written authorization by the consumer is required on the post-loan sale of credit insurance on consumer credit transactions. The requirement to obtain specific affirmative written indication of the consumer's desire to purchase such insurance as required in K.S.A. 16a-2-501(2)(b) is intended if the insurance is written in connection with the extension of credit. The term "extension of credit" is not a defined term in the Kansas Uniform Consumer Credit Code, so it is the interpretation by the Commissioner that is specifically relates to the period of time when the loan is contemplated and approved by the creditor and ends upon the consummation or opening of a consumer credit transaction. The Official Staff Commentary on Regulation Z, Truth-in-Lending in section 226.4(b)(7) and (8) 2. states, "Insurance written in connection with a transaction. Insurance sold after consummation in closed-end credit transactions or after the opening of a plan in open-end credit transactions is not 'written in connection with' the credit transaction if the insurance is written because of the consumer's default (for example, by failing to obtain or maintain required property insurance) or because the consumer requests insurance after consummation or the opening of a plan (although credit-sale disclosures may be required for the insurance sold after consummation if it is financed)".

Although disclosures are required by Regulation Z if the premium is financed in an open end credit transaction by adding the monthly premium to the balance on which a finance charge is assessed, the written authorization by the consumer is a separate action from disclosure by the creditor and not required in this instance.

Conclusion: Written authorization by the consumer on the sale of credit insurance after consummation of a closed-end or opening of an open-end consumer credit transaction is not required if it fits the circumstances set forth above. Disclosure of finance charges in connection with the financing of the credit insurance premium is required.

Wm. F. Caton
Commissioner

Administrative Interpretation No. 1006
Mortgage Broker Fees
August 7, 1997

REVOKED OCTOBER 13, 1999

Administrative Interpretation No. 1007
Interest Rates on Mortgage Loans
September 1, 1998; Amended October 13, 1999

This administrative interpretation will modify the previous policy of this agency regarding the Kansas Uniform Consumer Credit Code (the "Code"), specifically K.S.A. 16a-2-401(7) and (8), and the maximum permissible interest rate for first mortgage loans made subject to the Code and subordinate mortgage loans

A first mortgage loan is only subject to the Code if the parties so agree in writing pursuant to K.S.A. 16a-1-109. K.S.A. 16a-2-401(7) provides that the interest rate of these first mortgage loans is governed by K.S.A. 16-207(b) ***unless made subject hereto by agreement.***

It is the opinion of the Acting Consumer Credit Commissioner that for purposes of K.S.A. 16a-2-401(7) and (8), a promissory note or other loan document signed by a borrower, in connection with a first or subordinate mortgage loan as described above, which discloses an interest rate not exceeding the interest rate ceilings established by K.S.A. 16a-2-401(1) or (2), constitutes an "agreement" by the parties that the loan is made subject to the provisions of K.S.A. 16a-2-401, including the interest rate ceilings.

This administrative interpretation applies to mortgage loans made before July 1, 1999, the effective date of 1999 Substitute Senate Bill 301. Code references in this interpretation refer to the Code prior to the effective date of 1999 Substitute Senate Bill 301.

Kevin C. Glendening
Acting Deputy Commissioner
Division of Consumer and Mortgage Lending
Office of the State Bank Commissioner

Administrative Interpretation No. 1008
Notice for high loan-to-value mortgages
October 13, 1999, Amended November 30, 2000

A notice in substantially the following form should be used in order to satisfy the notice requirement set forth in K.S.A. 16a-3-207, as amended, regarding high loan-to-value mortgage loans:

[date]

[name of consumer(s)]
[address of consumer(s)]

Dear [name of consumer(s)]

You have applied for a loan which will be secured by a mortgage on your home. ***We are required by the Kansas Uniform Consumer Credit Code to provide you with the following information not less than three days prior to the time you receive the loan funds.***

An appraisal is attached (or will be provided to you as soon as available) which estimates that the value of your home may be less than the amount of the loan for which you have been approved (plus any existing mortgage loans you have). If the value of your home is less than the combined amount of all mortgage loans on your home, then you don't have any "equity" in your home. This means, if you were to sell your home, that the sale proceeds may not be enough to repay your mortgage loans. The amount of equity you have in your home depends on how much you pay down your mortgage loans, and whether the value of your home increases or decreases.

Under Kansas law, most "unsecured" creditors, such as a credit card lender, cannot obtain a court-ordered lien on your home if you default, which would allow them to foreclose. However, if you give a creditor a mortgage on your home, then the creditor can foreclose on your home if you do not repay the loan. For example, if you refinance unsecured credit card debt with a second mortgage loan, then the second mortgage lender could foreclose on your home if you default. Foreclosure would force you to move, and your home would be sold. The sale proceeds would be paid to the lender

You may want to consider credit counseling, which could help you in budgeting and developing a plan to pay off your current debts. Credit counseling is available at little or no cost from non-profit and for-profit entities. Consumer Credit Counseling Service is a nationwide non-profit provider with locations across Kansas. You can call 1-800-388-2227 for a referral to a Kansas office which can assist you in person or by phone.

If you have additional questions regarding consumer credit matters, contact the Deputy Commissioner of Consumer and Mortgage Lending for Kansas at 1-877-387-8523 (toll free) to obtain additional information

If, within three days after receipt of this notice, you decide not to take the mortgage loan you have applied for, then you are entitled to a refund of any application fee or other amounts you have paid to the lender. However, you are not entitled to a refund of any out-of-pocket costs that the lender pays to a third party to process your loan application.

[name of lender]

The undersigned consumer(s) was provided this notice at least three days prior to receiving the loan funds

[signature of consumer(s)]

The three-day time period in K.S.A. 16a-3-207, as amended, must be calculated in accordance with K.S.A. 60-206.

For the purpose of K.S.A. 16a-3-207, as amended, a loan is determined to be made at the time the loan proceeds are disbursed.

Kevin C. Glendening
Acting Deputy Commissioner
Division of Consumer and Mortgage Lending
Office of the State Bank Commissioner

Administrative Interpretation No. 1009
Calculation of the 8% Cap on Prepaid Finance Charges in K.S.A. 16a-2-401(6)
October 13, 1999; Amended November 30, 2000

This interpretation is given in order to clarify K.S.A. 16a-2-401 regarding charges to be included when calculating the 8% cap on prepaid finance charges for consumer loans secured by an interest in real estate. The listed examples contained in this interpretation should not be strictly construed. They are not all-exclusive nor all-inclusive, as the type of charge being levied depends on the factors described below.

