

As Further Amended by House Committee

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Session of 2023

HOUSE BILL No. 2105

By Committee on Financial Institutions and Pensions

1-19

1 AN ACT concerning ~~financial institutions~~; relating to earned wage access
2 services; enacting the Kansas earned wage access services act;
3 establishing the administration of such act by the office of the state
4 bank commissioner; providing for registration, bond requirements;
5 duties, prohibited acts, reports, records retention, orders, civil fines,
6 **criminal** penalties and fees.

7
8 *Be it enacted by the Legislature of the State of Kansas:*

9 Section 1. Sections 1 through 16, and amendments thereto, shall be
10 known and may be cited as the Kansas earned wage access services act.

11 Sec. 2. As used in sections 1 through 16, and amendments thereto:

12 (a) "Act" means the Kansas earned wage access services act.

13 (b) "Commissioner" means the state bank commissioner ~~or the deputy~~
14 ~~commissioner of the consumer and mortgage lending division of the office~~
15 ~~of the state bank commissioner.~~

16 (c) "Consumer" means an individual who is a resident of this state. A
17 **provider may use the mailing address provided by a consumer to**
18 **determine such consumer's state of residence for purposes of this act.**

19 (d) "Consumer directed wage access services" means the business
20 **of delivering proceeds to a consumer prior to the date on which an**
21 **obligor is obligated to pay salary, wages, compensation or other**
22 **income to such consumer based on the consumer's representations and**
23 **the provider's reasonable determination of the consumer's earned but**
24 **unpaid income.**

25 (e) "Director" means a member of the registrant's or applicant's
26 board of directors.

27 (f) "Earned but unpaid income" means wages, compensation or
28 income that a consumer has represented, and that a provider has
29 reasonably determined, to have been earned or to have accrued to the
30 benefit of the consumer but, at the time of the payment of proceeds, have
31 not been paid to the consumer by an obligor.

32 ~~(e)(g)~~ (g) "Earned wage access services" means the business of
33 ~~delivering proceeds to consumers prior to the next date on which an~~
34 ~~obligor is obligated to pay salary, wages, compensation or other income to~~

1 a consumer. **providing consumer directed wage access services or**
2 **employer-integrated wage access services, or both.**

3 **(h) "Employer-integrated wage access services" means the**
4 **business of delivering proceeds to a consumer prior to the date on**
5 **which an obligor is obligated to pay salary, wages, compensation or**
6 **other income to such consumer, when the provider has verified the**
7 **earned but unpaid income of the consumer through time and**
8 **attendance or earnings data for the relevant pay period, using**
9 **information provided by an obligor or a service provider of the**
10 **obligor.**

11 ~~(f)~~**(i) "Mandatory payment" means an amount determined by a**
12 **provider that must be paid by a consumer to such provider as a condition**
13 **of receiving or repaying proceeds.**

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

19 ~~(h)~~**(j) "NonmandatoryNon-mandatory payment" means an amount**
20 **paid by a consumer or an obligor to a provider that does not meet the**
21 **definition of a mandatory payment. "Nonmandatory payment" includes,**
22 **but is not limited to Examples of permissible non-mandatory payments**
23 **include:**

24 (1) A fee imposed by a provider for delivery or expedited delivery of
25 proceeds to a consumer so long as a provider offers the consumer at least
26 one option to receive proceeds at no cost to the consumer;

27 (2) an amount paid by an obligor to a provider on a consumer's behalf
28 that entitles the consumer to receive proceeds at no cost to the consumer;

29 (3) a subscription or membership fee imposed by a provider for a
30 group of services that include earned wage access services so long as the
31 provider offers the consumer at least one option to receive proceeds at no
32 cost to the consumer; or

33 (4) a tip or gratuity paid by a consumer to a provider so long as the
34 provider offers the consumer at least one option to receive proceeds at no
35 cost to the consumer.

