

HOUSE BILL No. 2812

By Committee on Appropriations

Requested by Representative Hoheisel

2-20

1 AN ACT concerning financial institutions; relating to the Kansas mortgage
2 business act; uniform consumer credit code; pertaining to certain
3 definitions, terms and conditions contained therein; modifying
4 consumer loan finance charges and repayment terms; record
5 requirements; credit card surcharge; definition of earnings and days;
6 increasing the threshold for certain consumer loans and leases;
7 origination fees for non-real estate transactions; clarifying license
8 requirements to make supervised loans; exempting supervised loan
9 license form filing notifications; transferring mortgage provisions
10 contained in the uniform consumer credit code to the Kansas mortgage
11 business act; clarifying entities exempt for licensing; amending K.S.A.
12 9-2201, 9-2202, 9-2203, 9-2208, 9-2209, 9-2212, 9-2216, 9-2216a, 9-
13 2220, 16-207, 16-207d, 16a-1-101, 16a-1-102, 16a-1-103, 16a-1-104,
14 16a-1-107, 16a-1-108, 16a-1-109, 16a-1-201, 16a-1-202, 16a-1-301,
15 16a-2-103, 16a-2-104, 16a-2-201, 16a-2-202, 16a-2-301, 16a-2-302,
16 16a-2-303, 16a-2-304, 16a-2-308, 16a-2-309, 16a-2-310, 16a-2-401,
17 16a-2-402, 16a-2-403, 16a-2-404, 16a-2-501, 16a-2-502, 16a-2-504,
18 16a-2-505, 16a-2-506, 16a-2-507, 16a-2-508, 16a-2-510, 16a-3-201,
19 16a-3-202, 16a-3-203, 16a-3-204, 16a-3-205, 16a-3-206, 16a-3-208,
20 16a-3-209, 16a-3-301, 16a-3-302, 16a-3-303, 16a-3-304, 16a-3-305,
21 16a-3-306, 16a-3-307, 16a-3-308, 16a-3-309, 16a-3-402, 16a-3-403,
22 16a-3-404, 16a-3-405, 16a-4-102, 16a-4-104, 16a-4-105, 16a-4-106,
23 16a-4-107, 16a-4-108, 16a-4-109, 16a-4-110, 16a-4-111, 16a-4-112,
24 16a-4-201, 16a-4-202, 16a-4-203, 16a-4-301, 16a-4-304, 16a-5-103,
25 16a-5-107, 16a-5-108, 16a-5-111, 16a-5-201, 16a-5-203, 16a-5-301,
26 16a-6-104, 16a-6-105, 16a-6-106, 16a-6-108, 16a-6-109, 16a-6-110,
27 16a-6-111, 16a-6-112, 16a-6-113, 16a-6-115, 16a-6-201, 16a-6-202,
28 16a-6-203, 16a-6-401, 16a-6-403 and 40-1209 and repealing the
29 existing sections; also repealing K.S.A. 16a-1-303, 16a-2-101, 16a-2-
30 102, 16a-2-303a, 16a-2-307, 16a-3-101, 16a-3-102, 16a-3-203a, 16a-3-
31 207, 16a-3-308a, 16a-4-101, 16a-4-103, 16a-5-101, 16a-5-102, 16a-5-
32 110, 16a-5-112, 16a-6-101, 16a-6-102, 16a-6-117, 16a-6-402, 16a-6-
33 404, 16a-6-405, 16a-6-406, 16a-6-407, 16a-6-408, 16a-6-409, 16a-6-
34 410, 16a-6-414, 16a-9-101 and 16a-9-102.
35

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

2 New Section 1. (a) Calendar days shall be used in computing any
 3 period of time. The day of the act, event or default from which the
 4 designated period of time begins to run shall not be included in such
 5 computation. Saturdays, Sundays and legal holidays shall be included in
 6 such computation. If the last day of the period so computed is a Saturday,
 7 Sunday or a legal holiday, the period shall run until the end of the next day
 8 that is not a Saturday, Sunday or a legal holiday. "Legal holiday" shall
 9 include any day designated as a holiday by the federal reserve bank.

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

12 New Sec. 2. (a) Any writing or signature required by this act may be
 13 provided or executed in an electronic form under K.S.A. 16-1601 et seq.,
 14 and amendments thereto.

15 (b) If the consumer agrees in writing to the use of electronic methods
 16 instead of United States mail, any requirement under this act to mail a
 17 document may be satisfied by sending the document by electronic
 18 methods. When a document is sent by electronic methods, the time of
 19 sending and receipt is defined by K.S.A. 16-1615, and amendments
 20 thereto.

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

23 New Sec. 3. (a) Sections 3 through 14, and amendments thereto, shall
 24 apply only to covered transactions, as defined in K.S.A. 9-2201, and
 25 amendments thereto.

26 (b) K.S.A. 9-2203 through 9-2209, and amendments thereto, shall
 27 apply to licensed mortgage companies, as defined in K.S.A. 9-2201, and
 28 amendments thereto.

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

31 New Sec. 4. (a) A mortgage company shall not make a covered
 32 transaction with an interest in land as security with an amount financed of
 33 \$5,000 or less in which the annual percentage rate of the loan exceeds the
 34 code mortgage rate. A security interest taken in violation of this section
 35 shall be void.

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

38 New Sec. 5. (a) A consumer shall not waive or agree to forego rights
 39 or benefits under sections 3 through 14, and amendments thereto, relating
 40 to covered transactions except as follows:

41 (1) The following may be settled by agreement if disputed in good
 42 faith. Any claim:

43 (A) By a consumer against a mortgage company for any violation of

1 sections 3 through 14, and amendments thereto, including for a civil
2 penalty; or

3 (B) against a consumer for default or for breach of a duty imposed by
4 sections 3 through 14, and amendments thereto.

5 (2) A claim against a consumer shall be settled for less value than the
6 amount claimed.

7 (3) A settlement in which the consumer waives or agrees to forego
8 rights or benefits under sections 3 through 14, and amendments thereto, is
9 invalid if the court, as a matter of law, finds the settlement to have been
10 unconscionable at the time it was made. The competence of the consumer,
11 any deception or coercion practiced upon the consumer, the nature and
12 extent of the legal advice received by the consumer and the value of the
13 consideration are relevant to the issue of unconscionability.

14 (b) A consumer may not authorize any person to confess judgment on
15 a claim arising out of a covered transaction. An authorization in violation
16 of this section shall be void.

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

19 New Sec. 6. (a) Except as otherwise provided in sections 3 through
20 14, and amendments thereto, if a mortgage company has violated any
21 provision of sections 3 through 14, and amendments thereto, relating to
22 covered transactions, the consumer shall have a cause of action to recover
23 from the mortgage company or person liable to the consumer actual
24 damages and except for a class action, a penalty in an amount determined
25 by the court not less than \$750 but not more than \$7,500.

26 (b) An action under this section based on closed-end covered
27 transaction violations shall be brought within one year of the last
28 scheduled payment due date stated in the agreement. An action under this
29 section based on open-end covered transaction violations shall be brought
30 within two years from the date of occurrence.

31 (c) If a person has violated K.S.A. 9-2203(a), and amendments
32 thereto, in originating a covered transaction, such covered transaction shall
33 be void. The consumer shall not be obligated to pay the amount financed
34 or the finance charge and such consumer shall have a right to recover any
35 finance charge paid from either the person violating this act or from the
36 consumer's mortgage servicer.

37 (d) A consumer shall not be obligated to pay a charge on a covered
38 transaction in excess of that allowed by sections 3 through 14, and
39 amendments thereto. A consumer shall have a right of refund for twice the
40 excess charges from the person who made the excess charge or from the
41 consumer's mortgage servicer. A consumer may request a refund payment
42 check or application to the outstanding obligation. Following a reasonable
43 time after demand, if the request is refused, the consumer may recover

1 twice the excess charge from the person liable or the mortgage company
2 and, except for a class action, an amount determined by the court not less
3 than \$750 but not more than \$7,500.

4 (e) A mortgage company shall have no penalty liability as discussed
5 in this section if within 60 days after discovering the error the mortgage
6 company corrects the error through refund or adjustment and notifies the
7 consumer of the error. This waiver shall not apply if an action has already
8 been instituted or the consumer has provided written notice of the
9 violation. If the violation is a prohibited agreement, providing a corrected
10 copy of the writing containing the error shall be sufficient notification and
11 correction.

12 (f) If the mortgage company establishes, by a preponderance of
13 evidence, that a violation is unintentional or the result of a bona fide error
14 of law or fact notwithstanding the maintenance of procedures reasonably
15 adopted to avoid any such violation or error, no liability is imposed under
16 this section.

17 (g) A mortgage company who in good faith complies with a written
18 administrative guidance document shall not be subject to any penalties
19 under this section for any act done or omitted in conformity with such
20 written administrative guidance document.

21 (h) Except as otherwise provided, no violation of the provisions of
22 sections 3 through 14, and amendments thereto, shall impair rights on a
23 debt.

24 (i) The mortgage company shall reimburse the consumer's reasonable
25 attorney fees and cost of the action if the proceeding finds that the
26 mortgage company has violated any provision of sections 3 through 14,
27 and amendments thereto. Reasonable attorney fees shall be determined by
28 the value of the time expended by the attorney and not by the amount of
29 the recovery on behalf of the consumer.

30 (j) This section shall not apply to attorneys or collection agencies that
31 did not purchase the mortgage loan.

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

34 New Sec. 7. (a) The consumer may prepay in full the unpaid balance
35 of a covered transaction at any time without penalty.

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

38 New Sec. 8. (a) The periodic finance charge for a covered transaction
39 shall not exceed 18% per annum, subject to the limitations on prepaid
40 finance charges set forth in this subsection. This subsection shall not apply
41 to a:

42 (1) Loan secured by a first mortgage that constitutes a covered
43 transaction by virtue of the loan-to-value ratio that exceeds 100% at the

1 time the loan is made; or

2 (2) covered transaction where the finance charge is governed by
3 K.S.A. 16-207(e)(4), and amendments thereto.

4 (b) If a loan secured by a first mortgage constitutes a covered
5 transaction by virtue of the loan-to-value ratio exceeding 100% at the time
6 the loan is made, then the periodic finance charge for the loan shall not
7 exceed that authorized pursuant to K.S.A. 16-207(a), and amendments
8 thereto, but the loan is subject to the limitations on prepaid finance charges
9 set forth in this section. Such prepaid finance charges may be charged in
10 addition to the finance charges permitted under K.S.A. 16-207(a), and
11 amendments thereto.