For consumer loans secured by real estate, state law imposes an 8% cap on prepaid finance charges, with a maximum of 5% of those charges allowed to be retained by the lender. A prepaid finance charge is any finance charge paid separately in cash or by check before or at consummation of a transaction, or withheld from the proceeds of the credit at any time. However, finance charges are not "prepaid" merely because they are precomputed, regardless of whether a portion of the charge will be rebated to the consumer upon prepayment.

K.A.R. 75-6-26 defines "finance charge" to have the same meaning as "finance charge" under Regulation Z, with one major exception. Except for appraisals, which can be payable to the lender or a related party, the Code limits costs in real estate transactions to bona fide and reasonable fees that are paid *to unrelated third parties.* Regulation Z, on the other hand, allows some real estate transaction costs to be paid to the creditor or to a related party and still be excluded from the finance charge.

In calculating the cap on prepaid finance charges, a lender should first determine which charges constitute "finance charges" under Regulation Z. All of those items are included in the 8% cap. Next, the lender must look at the remaining charges which do not constitute finance charges under Regulation Z and determine to whom the fee was paid. Other than appraisal fees, if the fee was paid to the lender or a related party, then pursuant to state law, they also must be included in the cap.

A. Common examples of items that ARE included in the 8% cap, either because they are finance charges under Regulation Z, or because they are finance charges under state law are:

1. Administrative fees
2. Assignment fees
3. Broker's fees/Finder's fees
4. Buyer's points
5. Closing fees, unless paid to a third party
6. Credit investigation fees
7. Credit report review fees, unless secured by real estate and paid to a third party
8. Documentation preparation fees, unless paid to a third party
9. Lender's inspection fees
10. Loan fees

11. Loan guarantee insurance premiums, if such insurance is required by the creditor
12. Processing fees
13. Service fees
14. Underwriting fees
15. Origination fees
16. Flood insurance monitoring fees (ongoing monitoring over the life of the loan)
17. Tax service fees (ongoing monitoring over the life of the loan)

B. Common examples of items that are NOT included in the 8% cap, because they are not finance charges under Regulation Z or under state law include:

Even if retained by the lender or a related party:

1. Application fees, if they are charged to all borrowers
2. Appraisal fees

Only if they are paid to a third party not related to the lender:

3. Closing agent fees, if the lender does not require use of the closing agent or retain a portion of the charge
4. Courier fees
5. Credit report fees
6. Document preparation fees
7. Flood insurance determination fees, if imposed as part of the initial credit decision and performed prior to closing
8. Notary fees
9. Pest inspection fees
10. Recording fees to government entities
11. Survey fees
12. Tax service fees, if imposed as part of the initial credit decision
13. Title examination or title insurance fees

Administrative Interpretation No. 1010
Prompt Crediting of Payments; Date of Receipt
October 13, 1999; Amended November 30, 2000

This interpretation is given in order to clarify the difference between K.S.A. 16a-2-104 and Truth in Lending, Regulation Z, 12 CFR Section 226

The language of K.S.A. 16a-2-104 and Regulation Z, Section 226.10, is substantially similar. However, Section 226.10 of Regulation Z applies only to open-end credit transactions. K.S.A. 16a-2-104 was adopted to apply to all consumer credit transactions. Its application is not limited to open-end credit transactions.

The creditor is to credit the payment as of the date of receipt. The Administrator interprets the "date of receipt" as used in K.S.A. 16a-2-104 to mean the date that the payment instrument or other means of completing the payment reached the creditor. For example:

1. Payment by check is received on the date the creditor receives the check, not when the funds are collected.

2. In a voluntary payroll deduction plan in which funds are deposited in the creditor's asset account, payment is received on the date when it is debited to the asset account, (rather than on the date of the deposit), provided the consumer retains use of the funds until the contractual payment date.

3. If the consumer elects to have payment made by a third-party payor such as a financial institution, through a preauthorized payment or telephone bill-payment arrangement, payment is received when the creditor gets the third-party payor's check or other transfer medium, such as an electronic fund transfer.

4. If the consumer elects to make payment in a type of night deposit or drop box and such payment is made after the creditor's business hours, on a national holiday, or weekend, the payment is considered received the morning of the next business day.

5. Setting a cut-off hour for receipt of payments would be a "reasonable requirement" under the statute. A creditor may specify that payments must be received by a certain cut-off hour in order to be credited as being received that day, so long as the creditor specifies that requirement in writing to the consumer. The statute states that reasonable requirements may be imposed if a creditor specifies the requirements "in a writing delivered to the consumer".

   It is the interpretation of the Administrator that this language requires a written notice to each consumer whose consumer credit transaction would be subject to the requirement. Simply posting a notice in the lobby, for example would not satisfy the statutory requirement.

Franklin Nelson
State Bank Commissioner

Administrative Interpretation No. 1011
Computation of Interest; Prepaid Finance Charges
July 14, 2004

This interpretation concerns K.S.A. 16a-2-103(5) and the computation of interest in consumer loans and consumer credit sales. K.S.A. 16a-2-103(5) was passed as part of a bill containing several revisions to the Kansas Uniform Consumer Credit Code (UCCC) in 1999. That section is designed to address when interest can be charged, from a timing perspective.

Periodic interest may not be charged on a consumer loan until, and may only be charged to the extent that, principal has been disbursed to or for the benefit of the consumer. (An exception is made for loans, other than cash advances, pursuant to lender credit cards.) If principal is disbursed in multiple advances, interest may accrue on each advance only when it has been disbursed as directed by the consumer. Similarly, in a consumer credit sale transaction, interest may not be charged until the related goods, services or interest in land, as the case may be, have been shipped, delivered, furnished or otherwise made available to or for the benefit of the consumer.

K.S.A. 16a-2-103(5) does not prohibit a creditor from charging interest on points or other prepaid finance charges. Consumers sometimes elect to finance closing costs such as these through the creditor deducting and retaining the prepaid finance charges from the loan proceeds. Prepaid finance charges which are not paid separately in cash or by check by the consumer are considered to be part of the principal amount of the loan (see K.S.A. 16a-1-301 (37)). When the consumer elects to pay prepaid finance charges from the proceeds of the loan, rather than paying them separately out of pocket, that portion of the principal has, in effect, been disbursed for the benefit of the consumer, and interest may be charged.

Kevin C. Glendening
Deputy Commissioner
Administrator of the UCCC

GUIDANCE

Please note that subsequent legal cases and legislation can affect the validity of past guidance documents. Guidance documents are valid at the time they are published, based on the law and facts at that given time. In 2024, the following guidance documents remain valid.