36 ~~(i)~~**(k) "Nonrecourse" means a provider shall not compel or attempt to**
37 **compel repayment by a consumer of outstanding proceeds or**
38 **nonmandatory non-mandatory payments owed by such consumer to such**
39 **provider through any of the following means:**

40 (1) A civil suit against the consumer in a court of competent
41 jurisdiction;

42 (2) use of a third party to pursue collection of outstanding proceeds or
43 ~~nonmandatory non-mandatory~~ payments on the provider's behalf; or

1 (3) sale of outstanding amounts to a third-party collector or debt
2 buyer.

3 ~~(j)~~(l) "Obligor" means an employer or other person who is
4 contractually or legally obligated to pay a consumer earned but unpaid
5 income on an hourly, project-based, piecework or other basis, including
6 where the consumer is acting as an independent contractor. "Obligor" does
7 not include a service provider of an obligor or another third party that has
8 an obligation to make any payment to a consumer based solely on the
9 consumer's agency relationship with the obligor.

10 ~~(k)~~(m) "**Officer**" means a person who participates or has
11 authority to participate, other than in the capacity of a director, in
12 major policymaking functions of the registrant or applicant, whether
13 or not the person has an official title. "**Officer**" includes, but is not
14 limited to, the chief executive officer, chief financial officer, chief
15 operations officer, chief legal officer, chief credit officer, chief
16 compliance officer and every vice president.

17 (n) "Outstanding proceeds" means a payment of proceeds to a
18 consumer by a provider that has not yet been repaid to such provider.

19 ~~(h)~~(o) "**Owner**" means an individual who holds, directly or
20 indirectly, at least 10% or more of a class of voting securities or the
21 power to direct the management or policies of a registrant or an
22 applicant.

23 (p) "**Partner**" means a person that has the right to receive upon
24 dissolution, or has contributed, 10% or more of the capital of a
25 partnership of the registrant or applicant.

26 (q) "Person" means any corporation, partnership, association or other
27 commercial entity.

28 ~~(m)~~(r) "Proceeds" means a payment of funds to a consumer by a
29 provider that is based on earned but unpaid income.

30 ~~(n)~~(s) "Provider" means a person who is in the business of offering
31 and providing earned wage access services to consumers.

32 ~~(o)~~(t) "Registrant" means a person who is registered with the
33 commissioner as an earned wage access services provider.

34 Sec. 3. (a) No person shall engage in or hold such person out as
35 willing to engage in any earned wage access services business with a
36 consumer without registering with the commissioner. Any person required
37 to be registered as an earned wage access services provider shall submit to
38 the commissioner an application for registration on forms prescribed and
39 provided by the commissioner. Such application for registration shall
40 include:

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

43 (2) the name and address of each owner, officer, director, member or

1 partner of the applicant;

2 (3) a description of the ownership interest of any officer, director,
3 member, partner, agent or employee of the applicant in any affiliate or
4 subsidiary of the applicant or in any other entity that provides any service
5 to the applicant or any consumer relating to the applicant's earned wage
6 access services business; and

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

10 (b) Each application for registration shall be accompanied by a
11 nonrefundable fee that shall be established by rules and regulations
12 adopted by the commissioner.

13 (c) The commissioner shall approve an application and shall issue a
14 nontransferable and nonassignable registration to the applicant when the
15 commissioner:

16 (1) Receives the complete application and fee required by this
17 section; and

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

22 (d) Each earned wage access services registration issued under this
23 section shall expire on ~~April 30~~ **December 31** of each year. A registration
24 shall be renewed by filing a complete renewal application with the
25 commissioner at least 30 calendar days prior to the expiration of the
26 registration. Such renewal application shall contain all information the
27 commissioner requires to determine the existence and effect of any
28 material change from the information contained in the applicant's original
29 application, annual reports or prior renewal applications. Each renewal
30 application shall be accompanied by a nonrefundable renewal fee that shall
31 be established by rules and regulations adopted by the commissioner.