12 (c) This section shall not be construed to limit or restrict the manner
13 of calculating the finance charge, whether by way of add-on, discount or
14 otherwise, provided the rate and the amount of the finance charge does not
15 exceed that permitted by this section.

16 (d) Prepaid finance charges on covered transactions shall be limited
17 to an amount not to exceed 8% of the amount financed, provided that the
18 aggregate amount of prepaid finance charges payable to the mortgage
19 company or any person related to such company does not exceed 5% of
20 the amount financed. Prepaid finance charges permitted under this
21 subsection shall be in addition to finance charges permitted under
22 subsection (a). Prepaid finance charges permitted under this subsection
23 shall be fully earned when paid and such prepaid finance charges shall be
24 nonrefundable unless the parties agree otherwise in writing.

25 (e) The finance charge limitations in subsection (a) shall not apply to
26 a covered transaction for which the finance charge is governed pursuant to
27 K.S.A. 16-207(e)(4), and amendments thereto.

28 (f) If, within 12 months after the date of the original covered
29 transaction, a mortgage company or a person related to such company
30 refinances a covered transaction, with respect to which a prepaid finance
31 charge was payable to the same person then the aggregate amount of
32 prepaid finance charges payable to the mortgage company or any person
33 related to such company with respect to the new covered transaction shall
34 not exceed 5% of the additional amount financed.

35 (g) For purposes of this section, "additional amount financed" means
36 the difference between:

37 (1) The amount financed for the new covered transaction, less the
38 amount of all closing costs incurred in connection with the new covered
39 transaction that are not included in the prepaid finance charges for the new
40 covered transaction; and

41 (2) the unpaid principal balance of the original covered transaction.

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

1 New Sec. 9. (a) In addition to the finance charge permitted by
2 sections 3 through 14, and amendments thereto, for covered transactions, a
3 mortgage company may contract for and receive the following additional
4 charges for such covered transactions:

5 (1) Closing costs incurred in connection with the covered transaction
6 that are not included in the prepaid finance charges for the covered
7 transaction;

8 (2) late fees permitted pursuant to section 10, and amendments
9 thereto;

10 (3) charges for other benefits, including insurance, conferred on the
11 consumer if the benefits are of value to the consumer, and if:

12 (A) The charges are reasonable in relation to the benefits;

13 (B) the benefits are of a type that is not for credit and are excluded as
14 permissible additional charges from the finance charge by rules and
15 regulations adopted by the commissioner; or

16 (4) a service charge for an insufficient payment method not to exceed
17 \$30 subject to the limitations contained in this subsection.

18 (A) Notice shall be given to a consumer providing an insufficient
19 payment method either by:

20 (i) United States first class mail addressed to the consumer's last
21 known address; or

22 (ii) a clear notice of the insufficient payment method charge on the
23 consumer's regular monthly statement.

24 (B) If the consumer does not pay the amount of the insufficient
25 payment plus the service charge to the payee within 14 days from the
26 giving of notice, the payee may add the service charge to the outstanding
27 balance of such indebtedness of the consumer to draw interest at the
28 contract rate applicable to such indebtedness.

29 (b) With respect to an open-end covered transaction, a mortgage
30 company may charge the following fees in an amount not to exceed that
31 agreed to by the consumer:

32 (1) Fees on a monthly or annual basis;

33 (2) over-limit fees; and

34 (3) cash advance fees.

35 (c) The fees permitted under subsection (b) are in addition to any
36 finance charges or any additional charges permitted by sections 3 through
37 14, and amendments thereto.

38 (d) A mortgage company may charge a borrower up to \$5 per
39 payment when the borrower makes a single installment payment through
40 electronic methods for a covered transaction, including by authorizing the
41 mortgage company, verbally or in writing, to initiate the payment, subject
42 to the following limitations. No charge shall be assessed:

43 (1) If a late fee is assessed on the same installment; or

1 (2) where the consumer has agreed in writing to make all scheduled
2 payments through the use of electronic methods.

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

5 New Sec. 10. (a) The parties to a covered transaction may contract for
6 a late fee on any installment not paid in full within 10 calendar days after
7 its scheduled or deferred due date in an amount not to exceed 5% of the
8 unpaid amount of the installment or \$25, whichever is less.

9 (b) As an alternative to the late fee set forth in subsection (a), the
10 parties to a covered transaction may contract for a late fee not to exceed
11 \$10 on any installment not paid in full within 10 calendar days after its
12 scheduled or deferred due date, except that if the scheduled payment
13 amount is \$25 or less, the maximum late fee shall be \$5.

14 (c) A late fee may be assessed only once on an installment regardless
15 of the length of time such installment remains in default. A late fee may be
16 collected at the time it is assessed or at any time thereafter.

17 (d) No late fee may be assessed when such a fee or charge is
18 attributable solely to the failure of the consumer to pay a late fee on an
19 earlier installment and the payment is otherwise a periodic payment
20 received on the due date or within 10 calendar days after its scheduled or
21 deferred installment due date.

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

24 New Sec. 11. (a) A covered transaction shall not provide for the
25 negative amortization of principal or a balloon payment when the loan-to-
26 value ratio at the time such covered transaction was made exceeds 100%
27 or when the annual percentage rate of the loan exceeds the code mortgage
28 rate unless such covered transaction is open-end, incurred to acquire or
29 construct the consumer's principal residence or a reverse mortgage.

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

32 New Sec. 12. (a) The provisions of this section shall not apply to a
33 mortgage company that is exempt pursuant to K.S.A. 9-2202(a), and
34 amendments thereto.

35 (b) Before making a covered transaction, a mortgage company shall
36 obtain the appraised value of the real estate to be encumbered. If, based
37 upon the appraisal, the loan-to-value ratio of the covered transaction
38 exceeds 100%, then the mortgage company shall deliver to the consumer
39 not less than three days before the loan is made a:

40 (1) Free copy of the appraisal; and

41 (2) written notice regarding high loan-to-value mortgages and the
42 availability of consumer credit counseling.

43 (c) If within three days after receiving the notice, the consumer elects

1 not to enter into the covered transaction, then the mortgage company shall
2 promptly refund to the consumer any application fees or other amounts
3 paid by the consumer to such mortgage company except for the following:

4 (1) Bona fide out-of-pocket costs incurred before the consumer
5 elected not to enter into the covered transaction, provided that such costs
6 were paid or are payable to unrelated persons; and

7 (2) a bona fide appraisal fee paid or payable to the mortgage company
8 or a related person.

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

11 New Sec. 13. (a) An agreement of the parties to a covered transaction
12 with respect to default on the part of the consumer shall be enforceable
13 only to the extent that the:

14 (1) Consumer fails to make a payment as required by agreement; or

15 (2) (A) prospect of payment, performance or realization of collateral
16 is significantly impaired.

17 (B) For purposes of this paragraph, the burden of establishing the
18 prospect of significant impairment shall be on the mortgage company.

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

21 New Sec. 14. (a) After a consumer has been in default for 10 days for
22 failure to make a required payment in a covered transaction payable in
23 installments, a mortgage company may give the consumer the notice
24 described in this section.

25 (1) A mortgage company provides notice to the consumer under this
26 section when the mortgage company delivers the notice to the consumer or
27 delivers or mails the notice to the consumer's residence.

28 (2) The notice shall be in writing and shall conspicuously state:

29 (A) The name, address and telephone number of the mortgage
30 company to which payment is to be made;

31 (B) a brief description of the covered transaction;

32 (C) the consumer's right to cure the default;

33 (D) the amount of payment and date by which payment must be made
34 to cure the default; and

35 (E) the consumer's possible liability for the reasonable costs of
36 collection including, but not limited to, court costs, either attorney fees or
37 collection agency fees, and any other information required by the
38 commissioner as set forth by rules and regulations or by administrative
39 interpretation.

40 (b) With respect to a covered transaction payable in installments, after
41 a default consisting only of the consumer's failure to make a required
42 payment, a mortgage company may neither accelerate maturity of the
43 unpaid balance of the obligation or take possession of collateral as a result

1 of such default until 20 days after a notice of the consumer's right to cure
2 is given. Within 20 days after the notice is given, the consumer may cure
3 all defaults resulting from a failure to make the required payment by
4 tendering the amount of all unpaid sums due at the time of the tender,
5 without acceleration, plus any unpaid late fees. Such cure restores the
6 consumer to the consumer's rights under the agreement as though the
7 defaults had not occurred.

8 (c) With respect to defaults on the same obligation after a mortgage
9 company has once given a notice of the consumer's right to cure, this
10 section shall confer on the consumer no right to cure and imposes no
11 limitation on the mortgage company's right to proceed against the
12 consumer or the collateral.

13 (d) Unless the consumer voluntarily surrenders the collateral to the
14 mortgage company, the mortgage company may take possession of the
15 collateral without judicial process only if possession can be taken without
16 entry into a dwelling and without the use of force or other breach of the
17 peace.

18 (e) Nothing in this section shall be construed to prohibit a consumer
19 from voluntarily surrendering the collateral of the covered transaction and
20 shall not prohibit the mortgage company from thereafter enforcing the
21 mortgage company's security interest in the collateral at any time after
22 surrender.

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

25 New Sec. 15. (1) The following shall be exempt from the supervised
26 loan licensing requirements of this act:

- 27 (a) a supervised financial organization;
- 28 (b) the federal deposit insurance corporation acting in its corporate
29 capacity or as receiver; or
- 30 (c) an attorney who is forwarded contracts for collection.

31 (2) This section shall be a part of and supplemental to the uniform
32 consumer credit code.

33 New Sec. 16. (1) Any writing or signature required by this act may be
34 provided or executed using an electronic format pursuant to K.S.A. 16-
35 1601 et seq., and amendments thereto.

36 (2) If a consumer agrees in writing to the use of an electronic format
37 instead of United States mail to send a document, any requirement under
38 this act to use United States mail to send a document may be satisfied by
39 sending the document by such electronic format. When a document is sent
40 using an electronic format, the time of sending and receipt is defined
41 pursuant to K.S.A. 16-1615, and amendments thereto.

42 (3) This section shall be a part of and supplemental to the uniform
43 consumer credit code.