Current Guidance – General

CML 2019-1.....Advertising

CML 2019-2.....Use of Fictitious Names

CML 2020-1.....Historical Usury Rates for First Mortgage Loans

CML 2021-2.....(UCCC) Working Remotely

Current Guidance – Money Transmitter

MT 2014-1 .....Virtual Currency

MT 2016-1 .....Agent-of-the-Payee

Instructions for Submitting a Request for an Agent-of-the-Payee Exemption

MT 2019-1 .....Cash-In-Transit

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David L. Herndon, Acting Bank Commissioner

Laura Kelly, Governor

CML Guidance 2019-1
Advertising
August 23, 2019

Information Required in Advertising

KMBA. Licensees and registrants soliciting or advertising mortgage business directed at Kansas residents must include the name and license number/unique identifier of the licensee on record with the OSBC per K.S.A. 9-2208 (c) and (e).

CSO. Similarly, credit service organizations must include the name and license number used on record with the OSBC for solicitations and advertisements per K.S.A. 50-1120 (d) and (f).

U3C. A licensee subject to the Uniform Consumer Credit Code may only conduct business under the name given in the license per K.S.A. 16a-2-302(7).

KMTA. Kansas law does not prescribe requirements for money transmitter names.

Limits on Name Under the Banking Code. A provision of the Kansas banking code, K.S.A. 9-2011, states:

> It shall be unlawful for any individual, firm or corporation to advertise, publish or otherwise promulgate that the individual, firm or corporation is engaged in the **banking business or trust business** without first having obtained authority from the commissioner. Any such individual or member of any such firm or officer of any such corporation violating this section, upon conviction shall be guilty of a class A, nonperson misdemeanor.

Use of the words “trust company” or “bank” (or any derivative such as banc, banque) may constitute advertising to the general public that such person is engaged in the banking business. Such advertising makes it appear that the person has obtained authority from the OSBC and it is in fact a bank/trust company subject to banking law and supervision. Such an assertion is deceptive and confusing to the public.[1]

The OSBC must review names on a case-by-case basis to determine whether the particular use of the words in the name could be construed to mean the entity is lawfully engaged in the

[1] Exception are businesses that are clearly not financial institutions such as “Blood Bank.”

business of banking. Factors to be considered in deciding whether the use of the words “bank,” “trust,” or “trust company” are appropriate: 1. type of service provided, 2. level of sophistication of the parties interacted with, and 3. the amount of contact the business has with the public.

Retention of Advertising Records

KMBA. Licensees shall maintain a record of all solicitations or advertisements for a period of 36 months in accordance with K.S.A. 9-2208(c). Such advertising does not include business cards or promotional items.

CSO. Each licensee must maintain a record of all solicitations or advertisements for a period of 36 months, not including business cards or promotional items per K.S.A. 50-1120(d).

U3C. K.S.A. 16a-2-304 outlines the requirements for record retention under the U3C. Generally, records must be maintained in order for the administrator to determine compliance with the law. Under K.A.R. 75-6-38—a regulation implementing the U3C’s record retention—each licensee or person filing notification shall retain copies of advertisements or solicitations whether printed or internet/electronic.

KMTA. The commissioner has discretion to require any person under the Act to maintain such documents and records as necessary to verify compliance with law. The commissioner may deny, suspend, revoke or refuse to renew or approve a license for any person who fails to keep and maintain sufficient records to permit an audit or to show compliance with the law per K.S.A. 9-513a.

False and Misleading Advertisement

KMBA. An individual engaging solely in loan processing or underwriting cannot represent to the public that such individual can or will perform any activities of a loan originator. This prohibition includes advertising, communicating, or using business cards, stationery, brochures, signs, rate lists or other promotional items per K.S.A.9-2201(i)(2). No KMBA solicitation or advertisement can contain false, misleading or deceptive information, or indicate or imply that the interest rates or charges stated are "recommended," "approved," "set" or "established" by the state of Kansas, per K.S.A. 9-2208(d). No person who is required to be licensed or registered under the KMBA can solicit, advertise or enter into a contract for specific interest rates, points or other financing terms unless the terms are actually available at the time of soliciting, advertising or contracting per K.S.A. 9-2212(m).

CSO. No CSO solicitation or advertisement shall contain false, misleading or deceptive information per K.S.A. 50-1120(e).

U3C. Under K.S.A. 16a-2-310, no person shall solicit, advertise or enter into a contract for specific interest rates, points or other financing terms unless the terms are actually available at the time of soliciting, advertising or contracting. Under K.S.A.16a-3-208, a supervised lender

shall not, directly or indirectly, make a false, misleading or deceptive advertisement regarding loans or the availability of loans.

A supervised lender cannot advertise any size of loan, security required for a loan, rate of charge or other conditions of lending except with the full intent of making loans at those rates—or lower rates—and under those conditions—or conditions more favorable to the consumer—to loan applicants who meet the standards or qualifications prescribed by the supervised lender.

KMTA. The commissioner may deny, suspend, revoke or refuse to renew or approve a license for any person who: engages in any transaction, practice or business conduct that is fraudulent or deceptive in connection with the business of money transmission or; 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 per K.S.A. 9-513a(j), (k).

Regulation Z

In addition to state law restrictions on advertising solicitations, Regulation Z, 12 C.F.R. 1026, requires that certain disclosures be provided in advertisements. Licensees should refer to Regulation Z for specific advertising requirements applicable to the loan products they offer. Features common to many of the advertisements we have reviewed include statements regarding terms of repayment or specifying the amount of a payment. Such statements trigger additional disclosures that must be made pursuant to Regulation Z. The OSBC expects all licensees to familiarize themselves with Regulation Z's advertising provisions and to seek legal counsel when necessary to ensure compliance. Licensees should not rely on marketing companies offering form solicitations for compliance with either state or federal law.

Internet Communications and Social Media

Any website or internet post, as well as social media, e.g., Facebook, Twitter, Instagram, and any form of electronic promotion is considered advertising subject to this Regulatory Mailing.

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David L. Herndon, Acting Bank Commissioner

Laura Kelly, Governor

CML Guidance 2019-2
Use of Fictitious Names
October 24, 2019

The purpose of this memorandum is to clarify the opinion of this office regarding a licensee's use of fictitious names, also referred to as trade names, or dba (doing business as) names in loan contracts and other documents. Our office routinely receives questions from regulated entities as to the proper use of these names.

While a document that references only the fictitious name of a licensee may be valid and enforceable by either party to the transaction, the use of an alternative name could lead to confusion for consumers. It is recommended that licensees use their full legal name in all documents prepared or used by a licensee when entering into transactions with Kansas consumers. It is acceptable to add a fictitious name that is properly noted on the entity's license in legal documents when the legal name is also used. A licensee may use just the fictitious name that is listed on the license without the official legal name so long as the use is not intended to cause confusion or deceit to the public.