32 (e) If the commissioner fails to issue a registration within 60 calendar
33 days after a filed application is deemed complete by the commissioner, the
34 applicant may make written request for a hearing. Upon receipt of such
35 written request for a hearing, the commissioner shall conduct a hearing in
36 accordance with the Kansas administrative procedure act.

37 Sec. 4. Each applicant or registrant shall file with the commissioner a
38 surety bond in a form acceptable to the commissioner. Such surety bond
39 shall be issued by a surety or insurance company authorized to conduct
40 business in this state, securing the applicant's or registrant's faithful
41 performance of all duties and obligations of a registrant. The surety bond
42 shall:

43 (a) Be payable to the office of the state bank commissioner;

1 (b) provide that the bond may not be terminated without 30 calendar
2 days' prior written notice to the commissioner, that such termination shall
3 not affect the surety's liability for violations of this act occurring prior to
4 the effective date of cancellation, and principal and surety shall be and
5 remain liable for a period of two years from the date of any action or
6 inaction of principal that gives rise to a claim under the bond;

7 (c) provide that the bond shall not expire for two years after the date
8 of surrender, revocation or expiration of the applicant's or registrant's
9 registration, whichever occurs first;

10 (d) be available for:

11 (1) The recovery of expenses, fines and fees levied by the
12 commissioner under this act; and

13 (2) payment of losses or damages that are determined by the
14 commissioner to have been incurred by any consumer as a result of the
15 applicant's or registrant's failure to comply with the requirements of this
16 act; and

17 (e) be in the amount of ~~\$25,000~~ **\$100,000**.

18 Sec. 5. A provider that is registered in the state of Kansas shall be
19 subject to the following requirements:

20 (a) The registrant shall provide all proceeds on a non-recourse basis
21 and shall treat non-mandatory payments as non-recourse payment
22 obligations.

23 (b) Before providing a consumer with earned wage access services,
24 the registrant shall provide a consumer with a written paper or electronic
25 document, which may be included as part of the contract to provide earned
26 wage access services, that meets all of the following requirements:

27 (1) Informs the consumer of the terms and conditions of the earned
28 wage access services;

29 (2) **clearly and conspicuously describes how the consumer may**
30 **obtain proceeds at no cost to such consumer;**

31 (3) **includes a statement clear disclosure** that the commissioner has
32 jurisdiction over the earned wage access services performed by the
33 registrant and provides ~~both a phone number and a website through which~~
34 ~~consumers can submit~~ **the commissioner's phone number and website**
35 **for submitting** complaints about the provider's earned wage access
36 services to the commissioner;

37 ~~(3)(4)~~ (4) is written in a font and using language intended to be easily
38 understood by a layperson; and

39 ~~(4)(5)~~ (5) discloses any non-mandatory payments that may be directly
40 imposed by the registrant in connection with the provision of earned wage
41 access services.

42 (c) **A registrant shall inform the consumer of any material**
43 **changes to the terms and conditions of the earned wage access services**

1 **before implementing such changes for such consumer. The registrant**
2 **shall use a font and language intended to be easily understood by a**
3 **layperson.**

4 **(d)** The registrant shall provide proceeds to a consumer via any
5 means mutually agreed upon by the consumer and registrant.

6 ~~(d)~~**(e)** In any case in which the registrant will seek repayment of
7 proceeds from a consumer, the registrant shall inform the consumer when
8 the registrant will make such registrant's first attempt to seek repayment of
9 such proceeds from the consumer.

10 ~~(e)~~**(f)** A registrant that ~~seeks repayment of proceeds to use pre-~~
11 **authorized electronic transfers** from a consumer's depository institution
12 account shall comply with all applicable NACHA rules.