1 Sec. 17. K.S.A. 9-2201 is hereby amended to read as follows: 9-2201.

2 As used in this act:

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

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

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

11 (d) *"Appraised value" means, with respect to any real estate at any*
12 *time:*

13 (1) *The total appraised value of the real estate, as reflected in the*
14 *most recent records of the tax assessor of the county in which the real*
15 *estate is located;*

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

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

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

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

33 (g) *"Closed-end covered transaction" means the same as in 12 C.F.R.*
34 *1026.2(a)(10).*

35 (h) *"Closing costs" means:*

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

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

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

2 (A) 12%; or

3 (B) the sum of:

4 (i) The required net yield published by the federal national mortgage
5 association for 60-day mandatory delivery whole-loan commitments for
6 30-year fixed-rate mortgages with actual remittance on the first day for
7 which the required net yield was published in the previous month; and

8 (ii) 5%.

9 (2) If the reference rate referred to in clause (i)(1)(B)(i) is
10 discontinued, becomes impractical to use, or is otherwise not readily
11 ascertainable for any reason, the commissioner may designate a
12 comparable replacement reference rate and, upon publishing notice of the
13 same, such replacement reference rate shall become the reference rate
14 referred to in clause (i)(1)(B)(i). The secretary of state shall publish notice
15 of the code mortgage rate not later than the second issue of the Kansas
16 register published each month.

17 ~~(h)~~(j) "Commissioner" means the state bank commissioner or
18 designee, who shall be the deputy commissioner of the consumer and
19 mortgage lending division of the office of the state bank commissioner.

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

22 (l) "Covered transaction" means a mortgage loan that:

23 (1) Is a subordinate mortgage;

24 (2) has a loan-to-value ratio at the time when made that exceeds
25 100%, except for any loan guaranteed by a federal government agency of
26 the United States; or

27 (3) in the case of section 11, and amendments thereto, the annual
28 percentage rate of the loan exceeds the code mortgage rate.

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

35 ~~(e)~~(n) "Individual" means a human being.

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

43 (p) "Installment" means a periodic payment required or permitted by

1 *agreement in connection with a covered transaction.*

2 ~~(d)~~(q) "License" means a license issued by the commissioner to
3 engage in mortgage business as a mortgage company.

4 (r) "*Licensed mortgage company*" means a mortgage company that
5 *has been licensed as required by this act.*

6 ~~(e)~~(s) "Licensee" means a person who is licensed by the
7 commissioner as a mortgage company.

8 ~~(f)~~(t) "Loan originator" means an individual:

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

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

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

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

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

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

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

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

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

1 (v) *"Loan-to-value ratio" means a fraction expressed as a percentage*
2 *at any time:*

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

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

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

13 ~~(i)~~(x) *"Mortgage company" means a person engaged in mortgage*
14 *business.*

15 ~~(j)~~(y) *"Mortgage loan" means a loan or agreement to extend credit*
16 *made to one or more ~~individuals~~ persons which is secured by a first or*
17 *subordinate mortgage, deed of trust, contract for deed or other similar*
18 *instrument or document representing a security interest or lien, except as*
19 *provided for in K.S.A. 60-1101 through 60-1110, and amendments thereto,*
20 *upon any lot intended for residential purposes or a one-to-four family*
21 *dwelling as defined in 15 U.S.C. § 1602(w), located in this state, occupied*
22 *or intended to be occupied for residential purposes by the owner, including*
23 *the renewal or refinancing of any such loan.*

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

30 ~~(l)~~(aa) *"Mortgage servicer" means any person engaged in mortgage*
31 *servicing.*

32 ~~(m)~~(bb) *"Mortgage servicing" means collecting payment, remitting*
33 *payment for another or the right to collect or remit payment of any of the*
34 *following: Principal; interest; tax; insurance; or other payment under a*
35 *mortgage loan.*

36 ~~(n)~~(cc) *"Nationwide mortgage licensing system and registry" means a*
37 *mortgage licensing system developed and maintained by the conference of*
38 *state bank supervisors and the American association of residential*
39 *mortgage regulators for the licensing and registration of mortgage loan*
40 *originators.*

41 ~~(o)~~(dd) *"Not-for-profit" means a business entity that is granted tax*
42 *exempt status by the internal revenue service.*

43 (ee) *"Open-end covered transaction" means a covered transaction in*

1 *which a mortgage company:*

2 *(1) Reasonably contemplates repeated transactions;*

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

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

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

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

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

18 ~~(g)~~(ii) "Primary market" means the market wherein mortgage
19 business is conducted including activities conducted by any person who
20 assumes or accepts any mortgage business responsibilities of the original
21 parties to the transaction.

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

26 ~~(s)~~(kk) "Promotional items" means pens, pencils, hats and other such
27 novelty items.

28 ~~(t)~~(ll) "Registrant" means any individual who holds a valid
29 registration to conduct mortgage business in this state as a loan originator
30 on behalf of a licensed mortgage company.

31 (mm) "Related" with respect to a person means:

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

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

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

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

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

1 (+) (oo) "Unique identifier" means a number or other identifier
2 assigned by protocols established by the nationwide mortgage licensing
3 system and registry.

4 Sec. 18. K.S.A. 9-2202 is hereby amended to read as follows: 9-2202.
5 The following are exempt from the licensing requirements of this act:

6 (a) Any bank, savings bank, trust company, savings and loan
7 association, building and loan association, industrial loan company or
8 credit union organized, chartered or authorized under the laws of the
9 United States or of any state which is authorized to make loans and to
10 receive deposits;

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

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

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

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

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

31 Sec. 19. K.S.A. 9-2203 is hereby amended to read as follows: 9-2203.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41 Sec. 20. K.S.A. 9-2208 is hereby amended to read as follows: 9-2208.

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

1 public.

2 (b) ~~Prior to entering into any contract for the provision of services or~~
 3 ~~prior to the licensee receiving any compensation or promise of~~
 4 ~~compensation for a mortgage loan the licensee shall acquire from the~~
 5 ~~consumer a signed acknowledgment containing such information as the~~
 6 ~~commissioner may prescribe by rule and regulation. The signed~~
 7 ~~acknowledgment shall be retained by the licensee and a copy shall be~~
 8 ~~provided to the consumer.~~
 9 *The licensee shall provide each consumer a*
 10 *notice, containing such information as the commissioner may prescribe by*
 11 *rules and regulations, before the earliest of the following, as applicable:*

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

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

16 (3) *15 days after accepting a transfer of mortgage servicing.*

17 (c) All solicitations and published advertisements concerning
 18 mortgage business directed at Kansas residents, including those on the
 19 internet or by other electronic means, shall contain the name and license
 20 number or unique identifier of the licensee on record with the
 21 commissioner. Each licensee shall maintain a record of all solicitations or
 22 advertisements for a period of 36 months. For the purpose of this
 23 subsection, "advertising" does not include business cards or promotional
 24 items.

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

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

32 Sec. 21. K.S.A. 9-2209 is hereby amended to read as follows: 9-2209.

33 (a) The commissioner may exercise the following powers:

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

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

42 (3) charge reasonable costs of investigation, examination and
 43 administration of this act, to be paid by the applicant, licensee or
 44 registrant. The commissioner shall establish such fees in such amounts as

1 the commissioner may determine to be sufficient to meet the budget
2 requirements of the commissioner for each fiscal year. Charges for
3 administration of this act shall be based on the licensee's loan volume;

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

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

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

17 (7) require or permit any person to file a written statement, under oath
18 or otherwise as the commissioner may direct, setting forth all the facts and
19 circumstances concerning any apparent violation of this act; or any rule
20 and regulation promulgated thereunder or any order issued pursuant to this
21 act;

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

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

31 (10) require that any applicant, licensee, registrant or other person
32 complete a minimum number of prelicensing education hours and
33 complete continuing education hours on an annual basis. Prelicensing and
34 continuing education courses shall be approved by the commissioner, or
35 the commissioner's designee, and may be made a condition of application
36 approval and renewal;

37 (11) require fingerprinting of any applicant, registrant, licensee,
38 members thereof if a copartnership or association, or officers and directors
39 thereof if a corporation, or any agent acting on their behalf, or other person
40 as deemed appropriate by the commissioner. The commissioner or the
41 commissioner's designee, may submit such fingerprints to the Kansas
42 bureau of investigation, federal bureau of investigation or other law
43 enforcement agency for the purposes of verifying the identity of such

1 persons and obtaining records of their criminal arrests and convictions. For
2 the purposes of this section and in order to reduce the points of contact that
3 the federal bureau of investigation may have to maintain with the
4 individual states, the commissioner may use the nationwide mortgage
5 licensing system and registry as a channeling agent for requesting
6 information from and distributing information to the department of justice
7 or any governmental agency;

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

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

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

23 (15) establish relationships or contracts with the nationwide mortgage
24 licensing system and registry or other entities to collect and maintain
25 records and process transaction fees or other fees related to applicants,
26 licensees, registrants or other persons subject to this act and to take such
27 other actions as may be reasonably necessary to participate in the
28 nationwide mortgage licensing system and registry. The commissioner
29 shall regularly report ~~violations of law, as well as~~ enforcement actions and
30 other relevant information to the nationwide mortgage licensing system
31 and registry;

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

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

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

40 (19) enter into any informal agreement with any mortgage company
41 for a plan of action to address violations of law. The adoption of an
42 informal agreement authorized by this paragraph shall not be subject to the
43 provisions of K.S.A. 77-501 et seq., and amendments thereto, or K.S.A.

1 77-601 et seq., and amendments thereto. Any informal agreement
2 authorized by this paragraph shall not be considered an order or other
3 agency action, and shall be considered confidential examination material
4 pursuant to K.S.A. 9-2217, and amendments thereto. All such examination
5 material shall also be confidential by law and privileged, shall not be
6 subject to the open records act, K.S.A. 45-215 et seq., and amendments
7 thereto, shall not be subject to subpoena and shall not be subject to
8 discovery or admissible in evidence in any private civil action; and

9 (20) issue, amend and revoke written administrative guidance
10 documents in accordance with the applicable provisions of the ~~Kansas~~
11 ~~administrative procedure act~~ *rules and regulations filing act*.

12 (b) For the purpose of any examination, investigation or proceeding
13 under this act, the commissioner or any officer designated by the
14 commissioner may administer oaths and affirmations, subpoena witnesses,
15 compel such witnesses' attendance, adduce evidence and require the
16 production of any matter that is relevant to the examination or
17 investigation, including the existence, description, nature, custody,
18 condition and location of any books, documents or other tangible things
19 and the identity and location of persons having knowledge of relevant
20 facts; or any other matter reasonably calculated to lead to the discovery of
21 relevant information or items.