Assume the legal name of a licensee is "XYZ Financial Group" but with a dba of "XYZ Mortgage." The company has properly noted both names on the license. The best practice is for all loan documents to include the official legal name "XYZ Financial Group." The company may also include the company's dba "XYZ Mortgage" with the legal name, or alone if the dba does not cause confusion or deception to the public.

Should you have any questions or concerns please contact the Office of the State Bank Commissioner, Consumer and Mortgage Lending Division, at 785-296-2266.

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CML Guidance 2020-1
Historical Usury Rates for First Mortgage Loans
March 18, 2020

Usury Rate for First Mortgage Loans Prior to July 1, 2013

Prior to July 1, 2013, Kansas law defined a floating usury cap in K.S.A. 16-207(b) for interest rates on first mortgage loans.[1] This subsection also required the Secretary of State to periodically publish notice of this maximum interest rate. Effective July 1, 2013, that subsection was repealed. The floating cap was removed, and the secretary of state was no longer required to publish notice of the maximum interest rate. On and after July 1, 2013, all first mortgage loans are subject to K.S.A. 16-207(a), which continues to provide a general usury cap of 15% per annum, unless otherwise specifically authorized by other provisions of law.

This guidance document contains the historical text of 16-207(b) prior to July 1, 2013, and the relevant historical rates as published by the Secretary of State from January 1993 up to June 2013. This historical data remains relevant for first mortgage loans entered into prior to July 1, 2013.

Historical Text of K.S.A. 16-207(b)

Prior to July 1, 2013, K.S.A. 16-207(b) stated:

> The interest rate limitation set forth in this subsection applies to all first mortgage loans and contracts for deed to real estate, unless the parties agree in writing to make the transaction subject to the uniform consumer credit code, K.S.A. 16a-1-101 to 16a-9-102, and amendments thereto. The interest rate limitation set forth in this subsection does not apply to a second mortgage loan governed by the uniform consumer credit code, K.S.A. 16a-1-101 to 16a-9-102, and amendments thereto, unless the lender and the borrower agree in writing that the interest rate for the loan is to be governed by this subsection. The maximum rate of interest per annum for notes secured by real estate mortgages and contracts for deed to real estate governed by this subsection shall be at an amount equal to 1 ½ percentage points above the yield of thirty-year fixed rate conventional home

[1] In this guidance document, "first mortgage loans" refers to consumer, first-lien, fixed-rate, real-estate mortgage loans and contracts for deed to real estate.

mortgages committed for delivery within 61 to 90 days accepted under the federal home loan mortgage corporation's daily offerings for sale on the last day on which commitments for such mortgages were received in the preceding month unless otherwise specifically authorized by law. Such interest rate shall be computed for each calendar month and be effective on the first day thereof. The secretary of state shall publish notice of such maximum interest rate not later than the second issue of the Kansas register published each month.

Chart of Historical Usury Rates for First Mortgage Loans

See the following page for a chart of maximum interest rates for first mortgage loans as published by the Secretary of State from January 1993 through June 2013.

Historical Kansas Usury Rates for First Mortgage Loans from January 1993 to June 2013

	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003
January	4.42%	5.02%	6.11%	6.47%	6.30%	7.41%	7.57%	7.56%	7.13%	7.20%	7.07%
February	4.60%	4.93%	6.09%	6.33%	6.51%	7.04%	7.72%	7.57%	6.97%	7.15%	7.16%
March	4.59%	4.96%	6.16%	6.25%	6.53%	7.36%	7.48%	7.58%	7.07%	6.95%	6.98%
April	4.60%	5.11%	6.16%	6.37%	5.92%	7.16%	7.55%	7.82%	7.42%	6.91%	7.02%
May	4.43%	4.90%	6.01%	6.36%	6.09%	7.42%	7.58%	7.96%	7.13%	7.50%	6.94%
June	4.93%	4.74%	5.85%	6.12%	6.53%	7.59%	7.79%	8.05%	7.01%	7.72%	6.38%
July	NA	4.49%	5.87%	5.74%	6.58%	7.72%	8.07%	8.22%	6.99%	7.61%	6.62%
August	NA	4.30%	5.77%	5.58%	6.57%	7.82%	8.06%	7.97%	7.16%	7.46%	7.48%
September	NA	4.32%	5.30%	5.37%	6.47%	7.68%	7.83%	7.78%	7.12%	7.13%	7.58%
October	NA	4.10%	5.03%	5.57%	6.21%	7.40%	7.70%	7.58%	7.31%	7.09%	7.02%
November	NA	4.34%	5.18%	5.46%	6.33%	7.93%	7.59%	7.63%	7.63%	7.02%	7.33%
December	NA	4.25%	5.12%	5.69%	5.96%	6.87%	7.31%	7.47%	7.64%	7.15%	7.28%

	2002	2001	2000	1999	1998	1997	1996	1995	1994	1993
January	8.64%	8.78%	9.71%	8.29%	8.75%	9.54%	8.74%	10.95%	8.76%	9.62%
February	8.36%	8.50%	10.09%	8.21%	8.60%	9.54%	8.65%	10.66%	8.47%	9.20%
March	7.91%	8.48%	9.73%	8.67%	8.64%	9.55%	9.21%	10.15%	8.95%	8.97%
April	8.59%	8.51%	9.88%	8.63%	8.69%	9.87%	9.59%	10.22%	9.78%	8.99%
May	8.21%	8.71%	9.87%	8.62%	8.55%	9.79%	9.80%	10.06%	10.17%	8.98%
June	8.10%	8.63%	10.08%	8.97%	8.57%	9.64%	10.01%	9.40%	10.24%	9.06%
July	8.05%	8.78%	9.70%	9.24%	8.56%	9.44%	9.80%	9.42%	10.32%	8.65%
August	7.93%	8.42%	9.70%	9.55%	8.56%	9.05%	9.88%	9.52%	10.12%	8.64%
September	7.51%	8.30%	9.51%	9.69%	8.31%	9.21%	9.94%	9.38%	10.17%	8.31%
October	7.24%	8.02%	9.34%	9.44%	8.01%	9.03%	9.78%	9.39%	10.50%	8.38%
November	7.24%	7.62%	9.35%	9.43%	8.09%	8.94%	9.44%	9.18%	10.68%	8.34%
December	7.43%	8.23%	9.06%	9.56%	8.24%	8.91%	9.22%	8.93%	10.97%	8.79%

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CML Guidance 2021-2
Kansas Uniform Consumer Credit Code (UCCC)
Working Remotely
June 30, 2021

The Office of the State Bank Commissioner, Consumer and Mortgage Lending Division (OSBC-CML) recognizes the ongoing need for employees of its Supervised Loan Licensees and Credit Notification Filers to work remotely during the ongoing COVID-19 pandemic. Governor Laura Kelly has provided guidance this last year through the issuance of Executive Orders; however, OSBC-CML has determined that the question of remote offices[1] for work done pursuant to the UCCC is a relevant question past the pandemic.