13 ~~(f)~~ A registrant shall permit a consumer to cancel participation in an
14 earned wage access service at any time without incurring a charge for
15 ~~doing so~~ **makes earned wage access services available to a consumer on**
16 **a recurring basis shall allow a consumer to discontinue receiving those**
17 **services at any time without imposing a financial penalty on that**
18 **consumer.**

19 Sec. 6. No person required to be registered under this act shall:

20 (a) Impose a mandatory payment on a consumer that directly relates
21 to the provision of earned wage access services;

22 (b) charge a late fee, interest or any other penalty or charge for failure
23 to repay outstanding proceeds;

24 ~~(c)~~ **make the offering of earned wage access services, either in seek**
25 **repayment of proceeds in an amount that exceeds the amount of a**
26 **consumer's earned but unpaid income and any applicable non-**
27 **mandatory payment;**

28 **(d) condition** the amount of proceeds a consumer is eligible to
29 request or the frequency with which **a consumer is eligible to request**
30 ~~proceeds are provided to a consumer, contingent~~ on whether the consumer
31 makes any non-mandatory payments or on the size of any non-mandatory
32 payments that the consumer may make to that registrant in connection with
33 the provision of earned wage access services. This subsection shall not be
34 construed to prohibit a non-mandatory payment equal to a percentage of
35 proceeds provided;

36 ~~(d)~~**(e) solicit a consumer to make a non-mandatory payment after**
37 **informing the consumer that such consumer's request for proceeds**
38 **was accepted;**

39 **(f)** charge a deferral fee or any other charge in connection with
40 deferring the collection of any outstanding proceeds beyond the original
41 scheduled repayment date;

42 ~~(e)~~**(g) accept credit of any kind as payment from a consumer of**
43 **outstanding proceeds or non-mandatory payments;**

1 **(h)** solicit a consumer to delay repayment of outstanding proceeds for
2 the purpose of increasing the total non-mandatory payments that the
3 registrant may collect;

4 ~~(f)~~**(i)** report a consumer's payment or failed repayment of outstanding
5 proceeds to a consumer credit reporting agency or a debt collector;

6 ~~(g)~~**(j)** require a credit score to determine a consumer's eligibility for
7 earned wage access services;~~or or~~

8 ~~(h)~~**(k)** **require a credit report for purposes other than verifying a**
9 **consumer's identity;**~~or~~

10 ~~(l)~~ provide, sell or otherwise disclose to any third party, including an
11 obligor, any non-public personal information collected from or about a
12 consumer except as necessary to provide earned wage access services to
13 such consumer or in accordance with a consumer's written consent.

14 Sec. 7. ~~(a) A registrant that provides proceeds to a consumer in~~
15 ~~accordance with this act shall not be subject to the provisions of the~~
16 ~~uniform consumer credit code in connection with such registrant's earned~~
17 ~~wage access services.~~

18 ~~(b)~~ Non-mandatory payments paid by a consumer to a registrant in
19 accordance with this act shall not be considered finance charges ~~for the~~
20 ~~purposes of applying the federal truth in lending act to the earned wage~~
21 ~~access services provided by such registrant.~~

22 Sec. 8. (a) (1) On or before April 1 of each year, each registrant shall
23 file with the commissioner an annual report relating to earned wage access
24 services provided by the registrant in this state during the preceding
25 calendar year. The annual report shall be on a form prescribed by the
26 commissioner.

27 (2) The information contained in the annual report shall be
28 confidential and shall not be subject to the open records act, K.S.A. 45-215
29 et seq., and amendments thereto. **The commissioner may publish**
30 **aggregate annual report information for multiple registrants in**
31 **composite form.** The provisions of this paragraph shall expire on July 1,
32 2028, unless the legislature reviews and acts to continue such provisions
33 pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2028.

34 (b) Within ~~30~~ **15** calendar days of any of the following events, a
35 registrant shall file a written report with the commissioner describing the
36 event and such event's expected impact on the registrant's business:

37 (1) The filing for bankruptcy or reorganization by the registrant;

38 (2) the institution of a revocation, suspension or other proceeding
39 against the registrant by a governmental authority that is related to the
40 registrant's earned wage access services business in any state;

41 (3) **the addition or loss of any owner, officer, partner or director**
42 **of the registrant;**

43 (4) a felony conviction of the registrant or any of such registrant's

1 owners, officers, principals, directors or partners; ~~or~~

2 ~~(4)(5)~~ a change in the registrant's name or legal entity status; **or**

3 **(6) the closing or relocation of the registrant's principal place of**
4 **business.**

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

8 Sec. 9. (a) Each registrant shall maintain and preserve complete and
9 adequate business records, including a general ledger containing all assets,
10 liabilities, capital, income and expense accounts for a period of three
11 years.