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

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

43 (e) Except for refund of an excess charge, no liability is imposed

1 under the Kansas mortgage business act for an act done or omitted in
2 conformity with a rule and regulation or written administrative
3 ~~interpretation~~ *guidance document* of the commissioner in effect at the time
4 of the act or omission, notwithstanding that after the act or omission, the
5 rule and regulation or written administrative interpretation may be
6 determined by judicial or other authority to be invalid for any reason.

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

10 Sec. 22. K.S.A. 9-2212 is hereby amended to read as follows: 9-2212.
11 No person required to be licensed or registered under this act shall directly
12 or indirectly:

13 (a) Pay compensation to, contract with or employ in any manner; any
14 person engaged in mortgage business who is not properly licensed or
15 registered, unless such person ~~meets the requirements of~~ *is exempt*
16 *pursuant to* K.S.A. 9-2202, and amendments thereto;

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

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

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

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

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

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

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

35 (g) receive compensation for rendering mortgage business services
36 where the licensee or registrant has otherwise acted as a real estate broker
37 or agent in connection with the sale of the real estate which secures the
38 mortgage transaction unless the person required to be licensed or
39 registered has provided written disclosure to the person from whom
40 compensation is collected that the person is receiving compensation both
41 for mortgage business services and for real estate broker or agent services;

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

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

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

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

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

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

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

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

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

38 Sec. 23. K.S.A. 9-2216 is hereby amended to read as follows: 9-2216.

39 (a) A licensee shall keep copies of all documents or correspondence
40 received or prepared by the licensee or registrant in connection with a loan
41 or loan application and those records and documents required by the
42 commissioner by rules and regulations adopted pursuant to K.S.A. 9-2209,
43 and amendments thereto, for such time frames as are specified in the rules

1 and regulations. If the loan is not serviced by a licensee, the retention
2 period commences on the date the loan is closed or, if the loan is not
3 closed, the date of the loan application. If the loan is serviced by a
4 licensee, the retention period commences on the date the loan is paid in
5 full or the date the licensee ceases to service the loan.

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

11 (c) Each licensee shall maintain the following information:

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

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

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

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

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

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

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

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

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

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

43 (1) Alter, destroy, shred, mutilate, conceal, cover up or falsify any

1 record with the intent to impede, obstruct or influence any investigation by
2 the commissioner or the commissioner's designee; or

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

6 Sec. 24. K.S.A. 9-2216a is hereby amended to read as follows: 9-
7 2216a. (a) Each licensee shall annually, on or before April 1, file a written
8 report with the commissioner containing the information that the
9 commissioner may reasonably require concerning the licensee's business
10 and operations during the preceding calendar year. The report shall be
11 made in the form prescribed by the commissioner, which may include
12 reports filed with the nationwide mortgage licensing system and registry.
13 Any licensee who fails to file the report required by this section with the
14 commissioner by April 1 shall be subject to a late penalty of \$100 for each
15 day after April 1 the report is delinquent, but in no event shall the
16 aggregate of late penalties exceed \$5,000. The commissioner may relieve
17 any licensee from the payment of any penalty, in whole or in part, for good
18 cause. *The commissioner may apply any funds received from late penalties*
19 *under this section to a consumer education fund, to be expended for such*
20 *purpose as directed by the commissioner.* The filing of the annual written
21 report required under this section shall satisfy any other reports required of
22 a licensee under this act.

23 (b) Information contained in the annual report shall be confidential
24 and may be published only in composite form. *The provisions of this*
25 *subsection providing for the confidentiality of public records shall expire*
26 *on July 1, 2030, unless the legislature reviews and reenacts such*
27 *provisions in accordance with K.S.A. 45-229, and amendments thereto,*
28 *prior to July 1, 2030.*

29 Sec. 25. K.S.A. 9-2220 is hereby amended to read as follows: 9-2220.
30 (a) The provisions of K.S.A. 9-2201 ~~through 9-2220~~ *et seq.*, and
31 amendments thereto, and ~~K.S.A. 9-2216a~~ *sections 1 through 14*, and
32 amendments thereto, shall be known and may be cited as the Kansas
33 mortgage business act.

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

37 Sec. 26. K.S.A. 16-207 is hereby amended to read as follows: 16-207.
38 (a) Subject to the following provision, the parties to any bond, bill,
39 promissory note or other instrument of writing for the payment or
40 forbearance of money may stipulate therein for interest receivable upon
41 the amount of such bond, bill, note or other instrument of writing, at a rate
42 not to exceed 15% per annum unless otherwise specifically authorized by
43 law.

1 (b) No penalty shall be assessed against any party for prepayment of
 2 any home loan evidenced by a note secured by a real estate mortgage
 3 where such prepayment is made more than six months after execution of
 4 such note.

5 (c) The lender may collect from the borrower:

6 (1) The actual fees paid a public official or agency of the state; or
 7 federal government, for filing, recording or releasing any instrument
 8 relating to a loan subject to the provisions of this section; and

9 (2) reasonable expenses incurred by the lender in connection with the
 10 making, closing, disbursing, extending, readjusting or renewing of loans
 11 subject to the provisions of this section.

12 (d) Any person so contracting for a greater rate of interest than that
 13 authorized by this section shall forfeit all interest so contracted for in
 14 excess of the amount authorized under this section; and in addition thereto
 15 shall forfeit a sum of money, to be deducted from the amount due for
 16 principal and lawful interest, equal to the amount of interest contracted for
 17 in excess of the amount authorized by this section and such amounts may
 18 be set up as a defense or counterclaim in any action to enforce the
 19 collection of such obligation and the borrower shall also recover a
 20 reasonable attorney fee.

21 (e) ~~The interest rates prescribed in subsection (a) shall not apply to a~~
 22 ~~business or agricultural loan. For the purpose of this section unless a loan~~
 23 ~~is made primarily for personal, family or household purposes, the loan~~
 24 ~~shall be considered a business or agricultural loan. For the purpose of this~~
 25 ~~subsection, a business or agricultural loan shall include credit sales and~~
 26 ~~notes secured by contracts for deed to real estate.~~ *Subsection (a) shall not*
 27 *apply to:*

28 (1) *A covered transaction subject to the usury provisions of the*
 29 *Kansas mortgage business act, K.S.A. 9-2201 et seq., and amendments*
 30 *thereto;*

31 (2) *a consumer credit transaction subject to the usury provisions of*
 32 *the uniform consumer credit code, K.S.A. 16a-1-101 et seq., and*
 33 *amendments thereto;*

34 (3) *loans made by a qualified plan, as defined by the internal revenue*
 35 *code, to an individual participant in such plan or to a member of the*
 36 *family of such individual participant;*

37 (4) *a note secured by a real estate mortgage or a contract for deed to*
 38 *real estate when the note or contract for deed permits adjustment of the*
 39 *interest rate, the term of the loan or the amortization schedule; or*

40 (5) *a business or agricultural transaction. For the purpose of this*
 41 *section, a "business or agricultural transaction" means a loan, including a*
 42 *note secured by a contract for deed to real estate or a credit sale, which is*
 43 *made primarily for purposes other than personal, family or household*

1 *purposes.*

2 (f) ~~Loans made by a qualified plan, as defined in section 401 of the~~
 3 ~~internal revenue code, to an individual participant in such plan or to a~~
 4 ~~member of the family of such individual participant, are not subject to the~~
 5 ~~interest rates prescribed in subsection (a).~~

6 (g) ~~The interest rates prescribed in subsection (a) shall not apply to a~~
 7 ~~note secured by a real estate mortgage or a contract for deed to real estate~~
 8 ~~where the note or contract for deed permits adjustment of the interest rate,~~
 9 ~~the term of the loan or the amortization schedule.~~

10 (h) ~~A first mortgage loan incurred for personal, family or household~~
 11 ~~purposes may be subject to certain provisions of the uniform consumer~~
 12 ~~credit code, K.S.A. 16a-1-101 to 16a-9-102, and amendments thereto, as~~
 13 ~~follows:~~

14 (1) ~~Certain high loan-to-value first mortgage loans are subject to the~~
 15 ~~provisions of the uniform consumer credit code, other than its usury~~
 16 ~~provisions. Examples of provisions of the uniform consumer credit code~~
 17 ~~applicable to high loan-to-value first mortgage loans include, but are not~~
 18 ~~limited to: Limitations on prepaid finance charges; mandatory appraisals;~~
 19 ~~required disclosures; restrictions on balloon payments and negative~~
 20 ~~amortization; limitations on late fees and collection costs; and mandatory~~
 21 ~~default notices and cure rights.~~

22 (2) ~~Certain high interest rate first mortgage loans are subject to~~
 23 ~~certain provisions of the uniform consumer credit code, including, without~~
 24 ~~limitation, provisions which impose restrictions on balloon payments and~~
 25 ~~negative amortization.~~

26 (3) ~~If the parties to a first mortgage loan agree in writing to make the~~
 27 ~~transaction subject to the uniform consumer credit code, than* all~~
 28 ~~applicable provisions of the uniform consumer credit code, including its~~
 29 ~~usury provisions, apply to the loan.~~

30 ~~This subsection is for informational purposes only and does not limit or~~
 31 ~~expand the scope of the uniform consumer credit code.~~

32 (i) ~~Subsections (b), (c) and (d) do not apply to a first mortgage loan~~
 33 ~~if:~~

34 (1) ~~The parties agree in writing to make the transaction subject to the~~
 35 ~~uniform consumer credit code, K.S.A. 16a-1-101 to 16a-9-102, and~~
 36 ~~amendments thereto; or~~

37 (2) ~~the loan is a high loan-to-value first mortgage loan subject to any~~
 38 ~~provision of the uniform consumer credit code.~~

39 ~~In the case of a loan described in paragraphs (1) or (2), the applicable~~
 40 ~~provisions of the uniform consumer credit code shall govern the loan in~~
 41 ~~lieu of subsections (b), (c) and (d).Subsections (b), (c) and (d) shall not~~
 42 ~~apply to:~~

43 (1) ~~A covered transaction under the Kansas mortgage business act,~~

1 *K.S.A. 9-2201 et seq., and amendments thereto; or*

2 *(2) a consumer credit transaction under the uniform consumer credit*
 3 *code, K.S.A. 16a-1-101 et seq., and amendments thereto.*

4 Sec. 27. K.S.A. 16-207d is hereby amended to read as follows: 16-
 5 207d. The state bank commissioner, ~~consumer credit commissioner,~~
 6 ~~savings and loan commissioner~~ and credit union administrator shall jointly
 7 adopt rules and regulations for the purpose of governing loans made
 8 primarily for personal, family or household purposes and made under the
 9 provisions of ~~subsection (h) of K.S.A. 16-207(e)(4), and any amendments~~
 10 ~~thereto, and subsection (8) of K.S.A. 16a-2-401, and any amendments~~
 11 ~~thereto.~~ Such rules and regulations shall be published in only one place in
 12 the Kansas administrative regulations as directed by the state rules and
 13 regulations board.