This guidance document addresses only Supervised Loan Licensees and Credit Notification Filers. Mortgage Loan Originators are addressed under the KMBA in Guidance Document 2021-1.

Law

The following provisions of the UCCC contain references to locations, offices, and places of business.

Licensing Places of Business

K.S.A. 16a-2-302 contains three provisions that address Supervised Loan Licensees and their place of business:

> (5) The administrator shall adopt rules and regulations regarding whether a licensee shall be required to obtain a single license for each place of business or whether a licensee may obtain a master license for all of its places of business…
>
> (6) No licensee shall change the location of any place of business without giving the administrator at least 15 days prior written notice.
>
> (7) A licensee may conduct the business of making loans for personal, family or household purposes only at or from any place of business for which the licensee holds a license and not under any other name than that in the license…

[1] Remote office means an employee working at his or her home pursuant to the UCCC.

Together, the provisions require a licensee to conduct business under the UCCC "at or from" a licensed place of business, and that location cannot be changed without notice to the Administrator. The Administrator may, by regulation, determine if a single license is required for each place of business or whether a master license can be obtained for all places of business. The OSBC has established that a license is required for each place of business pursuant to K.A.R. 75-6-30.

"Place of business" is defined in K.A.R. 75-6-30 as the location where an applicant or licensee regularly performs the following: making a supervised loan, making any loan for personal, family or household purpose to a consumer, or accepting payments on loans. ATMs are deemed to be a location for making supervised loans.

Location of Records

K.S.A. 16a-2-304 says that records do not need to be kept in the place of business so long as the Administrator is given free access to the records wherever located. Every licensee, assignee or servicer and every credit notification filer shall provide the Administrator with the name, address, telephone number, contact person regarding the location and availability of current records of a consumer credit transaction. Subsection (4) of this statute allows the records to be retained in electronic form.

K.S.A 16a-6-104(i) requires the Administrator to have free and reasonable access to the offices, places of business and records of the licensee or credit notification filer. K.S.A. 16a-6-106 says if the records are located outside of Kansas, the records should either be made available to the Administrator at a convenient location within this state or the Administrator may examine them at the place where they are maintained.

Fee for Business Locations

K.S.A. 16a-6-203 requires a credit notification filer to pay to the Administrator an annual fee for each business location for that year.

Conclusion:

The UCCC does not expressly require employees of Supervised Loan Licensees or Credit Notification Filers to work in the company's office or place of business. Kansas law requires only that the Supervised Loan Licensee conduct business "at or from" a licensed place of business. Employees are managed by the Supervised Loan Licensee or Credit Notification Filer, which is responsible and liable for its employees, whether they work in the office or remotely. Remote work by employees does not interfere with the OSBC's ability to access and examine records, given the requirements for record-keeping stated above. In conclusion, employees of Supervised Loan Licensees and Credit Notification Filers under the UCCC may conduct their work from a remote office. Aside from remote offices, physical places of business where a Supervised Loan Licensee conducts business should continue to hold a license, and physical places of business where a Credit Notification Filer conducts business should continue to be reported annually.

Supervised Loan Licensees and Credit Notification Filers should be mindful of the OSBC-CML best practices offered for remote workers, as security of information will always be a necessary component of remote work.[2] Best practices include, but are not limited to, the following:

- Computers and devices that are utilized for remote work should include at-rest encryption.
- Steps should be taken to minimize the remote use of paper records with confidential information and proper destruction/disposal of paper documents must be employed.
- Connectivity to the main office or sensitive systems should be encrypted in transit by use of a virtual private network (VPN) or similar technology.
- Activity should be conducted in a private home environment, avoiding public areas such as coffee shops or libraries.

Supervised Loan Licensees and Credit Notification Filers will be responsible and liable for any breaches of security and should consult their Information Technology Department or other technology or security expert to ensure that their records are secure and safe.

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This guidance document will expire on July 1, 2022, at which time the OSBC-CML will re-evaluate this document to determine future application of these principles.

[2] See K.S.A. 16a-2-304(2) requiring establishment, maintenance, and enforcement of written policies and procedures regarding security of records, reasonably designed to prevent the misuse of consumer personal and financial information, and K.S.A. 16a-2-304(4)(c) requiring reasonable safeguards to protect records from loss, alteration, or destruction.

Office of the State Bank Commissioner
Guidance Document MT 2014-01

Date: June 6, 2014, Updated May 18, 2021

Regulatory Treatment of Virtual Currencies Under the Kansas Money Transmitter Act

Purpose

The purpose of this guidance document is to clarify the applicability of the Kansas Money Transmitter Act (KMTA)[1] to persons or entities engaging in the use and/or transmission of virtual currencies.[2] This guidance document provides the policy of the Office of the State Bank Commissioner (OSBC) regarding the regulatory treatment of virtual currencies pursuant to the statutory definitions of the KMTA.

Types of Virtual Currency

In broad terms, a virtual currency is an electronic medium of exchange typically used to purchase goods and services from certain merchants or to exchange for other currencies, either virtual or sovereign.[3] As of the date of this memorandum (2014), the OSBC is not aware of any virtual currency that has legal tender status in any jurisdiction, nor of any virtual currency issued by a governmental central bank. As such, virtual currencies exist outside established financial institution systems. There are many different virtual currency schemes, and it is not easy to classify all of them, but for purposes of this document, they can generally be divided into two basic types: centralized and decentralized.

Centralized virtual currencies are created and issued by a specified source. They rely on an entity with some form of authority or control over the currency. Typically, the authority behind a centralized virtual currency is also the creator. Centralized virtual currencies can be further divided into subclassifications that quickly become too complex to apply a universal policy. Some can be purchased with sovereign currency but cannot be exchanged back to sovereign currency; some can be converted back to sovereign currency; some are used only for purchase of goods and services from a closed universe of merchants, while others may have a theoretically open

[1] Kansas Statutes Annotated 9-508 *et seq.*
[2] Much of this document is modeled after guidance issued by the Texas Department of Banking in Supervisory Memorandum 1037 and we thank them for allowing the OSBC to adapt it for use in Kansas.
[3] As used in this document, sovereign currency refers to government-issued currency with legal tender status in the country of issuance, such as U.S. Dollars or Euros. This includes both government-issued fiat currency and commodity-backed currency that is designated as legal tender.

universe of merchants. Some centralized currencies are backed by the issuer with sovereign currency or precious metals, and therefore derive intrinsic value.