12 (b) Each registrant shall maintain and preserve complete and
13 adequate records of each earned wage access services contract during the
14 term of the contract and for a period of five years from the date on which
15 the registrant last provides proceeds to the consumer.

16 (c) If the registrant's records are located outside this state, the
17 registrant shall provide the records to the commissioner within three
18 calendar days or, at the commissioner's discretion, pay reasonable and
19 necessary expenses for the commissioner or commissioner's designee to
20 examine them at the place where such records are maintained. The
21 registrant may provide such records electronically to the commissioner in
22 a manner prescribed by the commissioner.

23 Sec. 10. The commissioner may deny, suspend, revoke or refuse to
24 renew a registration issued pursuant to this act if the commissioner finds,
25 after notice and opportunity for a hearing conducted in accordance with
26 the provisions of the Kansas administrative procedure act, that:

27 (a) The applicant or registrant has repeatedly or willfully violated any
28 provision of this act, any rules and regulations adopted thereunder or any
29 order lawfully issued by the commissioner pursuant to this act;

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

32 (c) the applicant or registrant is insolvent;

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

36 (e) the applicant, registrant or any officer, director, member, owner,
37 partner; ~~or principal or debt management counselor thereof of the~~
38 **applicant or registrant** has been convicted of any crime;

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

42 (g) the applicant, registrant or an employee of the applicant or
43 registrant has been the subject of any disciplinary action by the

1 commissioner or any other state or federal regulatory agency;

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

6 (i) the applicant or registrant has engaged in any deceptive business
7 practice;

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

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

14 Sec. 11. (a) The commissioner shall administer the provisions of this
15 act. In addition to other powers granted by this act, the commissioner,
16 within the limitations provided by law, may exercise the following powers:

17 (1) Adopt, amend and revoke rules and regulations as necessary to
18 carry out the intent and purpose of this act;

19 (2) make any investigation and examination of the operations, books
20 and records of an earned wage access services provider as the
21 commissioner deems necessary to aid in the enforcement of this act;

22 (3) have free and reasonable access to the offices, places of business
23 and all records of the registrant that ~~relate to the earned wage access~~
24 ~~services business~~ **will enable the commissioner to determine whether**
25 **the registrant is complying with the provisions of this act.** The
26 commissioner may designate persons, including comparable officials of
27 the state in which the records are located, to inspect the records on the
28 commissioner's behalf;

29 (4) establish, charge and collect fees from applicants or registrants for
30 reasonable costs of investigation, examination and administration of this
31 act, in such amounts as the commissioner may determine to be sufficient to
32 meet the budget requirements of the commissioner for each fiscal year.
33 The commissioner may maintain an action in any court to recover such
34 costs;

35 (5) order any registrant or person to cease any activity or practice that
36 the commissioner deems to be deceptive, dishonest, a violation of this act,
37 or of any other state or federal law, or unduly harmful to the interests of
38 the public;

39 (6) exchange any information regarding the administration of this act
40 with any agency of the United States or any state that regulates the
41 applicant or registrant or administers statutes, rules and regulations or
42 programs related to earned wage access services laws;

43 (7) disclose to any person or entity that an applicant's or registrant's

1 application or registration has been denied, suspended, revoked or refused
2 renewal;

3 (8) require or permit any person to file a written statement, under oath
4 or otherwise as the commissioner may direct, setting forth all the facts and
5 circumstances concerning any apparent violation of this act, any rule and
6 regulation adopted thereunder or any order issued pursuant to this act;