14 Sec. 28. K.S.A. 16a-1-101 is hereby amended to read as follows: 16a-
 15 1-101. K.S.A. 16a-1-101 ~~through 16a-9-102 et seq., and amendments~~
 16 ~~thereto,~~ shall be known and may be cited as the uniform consumer credit
 17 code.

18 Sec. 29. K.S.A. 16a-1-102 is hereby amended to read as follows: 16a-
 19 1-102. (1) K.S.A. 16a-1-101 ~~through 16a-9-102 et seq., and amendments~~
 20 ~~thereto,~~ shall be liberally construed and applied to promote its underlying
 21 purposes and policies.

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

23 (a) To simplify, clarify and modernize the law governing ~~retail~~
 24 ~~installment sales, consumer credit and consumer loans~~ *consumer credit*
 25 *transactions;*

26 (b) ~~to provide rate ceilings to assure an adequate supply of credit to~~
 27 ~~consumers;~~

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

31 (d) ~~to protect consumer buyers, lessees, and borrowers~~ *consumers*
 32 ~~against unfair practices by some suppliers of consumer credit, having due~~
 33 ~~regard for the interests of legitimate and scrupulous creditors; and~~

34 (e)(c) ~~to permit and encourage the development of fair and~~
 35 ~~economically~~ *facilitate* sound consumer credit practices; ~~and~~

36 (f) ~~to make uniform the law, including administrative rules and~~
 37 ~~regulations, among the various jurisdictions.~~

38 (3) A reference to a requirement imposed by K.S.A. 16a-1-101
 39 ~~through 16a-9-102 et seq., and amendments thereto,~~ includes reference to a
 40 ~~related rule and regulation of~~ *adopted by* the administrator ~~adopted~~
 41 ~~pursuant to this act.~~

42 Sec. 30. K.S.A. 16a-1-103 is hereby amended to read as follows: 16a-
 43 1-103. ~~Unless displaced by the particular provisions of~~ *The uniform*

1 *consumer credit code*, K.S.A. 16a-1-101 through 16a-9-102 *et seq.*, and
2 *amendments thereto*, takes precedence in consumer credit transactions, the
3 uniform commercial code and the principles of law and equity, including
4 the law relative to capacity to contract, principal and agent, estoppel,
5 fraud, misrepresentation, duress, coercion, mistake, bankruptcy; or other
6 validating or invalidating cause supplement its provisions.

7 Sec. 31. K.S.A. 16a-1-104 is hereby amended to read as follows: 16a-
8 1-104. K.S.A. 16a-1-101 through 16a-9-102 *et seq.*, and *amendments*
9 *thereto*, being a general act intended as a unified coverage of its subject
10 matter, no part of it shall be deemed to be ~~impliedly~~ *implicitly* repealed by
11 subsequent legislation if such construction can reasonably be avoided.

12 Sec. 32. K.S.A. 16a-1-107 is hereby amended to read as follows: 16a-
13 1-107. (1) Except as otherwise provided in K.S.A. 16a-1-101 through 16a-
14 9-102 *et seq.*, and *amendments thereto*, a consumer may not waive or
15 agree to forego rights or benefits under ~~such sections of~~ this act.

16 (2) A claim by a consumer against a creditor for ~~an excess charge,~~
17 ~~other any~~ violation of K.S.A. 16a-1-101 through 16a-9-102 *et seq.*, and
18 *amendments thereto*, or civil penalty, or a claim against a consumer for
19 default or breach of a duty imposed by ~~such sections of~~ this act, if disputed
20 in good faith, may be settled by agreement.

21 (3) A claim, ~~whether or not disputed,~~ against a consumer may be
22 settled for less value than the amount claimed.

23 (4) A settlement in which the consumer waives or agrees to forego
24 rights or benefits under K.S.A. 16a-1-101 through 16a-9-102 *et seq.*, and
25 *amendments thereto*, is invalid if the court as a matter of law finds the
26 settlement to have been unconscionable at the time it was made. The
27 competence of the consumer, any deception or coercion practiced upon
28 ~~him~~ *the consumer*, the nature and extent of the legal advice received by
29 ~~him~~ *the consumer*, and the value of the consideration are relevant to the
30 issue of unconscionability.

31 Sec. 33. K.S.A. 16a-1-108 is hereby amended to read as follows: 16a-
32 1-108. (1) K.S.A. 16a-1-101 through 16a-9-102 *et seq.*, and *amendments*
33 *thereto*, prescribes maximum charges for all creditors, except lessors and
34 those excluded ~~(by K.S.A. 16a-1-202, and amendments thereto)~~,
35 ~~extending~~ *extends* consumer credit including consumer credit sales
36 ~~(subsection (14) of K.S.A. 16a-1-301, and amendments thereto)~~ and
37 consumer loans ~~(subsection (17) of K.S.A. 16a-1-301, and amendments~~
38 ~~thereto)~~, and displaces existing limitations on the powers of those creditors
39 based on maximum charges.

40 (2) With respect to sellers of goods or services, ~~small loan companies,~~
41 licensed lenders, consumer and sales finance companies, industrial banks
42 ~~and~~, loan companies, ~~and~~ commercial banks and trust companies, this act
43 displaces existing limitations on their powers based solely on amount or

1 duration of credit.

2 (3) Except as provided in subsection (1) and ~~in the article on effective~~
3 ~~date and repealer (article 9)~~, K.S.A. 16a-1-101 through ~~16a-9-102~~ *et seq.*,
4 and amendments thereto, does not displace limitations on powers of credit
5 unions, savings banks, savings and loan associations; or other thrift
6 institutions ~~whether organized for the profit of shareholders or as mutual~~
7 ~~organizations.~~

8 (4) Except as provided in ~~subsections (1) and (2) and in the article on~~
9 ~~effective date and repealer (article 9)~~, K.S.A. 16a-1-101 through ~~16a-9-102~~
10 *et seq.*, and amendments thereto, does not displace:

11 (a) Limitations on powers of supervised financial organizations
12 ~~(subsection (44) of K.S.A. 16a-1-301, and amendments thereto)~~ with
13 respect to the amount of a loan to a single borrower, ~~the ratio of a loan to~~
14 ~~the value of collateral, the duration of a loan secured by an interest in land,~~
15 or other similar restrictions designed to protect deposits; or

16 (b) limitations on powers an organization is authorized to exercise
17 under the laws of this state or the United States.

18 Sec. 34. K.S.A. 16a-1-109 is hereby amended to read as follows: 16a-
19 1-109. The parties to a sale, lease; or loan or modification thereof, ~~which~~
20 *that* is not a consumer credit transaction may agree in a writing signed by
21 the parties that the transaction is subject to the provisions of K.S.A. 16a-1-
22 101 through ~~16a-9-102~~ *applying to consumer credit transactions et seq.,*
23 *and amendments thereto.* If the parties so agree, the transaction is a
24 consumer credit transaction for the purposes of K.S.A. 16a-1-101 through
25 ~~16a-9-102 et seq., and amendments thereto.~~

26 Sec. 35. K.S.A. 16a-1-201 is hereby amended to read as follows: 16a-
27 1-201. (1) Except as otherwise provided in this section, K.S.A. 16a-1-101
28 ~~through 16a-9-102 et seq.~~, and amendments thereto, apply to consumer
29 credit transactions made in ~~this state~~ *Kansas*. For purposes of such sections
30 of this act, a consumer credit transaction is made in ~~this state~~ *Kansas* if:

31 (a) ~~A signed writing~~ *written agreement executed by electronic or*
32 *physical signature* evidencing the obligation or offer of the consumer is
33 received by the creditor ~~in this state~~ *from a consumer in Kansas*; or

34 (b) the creditor induces the consumer who is a resident of ~~this state~~
35 *Kansas* to enter into the transaction by solicitation in ~~this state~~ *Kansas* by
36 any means, including, but not limited to: Mail, telephone, radio, television,
37 *electronic mail, internet* or any other electronic means.

38 (2) *Except as provided in subsection (5), a consumer credit*
39 *transaction made in a state outside of Kansas to a person who was not a*
40 *resident of Kansas when the sale, lease, loan or modification was made is*
41 *valid and enforceable in Kansas according to its terms to the extent that it*
42 *is valid and enforceable under the laws of the state applicable to the*
43 *transaction.*

1 (3) *Notwithstanding other provisions of this section, except as*
2 *provided in subsection (5), K.S.A. 16a-1-101 et seq., and amendments*
3 *thereto, do not apply if the consumer is not a resident of Kansas at the*
4 *time of a consumer credit transaction and the parties have agreed that the*
5 *law of the consumer's residence applies.*

6 (4) With respect to consumer credit transactions entered into pursuant
7 to ~~open end~~ *open-end* credit (subsection (31) of K.S.A. 16a-1-301, and
8 ~~amendments thereto~~), this act ~~applies~~ *shall apply* if the consumer's
9 communication or indication of intention to establish the ~~arrangement~~
10 *agreement* is received by the creditor ~~in this state conducting business in~~
11 *Kansas*. If no communication or indication of intention is given by the
12 consumer before the first transaction, this act applies if the creditor's
13 communication notifying the consumer of the privilege of using ~~the~~
14 ~~arrangement is mailed or personally delivered in this state~~ *open-end credit*
15 *is provided to the consumer in Kansas.*

16 ~~(3)(5)~~ The part ~~on~~ *addressing* limitations on creditors' remedies ~~(part~~
17 ~~4)~~ of the article on remedies and penalties ~~(article 5)~~ applies to actions or
18 other proceedings brought in this state to enforce rights arising from
19 consumer credit sales, consumer leases, or consumer loans, *transactions* or
20 extortionate extensions of credit, wherever made.