In contrast, decentralized virtual currencies are not created or issued by a particular person or entity, have no administrator, and have no central repository. Thus far, decentralized currencies are all cryptocurrencies such as Bitcoin, Litecoin, Peercoin, and Namecoin. A cryptocurrency is based on a cryptographic protocol that manages the creation of new units of the currency through a peer-to-peer network. The creation of cryptocurrency happens through a process called mining that basically involves running an application on a computer that performs proof-of-work calculations. When the computer performs a sufficient amount of these calculations, the cryptocurrency's underlying protocol essentially generates a new unit of the currency that can be delivered to the miner's wallet. Because users' wallets act as the connection points of the cryptocurrency's peer-to-peer network, transfers of cryptocurrency are made directly from wallet to wallet, without any intermediary, whereas transmissions of sovereign currencies must be made through one or more intermediaries such as a financial institution or money transmitter.

One important characteristic of cryptocurrency is its lack of intrinsic value. A unit of cryptocurrency does not represent a claim on a commodity and is not convertible by law. And unlike fiat currencies,[4] there is no governmental authority or central bank establishing its value through law or regulation. Its value is only what a buyer is willing to pay for it. Most cryptocurrencies are traded on third party exchange sites, where the exchange rates with sovereign currencies are determined by averaging the transactions that occur. Some experts consider cryptocurrency to be a new asset class that is neither currency nor commodity, but possessing characteristics of both, as well as characteristics of neither.

Application of Kansas Money Transmitter Act to Virtual Currency

Currency Exchange

The act of two-party currency exchange by itself is not covered by the KMTA regardless of whether it is sovereign currency being exchanged or virtual currency. Further, it is not regulated by the OSBC. However, the presence of a third party involved in a currency exchange transaction will likely subject the transaction to the KMTA as "money transmission" and is discussed further below.

Money Transmission

This guidance document does not address money transmission activities involving the various centralized virtual currencies in existence. Many of these types of virtual currency schemes are complicated and nuanced and general guidance cannot adequately cover all the possible types of these currencies. Thus, operators engaging in activities that may be considered money transmission involving a centralized virtual currency will have to seek an individual licensing determination from the OSBC.

[4] Fiat currency is government-issued legal tender, such as the U.S. Dollar. It has no intrinsic value and does not represent a claim on a commodity; its value is established by law.

This guidance is focused on money transmission activities involving decentralized cryptocurrencies, such as Bitcoin. Whether or not a Kansas money transmitter license is required for an entity to engage in the transmission of cryptocurrency turns on the question of whether cryptocurrency is considered "money" or "monetary value" under the KMTA. Money transmission is defined in statute and means "to engage in the business of receiving money or monetary value for transmission to a location within or outside the United States by…electronic means or any other means…"[5] Money is not defined in statute, but Black's Law Dictionary defines "money" as the "medium of exchange authorized or adopted by a government as part of its currency." Since no cryptocurrency is currently authorized or adopted by any governmental entity as part of its currency, it is clear that cryptocurrency is not considered "money" for the purposes of the KMTA.

Monetary value, however, is defined in statute as "a medium of exchange, whether or not redeemable in money."[6] Medium of exchange is not defined by statute, but Black's Law Dictionary defines "medium of exchange" as "anything generally accepted as payment in a transaction and recognized as a standard of value." Cryptocurrencies are not generally accepted as payment in the current economy. While there may be a few retailers who are accepting Bitcoin or other cryptocurrencies, it is not generally accepted throughout the entire economy and does not even approach the extent to which U.S. Dollars (or other sovereign currencies) are accepted. Cryptocurrency also does not have a recognized standard of value. There is no set value for a single unit of a cryptocurrency. As stated above, the value of a unit of cryptocurrency is only what a buyer is willing to pay for it and what a seller is willing to accept in order to part with it. There is no intrinsic or set value for a unit of cryptocurrency.

Therefore, because cryptocurrencies as currently in existence are not considered "money" or "monetary value" by the OSBC, they are not covered by the KMTA. Since the KMTA does not apply to transmission of decentralized cryptocurrencies, an entity engaged solely in the transmission of such currency would not be required to obtain a license in the State of Kansas. However, should the transmission of virtual currency include the involvement of sovereign currency in a transaction, it may be considered money transmission depending on how such transaction is organized.

To provide further guidance, the regulatory treatments of some common types of transactions involving cryptocurrency are as follows:

- Exchange of cryptocurrency for sovereign currency between two parties is not money transmission under the KMTA. This is essentially a sale of goods between two parties. The seller gives units of cryptocurrency to the buyer, who pays the seller directly with sovereign currency. The seller does not receive the sovereign currency with the intent to transmit to another entity.

- Exchange of one cryptocurrency for another cryptocurrency is not money transmission. Regardless of how many parties are involved, since cryptocurrency is not considered "money" under the KMTA, no money transmission occurs.

[5] K.S.A. 9-508(g).
[6] K.S.A. 9-508(f).

- Transfer of cryptocurrency by itself is not money transmission. Because cryptocurrency is not money or monetary value, the receipt of it with the intent to transmit it to another entity is not money transmission. This includes intermediaries who receive cryptocurrency for transfer to a third party, and entities that, akin to depositories, hold cryptocurrencies on behalf of customers.

- Exchange of cryptocurrency for sovereign currency through a third-party exchanger is generally considered money transmission. For example, most Bitcoin exchange sites facilitate exchanges by acting as an escrow-like intermediary. In a typical transaction, the buyer of cryptocurrency sends sovereign currency to the exchanger who holds the funds until it determines that the terms of the sale have been satisfied before remitting the funds to the seller. Irrespective of its handling of the cryptocurrency, the exchanger conducts money transmission by receiving the buyer's sovereign currency in exchange for a promise to make it available to the seller.

Exchange of cryptocurrency for sovereign currency through an automated machine may or may not be money transmission depending on the facts and circumstances of its operation and the flow of funds between the operator of the automated machine and the customer. For example, several companies have begun selling automated machines commonly called "Bitcoin ATMs" that facilitate contemporaneous exchanges of bitcoins for sovereign currency. Most such machines currently available, when operating in their default mode, act as an intermediary between a buyer and a seller, typically connecting through one of the established exchange sites. When a customer buys or sells bitcoins through a machine configured in this way, the operator of the machine receives the buyer's sovereign currency with the intent to transfer it to the seller. This would be considered money transmission under the KMTA and would require licensure. However, at least some Bitcoin ATMs can be configured to conduct transactions only between the customer and the operator or owner of the machine, with no third parties involved. If the machine never involves a third party, and only facilitates a sale or purchase of bitcoins by the machine's operator directly with the customer, there is no money transmission because at no time is sovereign money received by the owner or operator of the machine with the intent to transfer it to another entity.