7 (9) receive, as a condition in settlement of any investigation or
8 examination, a payment designated for consumer education to be
9 expended for such purpose as directed by the commissioner;

10 (10) delegate the authority to sign any orders, official documents or
11 papers issued under or related to this act to the deputy of consumer and
12 mortgage lending division of the office of the state bank commissioner;

13 ~~(11) require fingerprinting of any registrant, agent acting on behalf of~~
14 ~~a registrant or other person as deemed appropriate by the commissioner, or~~
15 ~~the commissioner's designee. The commissioner, or commissioner's~~
16 ~~designee, may submit such fingerprints to the Kansas bureau of~~
17 ~~investigation, federal bureau of investigation or any other law enforcement~~
18 ~~agency for the purposes of verifying the identity of such persons and~~
19 ~~obtaining records of their criminal arrests and convictions;~~ **(A) require**
20 **fingerprinting of any officer, partner or director of an applicant or**
21 **registrant. Such fingerprints may be submitted to the Kansas bureau of**
22 **investigation and the federal bureau of investigation for a state and**
23 **national criminal history record check. The fingerprints shall be used**
24 **to identify the person and to determine whether the person has a**
25 **record of arrests and convictions in this state or other jurisdictions.**
26 **The commissioner may use information obtained from fingerprinting**
27 **and the criminal history for purposes of verifying the identification of**
28 **the person and in the official determination of the qualifications and**
29 **fitness of the persons associated with the applicant. Whenever the**
30 **commissioner requires fingerprinting, any associated costs shall be**
31 **paid by the applicant or the parties to the application.**

32 **(B) The commissioner shall not authorize receipt of a state and**
33 **national criminal history record check from a private entity unless the**
34 **Kansas bureau of investigation or the federal bureau of investigation**
35 **is unable to supply such state and national criminal history record**
36 **check through the Kansas central repository of criminal history**
37 **records or any subsequent repository system provided for by law. The**
38 **commissioner shall not disclose or use a state and national criminal**
39 **history record check for any purpose except as provided for in this**
40 **section. Unauthorized use of a state or national criminal history**
41 **record check shall constitute a class A nonperson misdemeanor.**

42 **(C) Each state and national criminal history record check shall be**
43 **confidential, not subject to the open records act, K.S.A. 45-215 et seq.,**

1 **and amendments thereto, and not be disclosed to any applicant or**
2 **registrant. The provisions of this subparagraph shall expire on July 1,**
3 **2028, unless the legislature reviews and acts to continue such**
4 **provisions pursuant to K.S.A. 45-229, and amendments thereto, prior**
5 **to July 1, 2028;**

6 (12) issue, amend and revoke written administrative guidance
7 documents in accordance with the applicable provisions of the Kansas
8 administrative procedure act; and

9 (13) enter into any informal agreement with any person for a plan of
10 action to address violations of this act.

11 (b) Examination reports and correspondence regarding such reports
12 made by the commissioner or the commissioner's designees shall be
13 confidential and shall not be subject to the provisions of the open records
14 act, K.S.A. 45-215 et seq., and amendments thereto. The commissioner
15 may release examination reports and correspondence regarding the reports
16 in connection with a disciplinary proceeding conducted by the
17 commissioner, a liquidation proceeding or a criminal investigation or
18 proceeding. Additionally, the commissioner may furnish to federal or other
19 state regulatory agencies or any officer or examiner thereof, a copy of any
20 or all examination reports and correspondence regarding the reports made
21 by the commissioner or the commissioner's designees. The provisions of
22 this subsection shall expire on July 1, 2028, unless the legislature reviews
23 and acts to continue such provisions pursuant to K.S.A. 45-229, and
24 amendments thereto, prior to July 1, 2028.