21 ~~(4)~~ A consumer credit transaction made in another state to a person
22 who is a resident of this state at the time of the transaction is valid and
23 enforceable in this state to the extent that it is valid and enforceable under
24 the laws of the state applicable to the transaction, but the following
25 provisions apply as though the transaction occurred in this state:

26 ~~(a)~~ A creditor may not collect charges through actions or other
27 proceedings in excess of those permitted by the article on finance charges
28 and related provisions (article 2); and

29 ~~(b)~~ a creditor may not enforce rights against the consumer with
30 respect to the provisions of agreements which violate the provisions on
31 limitations on agreements and practices (part 3) and limitations on
32 consumer's liability (part 4) of the article on regulation of agreements and
33 practices (article 3).

34 ~~(5)~~ Except as provided in subsection (3), a consumer credit
35 transaction made in another state to a person who was not a resident of this
36 state when the sale, lease, loan, or modification was made is valid and
37 enforceable in this state according to its terms to the extent that it is valid
38 and enforceable under the laws of the state applicable to the transaction.

39 (6) For the purposes of K.S.A. 16a-1-101 ~~through 16a-9-102 et seq.~~,
40 and amendments thereto, the residence of a consumer is the address ~~given~~
41 *provided* by the consumer as the consumer's residence in any ~~writing~~
42 *written agreement* signed by the consumer in connection with a *consumer*
43 credit transaction. Until the consumer notifies the creditor of a new or

1 different address, the given address ~~is provided by the consumer shall be~~
 2 presumed to be unchanged.

3 ~~(7) Notwithstanding other provisions of this section:~~

4 ~~(a) Except as provided in subsection (3), K.S.A. 16a-1-101 through~~
 5 ~~16a-9-102, and amendments thereto, do not apply if the consumer is not a~~
 6 ~~resident of this state at the time of a credit transaction and the parties have~~
 7 ~~agreed that the law of the consumer's residence applies; and~~

8 ~~(b) K.S.A. 16a-1-101 through 16a-9-102, and amendments thereto,~~
 9 ~~apply if the consumer is a resident of this state at the time of a credit~~
 10 ~~transaction and the parties have agreed that the law of the consumer's~~
 11 ~~residence applies.~~

12 ~~(8)(7) Except as provided in subsection (7) (3), the following~~
 13 ~~agreements by a buyer, lessee, or debtor are invalid with respect to a~~
 14 ~~consumer credit transaction to which K.S.A. 16a-1-101 through 16a-9-102~~
 15 ~~et seq., and amendments thereto, apply:~~

16 ~~(a) That the law of another state shall apply;~~

17 ~~(b) that the consumer consents to the jurisdiction of another state; and~~

18 ~~(c) that fixes venue.~~

19 ~~(9) The following provisions of this act specify the applicable law~~
 20 ~~governing certain cases:~~

21 ~~(a) Applicability (K.S.A. 16a-6-102, and amendments thereto) of the~~
 22 ~~part on powers and functions of administrator (part 1) of the article on~~
 23 ~~administration (article 6); and~~

24 ~~(b) applicability (K.S.A. 16a-6-201, and amendments thereto) of the~~
 25 ~~part on notification and fees (part 2) of the article on administration~~
 26 ~~(article 6):~~

27 ~~(10) With respect to a consumer credit sale or consumer loan to~~
 28 ~~which K.S.A. 16a-1-101 through 16a-9-102, and amendments thereto,~~
 29 ~~does not otherwise apply by reason of the foregoing provisions of this~~
 30 ~~section, if, pursuant to a solicitation relating to a consumer credit sale or~~
 31 ~~loan received in this state, a person who is a resident of this state sends a~~
 32 ~~signed writing evidencing the obligation or offer of the person to a creditor~~
 33 ~~in another state, and the person receives the goods or services purchased or~~
 34 ~~the cash proceeds of the loan in this state:~~

35 ~~(a) The creditor may not contract for or receive charges exceeding~~
 36 ~~those permitted by this code, and such charges as do exceed those~~
 37 ~~permitted are excess charges for purposes of subsections (3) and (4) of~~
 38 ~~K.S.A. 16a-5-201 and 16a-6-113, and amendments thereto, and such~~
 39 ~~sections shall apply as though the consumer credit sale or consumer loan~~
 40 ~~were made in this state; and~~

41 ~~(b) the part on powers and functions of administrator (part 1) of the~~
 42 ~~article on administration (article 6) shall apply as though the consumer~~
 43 ~~credit sale or consumer loan were made in this state.~~

1 Sec. 36. K.S.A. 16a-1-202 is hereby amended to read as follows: 16a-
2 1-202. K.S.A. 16a-1-101 through 16a-6-414 do not apply to:

3 (1) Extensions of credit to government or governmental agencies or
4 instrumentalities;

5 (2) ~~except as otherwise provided in the article on insurance (article 4),~~
6 the sale of insurance by an insurer if the insured is not obligated to pay
7 installments of the premium and the insurance may terminate or be
8 cancelled after nonpayment of an installment of the premium, *except as*
9 *otherwise provided in article 4 of chapter 40 of the Kansas Statutes*
10 *Annotated, and amendments thereto;*

11 (3) transactions under public utility or common carrier tariffs if a
12 subdivision or agency of this state or of the United States regulates the
13 charges for the services involved, the charges for delayed payment, and
14 any discount allowed for early payment;

15 (4) ~~except with respect to disclosure,~~ pawnbrokers licensed and
16 regulated pursuant to statutes of this state, *except with respect to*
17 *disclosure;*

18 (5) transactions covered by the Kansas insurance premium finance
19 company act—(K.S.A. 40-2601 to 40-2613) *et seq., and amendments*
20 *thereto.*

21 Sec. 37. K.S.A. 16a-1-301 is hereby amended to read as follows: 16a-
22 1-301. ~~In addition to definitions appearing in subsequent articles,~~*As used*
23 *in K.S.A. 16a-1-101 through 16a-9-102 et seq., and amendments thereto:*

24 (1) "Actuarial method" means the method of allocating payments
25 made on a debt between the principal and the finance charge pursuant to
26 which a payment is applied, assuming no ~~delinquency charges~~ *late fees* or
27 other additional charges are then due, first to the accumulated finance
28 charge and then to the unpaid principal balance. When a finance charge is
29 calculated in accordance with the actuarial method, the contract rate is
30 applied to the unpaid principal balance for the number of days the
31 principal balance is unpaid. At the end of each computational period; or
32 fractional computational period, the unpaid principal balance is increased
33 by the amount of the finance charge earned during that period and is
34 decreased by the total payment, if any, made during the period after the
35 deduction of any ~~delinquency charges~~ *late fees* or other additional charges
36 due during the period.

37 (2) "Administrator" means the deputy commissioner of the consumer
38 and mortgage lending division appointed by the bank commissioner
39 pursuant to K.S.A. 75-3135, and amendments thereto.

40 (3) "*Agent*" means a person authorized through express or implied
41 authority to act on behalf of a licensee or applicant.

42 (4) "Agreement" means the bargain of the parties in fact as found in
43 their language or by implication from other circumstances including

1 course of dealing or usage of trade or course of performance.

2 ~~(4)~~(5) "Amount financed" means the net amount of credit provided to
3 the consumer or on the consumer's behalf. The amount financed shall be
4 calculated as provided in rules and regulations adopted by the
5 administrator pursuant to K.S.A. 16a-6-117, and amendments thereto.

6 ~~(5)~~(6) "Annual percentage rate" means the ~~finance charge expressed~~
7 ~~as a yearly rate, as calculated in accordance with the actuarial method. The~~
8 ~~annual percentage rate shall be calculated as provided in rules and~~
9 ~~regulations adopted by the administrator pursuant to K.S.A. 16a-6-117,~~
10 ~~and amendments thereto same and shall be interpreted in the same manner~~
11 ~~and be calculated using the same methodology as prescribed in 15 U.S.C.~~
12 ~~§ 1606.~~

13 ~~(6)~~ "Appraised value" means, with respect to any real estate at any
14 time:~~(a) The total appraised value of the real estate, as reflected in the~~
15 ~~most recent records of the tax assessor of the county in which the real~~
16 ~~estate is located;~~~~(b) the fair market value of the real estate, as reflected in~~
17 ~~a written appraisal of the real estate performed by a Kansas licensed or~~
18 ~~certified appraiser within the past 12 months; or~~~~(c) in the case of a~~
19 ~~nonpurchase money real estate transaction, the estimated market value as~~
20 ~~determined through an automated valuation model acceptable to the~~
21 ~~administrator. As used in this paragraph (c), "automated valuation model"~~
22 ~~means an automated system that is used to derive a property value through~~
23 ~~the use of publicly available property records and various analytic~~
24 ~~methodologies such as comparable sales prices, home characteristics and~~
25 ~~historical home price appreciations. Automated valuation models must be~~
26 ~~validated by an independent credit rating agency. An automated valuation~~
27 ~~model provider shall not accept a property valuation assignment when the~~
28 ~~assignment itself is contingent upon the automated valuation model~~
29 ~~provider reporting a predetermined property valuation, or when the fee to~~
30 ~~be paid to the automated valuation model provider is contingent upon the~~
31 ~~property valuation reached or upon the consequences resulting from the~~
32 ~~property valuation assignment.~~

33 (7) "Applicant" means a person who applies to become licensed
34 pursuant to K.S.A. 16a-2-302, and amendments thereto.

35 (8) "Assignment" means the act by which one person transfers to
36 another person or causes to vest in that other person, any kind of property
37 or valuable interests and includes any temporary or permanent transfer of
38 servicing rights in the property or valuable interest.

39 (9) "Balloon payment" means any scheduled payment that is more
40 than twice as large as the average of earlier scheduled payments.

41 ~~(7)~~(10) "Billing cycle" means the ~~time interval between periodic~~
42 ~~billing statement dates same and shall be interpreted in the same manner~~
43 ~~as prescribed in 12 C.F.R. 1026.2(a)(4).~~

1 (8)(11) "Cash price" of goods, services, or an interest in land means
2 the price at which they are offered for sale by the seller to cash buyers in
3 the ordinary course of business and may include:

4 (a) The cash price of accessories or services related to the sale, such
5 as delivery, installation, alterations, modifications, and improvements; and

6 (b) taxes to the extent imposed on a cash sale of the goods, services,
7 or interest in land. The cash price stated by the seller to the buyer in a
8 disclosure statement is presumed to be the cash price.