Additional Issues with Virtual Currency

- A cryptocurrency business that conducts money transmission, as outlined above, must comply with all applicable licensing, reporting, net worth, and other relevant requirements of the Kansas Money Transmitter Act under K.S.A 9-508 *et seq.*

- Any entity engaged in money transmission must comply with the permissible investment requirements of K.S.A 9-513b and as defined in K.S.A. 9-508(j). For purposes of allowed permissible investments, no virtual currency has been approved for use under this section by the Commissioner. Therefore, if a licensed money transmitter is seeking to comply with the

permissible investment requirement, it must have adequate U.S. currency or other approved investments to cover its outstanding payment instruments.

- For any entity intending to obtain licensing as a money transmitter, the OSBC will require any applicant who regularly handles virtual currencies in the course of its activities to submit a current third-party security audit of all relevant computer and information systems. Because of the increased risk that Kansas consumers may face when using the services of a money transmitter involved with virtual currencies, it is incumbent upon any license applicant to demonstrate that all of a customer's sovereign and virtual currency are secure while controlled by the transmitter.

This guidance document was originally issued on June 6, 2014 pursuant to K.S.A. 9-513 and K.S.A. 77-439. The Licensing Department has determined this guidance document has answered most virtual currency licensing questions since its issuance. However, this guidance document is only intended as general guidance. Any person engaged in virtual currency may request that the Licensing Department determine if their business model requires a license by submitting the following: a business plan, a diagram showing how fiat currency and/or virtual currency flows between persons, and a copy of any applicable contract.

The OSBC reserves the right to exercise its discretion in the application of this guidance document and it may edit, modify, or retract its interpretation at any time. Issued June 6, 2014; updated May 18, 2021.

Office of the State Bank Commissioner
Guidance Document MT 2016-01

Date: 11/30/2016

Regulatory Treatment of an Agent-of-the-Payee

Purpose

The purpose of this guidance document is to clarify the Office of the State Bank Commissioner's (OSBC) policy regarding the Kansas Money Transmitter Act (KMTA)[1] licensure requirements of persons who enter into an agency relationship to accept and process payments on behalf of a principal acting as a payee in a money transmission transaction.

The KMTA also discusses agents of exempt entities and agents of licensees. This guidance document does not alter the licensing requirement for agents of exempt entities[2] or a licensee's requirement to gain prior approval from the commissioner prior to agent designation.[3]

An agent-of-the-payee relationship typically arises in situations where the payee provides goods or services to a consumer, and it is not cost effective or feasible for the payee to handle immediate credit payments directly. For instance, a consumer may wish to make a payment on a utility bill but does not find it convenient to drive to the utility bill's headquarters. The hypothetical payee utility company wishes to allow consumers to make payments at convenient locations and receive immediate credit, but it is not cost effective for the utility company to hire employees to be located throughout the city. The utility company finds it cost effective to pay a commission to a local grocery store to accept payment on the utility company's behalf and permit the agent to provide immediate credit on the consumer's account.

Interpretation

An agent-of-the-payee relationship is money transmission as defined by the KMTA. Money transmission is defined under the KMTA as "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 State by wire, facsimile, electronic means or any other means…."[4] An agent-of-the-payee is considered to be engaged in money transmission because in exchange for money, an agent-of-the-payee is either appointed or agrees to collect and process payments from the consumer and forward payment to the payee.

[1] Kansas Statutes Annotated § 9-508 *et seq.*
[2] Kansas Statutes Annotated § 9-510(d)
[3] Kansas Statutes Annotated § 9-510(b)
[4] Kansas Statutes Annotated § 9-508(h).

Application under Kansas Common Law

While under the KMTA an agent-of-the-payee engages in money transmission, Kansas agency common law recognizes the customer's transaction is completed once the agent-of-the-payee receives payment in certain situations. Because the customer's transaction is completed upon the agent-of-the payee receiving payment, there is no money transmission.

Under Kansas agency common law, an agent's actions will impute[5] to a principal if the principal intends the agent to act on the principal's behalf and the agent acts within the authority granted.[6] In an agent-of-the-payee relationship, a payee would be the principal and the agent-of-the-payee is the agent. Kansas agency common law recognizes express and apparent agency authority[7]. A person is considered an agent if the person has express or apparent authority from a principal to do an act. Express authority is created if the principal has specifically delegated authority to the agent to do an act. Apparent authority is created based on the conduct of the principal and a consumer's reasonable reliance that an agent has authority to bind the principal. Apparent authority is a highly subjective test that often must be determined by a trier of fact. For this reason, the OSBC will only consider agent-of-the-payee relationships with written express authority when determining if licensure is required.

An agent-of-the-payee would not be subject to KMTA licensure based on common law express agency principles if the agent-of-the-payee can prove that:

1. There is a preexisting written agreement between the payee and the agent;
2. The payee expressly grants authority to the agent to accept payments on the payee's behalf in the preexisting written agreement;
3. Payment is treated as received by the payee upon receipt by the agent; and
4. Payment is for goods or services other than money transmission that has been provided or to be provided by the payee.

If an agent acts within its express authority to accept the funds on behalf of a payee, the law of Kansas deems the payee to have accepted and received the payment. The payee is considered liable to the consumer whether or not the agent actually transmits the funds to the payee. The legal responsibility of the payee to the consumer remains the same if the funds are in the hands of the agent or the payee. Thus, the agent receiving the money subject to the four steps above renders the transaction a two-party transaction between the customer and the payee.[8] The agent-of-the-payee doesn't accept money from the customer with the promise to make it available at a different location, so there is no money transmission.[9] The customer leaves the transaction with the benefit of the bargain and the payee has no recourse with the customer if the payee never receives the payment.

[5]Imputation is to ascribe or attribute; to regard as being done, caused, or possessed by. Black's Law Dictionary 14c (10th ed. 2014).
[6] *Golden Rule Ins. Co. v. Tomlinson*; 300 Kan. 944, 958-59; 335 P.3d 1178, 1190 (2014).
[7] *Id*.
[8] Texas Department of Banking Opinion Number 14-01 issued May 9, 2014.
[9] *Id*.