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

34 (d) The adoption of an informal agreement authorized by this section
35 shall not be subject to the provisions of the Kansas administrative
36 procedure act or the Kansas judicial review act. Any informal agreement
37 authorized by this subsection shall not be considered an order or other
38 agency action and shall be considered confidential examination material.
39 All such examination material shall be confidential by law and privileged,
40 shall not be subject to the provisions of the open records act, K.S.A. 45-
41 215 et seq., and amendments thereto, shall not be subject to subpoena and
42 shall not be subject to discovery or admissible in evidence in any private
43 civil action. The provisions of this subsection shall expire on July 1, 2028,

1 unless the legislature reviews and acts to continue such provisions
2 pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2028.

3 Sec. 12. (a) If the commissioner determines after notice and
4 opportunity for a hearing pursuant to the Kansas administrative procedure
5 act that any person has engaged, is engaging or is about to engage in any
6 act or practice constituting a violation of any provision of this act, any
7 rules and regulations adopted or order issued thereunder, the commissioner
8 may issue an order requiring any or all of the following:

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

10 (2) that the person pay a fine not to exceed ~~\$2,000~~ **\$5,000** per
11 incident for the unlawful act or practice;

12 (3) if any person is found to have violated any provision of this act
13 and such violation is committed against elder or disabled persons as
14 defined in K.S.A. 50-676, and amendments thereto, the commissioner may
15 impose an additional penalty not to exceed ~~\$2,000~~ **\$5,000** for each such
16 violation, in addition to any civil penalty otherwise provided by law;

17 (4) that the person to pay restitution for any loss arising from the
18 violation or requiring the person to disgorge any profits arising from the
19 violation. Such order may include the assessment of interest not to exceed
20 8% per annum from the date of the violation;

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

23 (6) that the person be barred from subsequently applying for
24 registration under this act.

25 (b) (1) If the commissioner makes written findings of fact that the
26 public interest will be irreparably harmed by delay in issuing an order
27 under subsection (a), the commissioner may issue an emergency cease and
28 desist order.

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

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

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

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

4 **(6) Fines and penalties collected pursuant to paragraphs (2) and**
5 **(3) shall be designated for use by the commissioner for consumer**
6 **education.**

7 Sec. 13. (a) In case of failure or refusal to obey a subpoena issued to
8 any person, any court of competent jurisdiction, upon application by the
9 commissioner, may issue an order requiring such person to appear before
10 the commissioner, or the officer designated by the commissioner, to
11 produce documentary evidence if so ordered or to give evidence relating to
12 the matter under investigation or in question. Any failure to obey the order
13 of the court may be punished by the court as contempt of court.

14 (b) No person shall be excused from attending, testifying or
15 producing any document or record before the commissioner or in
16 obedience to the subpoena of the commissioner or the commissioner's
17 designee, or in any proceeding instituted by the commissioner, on the
18 ground that such testimony or evidence, documentary or otherwise,
19 required of the person may tend to incriminate the person or subject the
20 person to a penalty or forfeiture. No individual may be prosecuted or
21 subjected to any penalty or forfeiture for or on account of any transaction,
22 matter or thing concerning which such person is compelled, after claiming
23 privilege against self-incrimination, to testify or produce evidence,
24 documentary or otherwise, except that the individual so testifying shall not
25 be exempt from prosecution and punishment for perjury committed in so
26 testifying.

27 Sec. 14. It is unlawful for any person to violate the provisions of this
28 act, any rules and regulations adopted or any order issued under this act. A
29 conviction for an intentional violation is a class A nonperson misdemeanor.
30 A second or subsequent conviction of this section is a severity level 7,
31 nonperson felony. No person may be imprisoned for the violation of this
32 section if such person proves that such person had no knowledge of the
33 rules and regulations or order.

34 Sec. 15. The commissioner, attorney general or a county or district
35 attorney may bring an action in a district court to enjoin any violation of
36 this act or any rules and regulations adopted thereunder.

37 Sec. 16. All fees collected by the commissioner pursuant to this act
38 shall be subject to the provisions of K.S.A. 75-1308, and amendments
39 thereto.

40 Sec. 17. This act shall take effect and be in force from and after its
41 publication in the statute book.