9 ~~(9)(12) "Closed-end credit" means a consumer loan or a~~
10 ~~consumer credit sale which is not incurred pursuant to open-end credit~~
11 ~~the same and shall be interpreted in the same manner as prescribed in 12~~
12 ~~C.F.R. 1026.2(a)(10).~~

13 (10)(13) "Closing costs" with respect to a debt secured by an interest
14 in land includes:

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

18 (b) bona fide and reasonable expenses incurred by the lender in
19 connection with the making, closing, disbursing, extending, readjusting or
20 renewing the debt which are payable to third parties not related to the
21 lender, except that reasonable fees for an appraisal made by the lender or
22 related party are permissible.

23 (11) ~~"Code mortgage rate" means the greater of:~~

24 ~~(a) 12%; or~~

25 ~~(b) the sum of:~~

26 ~~(i) The yield on 30-year fixed-rate conventional home mortgage loans~~
27 ~~committed for delivery within 61 to 90 days accepted under the federal~~
28 ~~home loan mortgage corporation's or any successor's daily offerings for~~
29 ~~sale on the last day on which commitments for such mortgages were~~
30 ~~received in the previous month; and~~

31 ~~(ii) 5%.~~

32 ~~If the reference rate referred to in subparagraph (i) of paragraph (b) is~~
33 ~~discontinued, becomes impractical to use, or is otherwise not readily~~
34 ~~ascertainable for any reason, the administrator may designate a~~
35 ~~comparable replacement reference rate and, upon publishing notice of the~~
36 ~~same, such replacement reference rate shall become the reference rate~~
37 ~~referred to in subparagraph (i) of paragraph (b). The secretary of state shall~~
38 ~~publish notice of the code mortgage rate not later than the second issue of~~
39 ~~the Kansas register published each month.~~

40 (12)(14) "Conspicuous" means a term or clause ~~is conspicuous when~~
41 ~~it that~~ is so written ~~that~~ so a reasonable person against whom it is to
42 operate ought to have noticed it. Whether a term or clause is conspicuous
43 or not is for decision by the trier of fact.

1 ~~(13)~~(15) "Consumer" means the buyer, lessee; or debtor to whom
2 credit is *offered or* granted in a consumer credit transaction.

3 (16) "*Consumer credit filer*" means a person who is required to file a
4 notice with the administrator pursuant to K.S.A. 16a-6-201 et seq., and
5 amendments thereto.

6 (17) "*Consumer credit insurance*" means insurance, other than
7 insurance on property, by which the satisfaction of debt in whole or in part
8 is a benefit provided, but does not include insurance that:

9 (a) Is provided in relation to a consumer credit transaction in which
10 a payment is scheduled more than 15 years after the extension of credit;

11 (b) is issued as an isolated transaction on the part of the insurer not
12 related to an agreement or plan for insuring consumers of the creditor; or

13 (c) indemnifies the creditor against loss due to the consumer's
14 default.

15 ~~(14)~~(18) "Consumer credit sale" means:

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

18 (i) Credit is granted either by a seller who regularly engages as a
19 seller in credit transactions of the same kind or pursuant to a credit card
20 other than a lender credit card;

21 (ii) the buyer is a person other than an organization;

22 (iii) the goods; or services, ~~or interest in land~~ are purchased primarily
23 for a personal, family or household purpose;

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

26 (v) with respect to a sale of goods or services, the amount financed
27 does not exceed ~~\$25,000~~ *the threshold amount*.

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

29 (i) A sale in which the seller allows the buyer to purchase goods or
30 services pursuant to a lender credit card; or

31 (ii) a sale of an interest in land, ~~unless the parties agree in writing to~~
32 ~~make the transaction subject to the uniform consumer credit code.~~

33 ~~(15)~~(19) "Consumer credit transaction" means a consumer credit sale,
34 consumer lease, or consumer loan or a modification thereof including a
35 refinancing, consolidation; or deferral.

36 ~~(16)~~(20) "Consumer lease" means a lease of goods:

37 (a) ~~Which~~*That* a lessor regularly engaged in the business of leasing
38 makes to a person, other than an organization, who takes under the lease
39 primarily for a personal, family or household purpose;

40 (b) in which the amount payable under the lease does not exceed
41 ~~\$25,000~~ *the threshold amount*;

42 (c) ~~which~~*that* is for a term exceeding four months; and

43 (d) ~~which~~*that* is not made pursuant to a lender credit card.

1 ~~(17)~~(21) "Consumer loan":

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

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

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

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

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

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

14 (i) A loan secured by a first mortgage ~~unless; or~~

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

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

20 (ii) a loan made by a qualified plan, as defined in section 401 of the
21 internal revenue code, to an individual participant in such plan or to a
22 member of the family of such individual participant.

23 ~~(18)~~(22) "Credit" means the right granted by a creditor to a debtor to
24 defer payment of debt or to incur debt and defer its payment.

25 ~~(19)~~(23) "Credit card" means any card, ~~plate~~ or other single credit
26 device that may be used from time to time to obtain credit. Since this
27 involves the possibility of repeated use of a single device, checks and
28 similar instruments that can be used only once to obtain a single credit
29 extension are not credit cards.

30 ~~(20)~~(24) "Creditor" means a person who regularly ~~extends~~ *engages,*
31 *directly or indirectly in extending* credit in a consumer credit transaction
32 ~~which is payable by a written agreement in more than four installments or~~
33 ~~for which the payment of a finance charge is or may be required and is the~~
34 ~~person to whom the debt arising from the consumer credit transaction is~~
35 ~~initially payable on the face of the evidence of indebtedness or, if there is~~
36 ~~no such evidence of indebtedness, by written agreement or, except as~~
37 ~~otherwise provided, an assignee of a creditor's right to payment. The term~~
38 ~~assignee does not in itself impose on an assignee any obligation of its~~
39 ~~assignor. In the case of credit extended pursuant to a credit card, the~~
40 ~~creditor is the card issuer and not another person honoring the credit card.~~

41 (25) "Director" means a member of a licensee's or applicant's board
42 of directors.

43 ~~(21)~~(26) "Earnings" means compensation ~~paid or~~ payable to an

1 individual or for such individual's account for personal services rendered
 2 or to be rendered by such individual, whether denominated as wages,
 3 salary, commission, bonus, or otherwise; and includes periodic payments
 4 pursuant to a pension, retirement, or disability program.

5 ~~(22)~~(27) "Finance charge" means all charges payable directly or
 6 indirectly by the consumer and imposed directly or indirectly by the
 7 creditor as an incident to or as a condition of the extension of credit. The
 8 finance charge shall be calculated as provided in rules and regulations
 9 adopted by the administrator pursuant to K.S.A. ~~16a-6-117~~ 16a-6-104, and
 10 amendments thereto.

11 ~~(23)~~ "First mortgage" means a first priority mortgage lien or similar
 12 real property security interest.

13 ~~(24)~~(28) "Goods" includes goods not in existence at the time the
 14 transaction is entered into and merchandise certificates, but excludes
 15 money, chattel paper, documents of title, and instruments.

16 *(29) "Installment" means a periodic payment required or permitted*
 17 *by agreement in connection with a consumer credit transaction.*

18 ~~(25)~~(30) ~~Except as otherwise provided,~~ "Lender" includes an assignee
 19 of the lender's right to payment but use of the term does not in itself
 20 impose on an assignee any obligation of the lender with respect to events
 21 occurring before the assignment.

22 ~~(26)~~(31) "Lender credit card" means a credit card issued by a
 23 supervised lender.

24 *(32) "License" means the authorization allowing a person to make*
 25 *supervised loans pursuant to the provisions on authority to make*
 26 *supervised loans.*

27 *(33) "Licensee" means a person that is licensed by the administrator*
 28 *to engage in supervised loan activity.*

29 *(34) "Licensing" includes the administrator's process respecting the*
 30 *grant, denial, revocation, suspension, annulment, withdrawal or*
 31 *amendment of a license.*

32 ~~(27)~~ "Loan":

33 (35) (a) "Loan": Except as provided in paragraph (b), a "loan"
 34 includes:

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

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

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

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

43 (b) A "loan" does not include the payment or agreement to pay money

1 to a third party for the account of a debtor if the debt of the debtor arises
 2 from a sale or lease and results from use of either a credit card issued by a
 3 person primarily in the business of selling or leasing goods or services or
 4 any other credit card which may be used for the purchase of goods or
 5 services and which is not a lender credit card.

6 ~~(28) "Loan-to-value ratio", at any time for any loan secured by an~~
 7 ~~interest in real estate, means a fraction expressed as a percentage:~~

8 ~~(a) The numerator of which is the aggregate unpaid principal balance~~
 9 ~~of all loans secured by a first mortgage or a second mortgage encumbering~~
 10 ~~the real estate at such time; and~~

11 ~~(b) the denominator of which is the appraised value of the real estate.~~

12 (36) *"Member" means, for the following business organizations:*

13 (a) *A co-partnership, a limited or general partner;*

14 (b) *an association that is a corporation, an owner;*

15 (c) *an association that is a member-managed limited liability*
 16 *company, the named managing partner; and*

17 (d) *an association that is a limited liability company managed by*
 18 *elected or appointed managers, all elected or appointed managers.*

19 ~~(29)~~(37) *"Merchandise certificate" means a writing or electronic*
 20 *instrument issued by a seller not redeemable in cash and usable in its face*
 21 *amount in lieu of cash in exchange for goods or services.*

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

27 (39) *"Officer" means a person who participates or has the authority*
 28 *to participate, other than in the capacity of a director, in major*
 29 *policymaking functions of the licensee or applicant, whether or not the*
 30 *person has an official title, including the chief executive officer, chief*
 31 *financial officer, chief operations officer, chief legal officer, chief credit*
 32 *officer, chief compliance officer and every vice president.*

33 ~~(30)~~(40) *"Official fees" means:*

34 (a) ~~Fees and charges~~*Taxes and fees* prescribed by law ~~which that~~
 35 ~~actually are or will be paid to public officials for determining the existence~~
 36 ~~of or for perfecting, releasing; or satisfying a security interest related to a~~
 37 ~~consumer credit sale, consumer lease, or consumer loan transaction; or~~

38 (b) premiums payable for insurance in lieu of perfecting a security
 39 interest otherwise required by the creditor in connection with the sale,
 40 lease; or loan, if the premium does not exceed the fees and charges
 41 described in paragraph (a) which would otherwise be payable.