Predetermination Requirement

Current licensees may request a review by the OSBC to confirm that the services they currently offer qualify for the agent-of-the-payee exemption. Licensees must continue to report eligible activity until the OSBC determines their qualification. Once confirmed, the company may choose not to report the eligible activity during the annual assessment period. All other activity that requires licensure must be reported.

Unlicensed persons that believe they may have a business model eligible for exemption must request a review before conducting activity in the state. A person must request the confirmation from the OSBC by June 30, 2017 to avoid a potential enforcement action.

This guidance document is issued pursuant to K.S.A. 9-513 and K.S.A 77-438. This document is only intended as general guidance and any licensing determination made by the OSBC is based upon the specific facts presented for each unique case. The OSBC reserves the right to exercise its discretion in the application of this guidance document and it may edit, modify or retract its interpretation at any time. Issued 11/30/2016.

RELATED TO GUIDANCE DOCUMENT MT 2016-01

Instructions for Submitting a Request for an Agent-of-the-Payee Exemption

If you are seeking an exemption for Agent-of-the-Payee based on Guidance Document MT 2016-01, please submit the following items:

1. A letter that specifically requests a review for an Agent-of-the-Payee exemption on your company. Reference within the letter the contractual language that pertains to the criteria required by the Guidance Document.

   Specifically:

   - ✓ The payee expressly grants authority to the agent to accept payments on the payee's behalf in the preexisting written agreement.

   - ✓ Payment is treated as received by the payee upon receipt by the agent. If applicable, this shall include who is liable for lost payments.

   - ✓ Payment is for goods or services other than money transmission that has been provided or to be provided by the payee.

2. A copy of each preexisting written agreement(s) that pertains to this request between your company as the agent and the payee.

Your letter and all supporting documents must be received in order for this request to be considered "complete" and for our office to begin such review. Failure to provide all required information will result in a denial.

Complete requests may be submitted by mail or email to:

Bailey Burghart, Licensing Program Analyst
Office of the State Bank Commissioner
700 SW Jackson, Suite 300
Topeka, KS 66603

bailey.burghart@osbckansas.org

Office of the State Bank Commissioner
Guidance Document MT 2019-01

Date: 11/01/2019

Regulatory Treatment of Cash-In-Transit

Purpose

The purpose of this guidance document is to clarify the Office of the State Bank Commissioner's (OSBC) policy regarding the treatment of cash-in-transit as a permissible investment under the Kansas Money Transmitter Act (KMTA).

Currently, the KMTA does not define "cash" to include cash-in-transit items nor "deposits" to include deposits-in-transit; however, it does direct licensees to calculate their permissible investments in accordance with United States Generally Accepted Accounting Principles (US GAAP) pursuant to K.S.A. 9-513b(a).

K.S.A. 9-513b(a) of the KMTA states "each licensee under this act shall at all times possess permissible investments having an aggregate market value, calculated in accordance with United States generally accepted accounting principles, of not less than the aggregate amount of the outstanding payment liability held by the licensee in the United States. This requirement may be waived by the commissioner if the dollar volume of a licensee's outstanding payment liability does not exceed the bond or other security devices posted by the licensee pursuant to K.S.A. 9-509, and amendments thereto."

Definition of Permissible Investments

Per K.S.A 9-508(k) of the KMTA, "permissible investments" means, in part:

(1) Cash;

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

US GAAP definition of Cash

Cash is defined by the Financial Accounting Standards Board (FASB) as follows:

> "Consistent with common usage, cash includes not only currency on hand but demand deposits with banks or other financial institutions. Cash also includes other kinds of accounts that have the general characteristics of demand deposits in that the customer may deposit additional funds at any time, and they may also effectively withdraw funds at any time without prior notice or penalty. All charges and credits to those accounts are cash receipts or payments to both the entity owning the account and the bank holding it. For example, a bank's granting of a loan by crediting the proceeds to a customer's demand deposit account is a cash payment by the bank and a cash receipt of the customer when the entry is made.[1]"

[1] FASB ASC Master Glossary, "Cash."

US GAAP Treatment of Cash-In-Transit

State regulators for money transmitters use the term cash-in-transit for the money services business call reports. Cash-in-transit does not appear to be a term used in the accounting industry but appears to have the same meaning as the industry term deposit-in-transit.

US GAAP permits a licensee to include deposits-in-transit in its calculation of cash.[2] Some deposits are received via automated clearing house (ACH) procedures. The question arose whether the KMTA permits cash-in-transit to be a permissible investment when an ACH-in-transit—a form of deposits-in-transit—is considered cash under US GAAP, and if the KMTA would permit cash-in-transit to be a permissible investment.

US GAAP states cash must include all cash within the payor's control, which includes cash in banks, cash on hand, and deposits-in-transit.[3] In addition, the Securities and Exchange Commission criticizes entities that do not reduce cash when payments are issued and no longer within the entity's control.[4] This cannot be considered an account payable.[5] Once the customer remits the money to the licensee, the customer can no longer declare it as cash, even though the money has not cleared out of the bank account.[6]

Application of Cash-In-Transit under the KMTA

US GAAP requires deposits-in-transit to be included in cash even before the entity has the funds cleared into its bank account. There is also no requirement for an allowance for loss. Like issuing a check, when an entity submits an ACH payment, it must reduce its cash balance once the funds are no longer within its control. The applicable date here is the "launch date." This is the date the ACH originator debits the sender's account and begins crediting the recipient's account. The recipient of an ACH-in-transit is required under US GAAP to declare the ACH-in-transit as cash after the launch date.

The OSBC will allow licensees to declare 100% of all deposits-in-transit as a form of deposit in a demand or interest-bearing account because doing so is consistent with US GAAP. Therefore, an incoming ACH-in-transit after the "launch date" from customers or agents should be counted towards the applicable demand or interest-bearing account balance for permissible investment purposes pursuant to K.S.A. 9-513b. Additionally, a licensee may declare an outgoing ACH-in-transit as towards the demand or interest-bearing account balance until the "launch date." Licensees will need to provide additional permissible investments after the launch date until the outstanding liability is extinguished.

This guidance document is issued pursuant to K.S.A. 9-513 and K.S.A 77-438. This document is only intended as general guidance and any compliance determination made by the OSBC is based upon the specific facts of each unique case. The OSBC reserves the right to exercise its discretion in the application of this guidance document and it may edit, modify or retract its interpretation at any time.

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[2] It is our position that US GAPP would permit a deposit-in-transit to be treated as cash as it is a credit towards a demand deposit account. FASB ASC Master Glossary, "Cash."
[3] FASB ASC Master Glossary, "Cash."
[4] GameStop Corp., Annual Report (Form 10-K) (February 1, 2014).
[5] *Id.*
[6] FASB ASC Master Glossary, "Cash."

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