42 ~~(31)~~(41) *"Open-end*~~Open-end~~ credit" means an arrangement pursuant
 43 to which:

1 (a) A creditor may permit a consumer, from time to time, to purchase
 2 goods or services on credit from the creditor or pursuant to a credit card; or
 3 to obtain loans from the creditor or pursuant to a credit card;

4 (b) the unpaid balance of amounts financed and the finance and other
 5 appropriate charges are debited to an account;

6 (c) the finance charge, if made, is computed on the outstanding
 7 unpaid balances of the consumer's account from time to time; and

8 (d) the consumer has the privilege of paying the balances in
 9 installments.

10 ~~(32)~~(42) "Organization" means a corporation, limited liability
 11 company, government or governmental subdivision or agency, trust, estate,
 12 partnership, cooperative~~or~~, association *or any other legally recognized*
 13 *business entity.*

14 ~~(33)~~(43) "Person" includes a natural person or an individual, and an
 15 organization.

16 ~~(34)~~(44) (a) "Person related to" with respect to an individual means:

17 (i) The spouse of the individual;

18 (ii) a brother, brother-in-law, sister, sister-in-law of the individual;;

19 (iii) an ancestor or lineal descendant of the individual or the
 20 individual's spouse,~~and~~; *or*

21 (iv) any other relative, by blood, adoption or marriage, of the
 22 individual or such individual's spouse ~~who shares the same home with the~~
 23 ~~individual.~~

24 (b) "Person related to" with respect to an organization means:

25 (i) A person directly or indirectly controlling, controlled by or under
 26 common control with the organization;;

27 (ii) an officer or director of the organization or a person performing
 28 similar functions with respect to the organization or to a person related to
 29 the organization;;

30 (iii) the spouse of a person related to the organization,~~and~~; *or*

31 (iv) a relative by blood, adoption or marriage of a person related to
 32 the organization ~~who shares the same home with such person.~~

33 ~~(35)~~(45) "Prepaid finance charge" means any finance charge paid
 34 separately in cash or by check before or at consummation of a transaction;
 35 or withheld from the proceeds of the credit at any time. ~~Prepaid finance~~
 36 ~~charges shall be calculated as provided in rules and regulations adopted by~~
 37 ~~the administrator pursuant to K.S.A. 16a-6-117, and amendments thereto.~~

38 ~~(36)~~ "Presumed" or "presumption" means that the trier of fact must
 39 ~~find the existence of the fact presumed unless and until evidence is~~
 40 ~~introduced which would support a finding of its nonexistence.~~

41 ~~(37)~~(46) "Principal" means the total of the amount financed and the
 42 prepaid finance charges, except that prepaid finance charges are not added
 43 to the amount financed to the extent such prepaid finance charges are paid

1 separately in cash or by check by the consumer. ~~The administrator may~~
2 ~~adopt rules and regulations regarding the determination or calculation of~~
3 ~~the principal or the principal balance pursuant to K.S.A. 16a-6-117, and~~
4 ~~amendments thereto.~~

5 (47) *"Regularly engaged" means a person that extends credit directly*
6 *or through assignment more than 25 times in any state during the*
7 *preceding calendar year.*

8 ~~(38)~~(48) "Sale of goods" includes any agreement in the form of a
9 bailment or lease of goods if the bailee or lessee agrees to pay as
10 compensation for use a sum substantially equivalent to or in excess of the
11 aggregate value of the goods involved and it is agreed that the bailee or
12 lessee will become, or for no other or a nominal consideration has the
13 option to become, the owner of the goods upon full compliance with such
14 bailee's or lessee's obligations under the agreements.

15 ~~(39)~~—"Sale of an interest in land" includes a lease in which the lessee
16 has an option to purchase the interest and all or a substantial part of the
17 rental or other payments previously made by the lessee are applied to the
18 purchase price.

19 ~~(40)~~(49) "Sale of services" means furnishing or agreeing to furnish
20 services and includes making arrangements to have services furnished by
21 another.

22 ~~(41)~~—"Second mortgage" means a second or other subordinate priority
23 mortgage lien or similar real property security interest.

24 ~~(42)~~(50) "Seller": Except as otherwise provided, "seller" includes an
25 assignee of the seller's right to payment but use of the term does not in
26 itself impose on an assignee any obligation of the seller with respect to
27 events occurring before the assignment.

28 ~~(43)~~(51) "Services" includes:

- 29 (a) Work, labor, and other personal services;;
30 (b) privileges with respect to transportation, hotel and restaurant
31 accommodations, education, entertainment, recreation, physical culture,
32 hospital accommodations, funerals, cemetery accommodations, and the
33 like;; and
34 (c) insurance.

35 ~~(44)~~(52) "Supervised financial organization" means a person, other
36 than an insurance company or other organization primarily engaged in an
37 insurance business:

- 38 (a) Organized, chartered; or holding an authorization certificate under
39 the laws of any state or of the United States which authorize the person to
40 make loans and to receive deposits, including a savings, share, certificate
41 or deposit account; and
42 (b) subject to supervision by an official or agency of such state or of
43 the United States.

1 ~~(45)~~(53) "Supervised lender" means a person authorized to make or
 2 take assignments of supervised loans, either under a license issued by the
 3 administrator ~~(K.S.A. 16a-2-301 and amendments thereto)~~ or as a
 4 supervised financial organization ~~(subsection (44) of K.S.A. 16a-1-301~~
 5 ~~and amendments thereto).~~

6 ~~(46)~~(54) "Supervised loan" means a consumer loan, including a loan
 7 made pursuant to ~~open-end~~ *open-end* credit, with respect to which the
 8 annual percentage rate exceeds 12%.

9 (55) "*Threshold amount*" means an amount equal to at least \$69,500
 10 as of July 1, 2024, and adjusted effective January 1 of each subsequent
 11 year by any annual percentage increase in the consumer price index for
 12 urban wage earners and clerical workers that was in effect on June 1 of
 13 the preceding year. Any increase or decrease in the threshold amount shall
 14 be rounded up or down to the nearest increment of \$100. If the consumer
 15 price index for urban wage earners and clerical workers in effect on June
 16 1 does not increase from the consumer price index for urban wage earners
 17 and clerical workers in effect on June 1 of the preceding year, the
 18 threshold amount effective the following January 1 through December 31
 19 shall not change from the preceding year.

20 ~~(47)~~(56) "Written agreement" means an agreement such as a
 21 promissory note, contract or lease that is evidence of or relates to the
 22 indebtedness. A letter that merely confirms an oral agreement does not
 23 constitute a written agreement for purposes of this subsection unless
 24 signed by the person against whom enforcement is sought.

25 ~~(48)~~(57) "Written administrative interpretation" means any written
 26 ~~communication from the consumer credit commissioner which is the~~
 27 ~~official interpretation as so stated in said written communication~~ by the
 28 ~~consumer credit commissioner of administrator regarding the Kansas~~
 29 uniform consumer credit code and rules and regulations pertaining thereto.

30 Sec. 38. K.S.A. 16a-2-103 is hereby amended to read as follows: 16a-
 31 2-103. (1) The provisions of this section shall apply to all consumer loans
 32 and all consumer credit sales.

33 (2) The finance charge on a consumer loan or consumer credit sale
 34 shall be computed in accordance with the actuarial method using either the
 35 ³⁶⁵/₃₆₅ method or, if the consumer agrees in writing, the ³⁶⁰/₃₆₀ method:

36 (a) The ³⁶⁵/₃₆₅ method means a method of calculating the finance
 37 charge whereby the contract rate is divided by 365 and the resulting daily
 38 rate is multiplied by the outstanding principal amount and the actual
 39 number of days in the computational period.

40 (b) The ³⁶⁰/₃₆₀ method means a method of calculating the finance
 41 charge whereby the contract rate is divided by 360 and the resulting daily
 42 rate is multiplied by the outstanding principal amount and the number of
 43 assumed days in the computational period. For the purposes of this

1 subsection, a creditor may assume that a month has 30 days, regardless of
2 the actual number of days in the month.

3 (c) If the documentation evidencing a consumer credit contract is
4 silent regarding whether the ³⁶⁵/₃₆₅ method or the ³⁶⁰/₃₆₀ method applies, then
5 the ³⁶⁵/₃₆₅ method shall apply.

6 ~~(3) In addition to the methods listed under subsection 2, the~~
7 ~~computation of finance charges on a consumer loan secured by a first or~~
8 ~~second lien real estate mortgage may be computed using the following~~
9 ~~amortization method: The contract rate is divided by 360 and the resulting~~
10 ~~rate is multiplied by the outstanding principal amount and 30 assumed~~
11 ~~days between scheduled due dates. For the purposes of this subsection, a~~
12 ~~creditor shall assume there are 30 days in the computational period,~~
13 ~~regardless of the actual number of days between due dates.~~

14 (4) The finance charge on a consumer loan or consumer credit sale
15 may not be computed in accordance with the ³⁶⁵/₃₆₀ method, whereby the
16 contract rate is divided by 360 and the resulting daily rate is multiplied by
17 the outstanding principal amount and the actual number of days in the
18 computational period.

19 (5)(4) Creditors may ignore the effect of a leap year in computing the
20 finance charge.

21 (6)(5) (a) Except for any portion of a loan made pursuant to a lender
22 credit card which does not represent a cash advance, interest or other
23 periodic finance charges on a consumer loan may accrue only on that
24 portion of the principal which has been disbursed to or for the benefit of
25 the consumer.

26 (b) On a consumer credit sale, interest or other periodic finance
27 charges may accrue only on that portion of the principal which relates to
28 goods, services or an interest in land, as the case may be, which has *or*
29 *services that have* been shipped, delivered, furnished or otherwise made
30 available to or for the benefit of the consumer or ~~has~~ *have* been disbursed
31 to or for the benefit of the consumer.

32 (7) ~~Subsection (2) does not apply to a consumer credit sale the~~
33 ~~finance charge for which is computed in accordance with subsection (5) of~~
34 ~~K.S.A. 16a-2-201, and amendments thereto.~~

35 (8) ~~Notwithstanding any other provisions of this act, the finance~~
36 ~~charges on consumer loans or consumer credit sales originating prior to~~
37 ~~January 1, 1994, which computed such finance charges on a precomputed~~
38 ~~basis, shall be subject to the conditions, limitations and restrictions~~
39 ~~contained in the uniform consumer credit code as in effect on December~~
40 ~~31, 1993, as such code relates to precomputed finance charges.~~

41 (9) ~~This section shall be supplemental to and a part of the uniform~~
42 ~~consumer credit code.~~

43 Sec. 39. K.S.A. 16a-2-104 is hereby amended to read as follows: 16a-

1 2-104. (1) A creditor shall credit a payment to the consumer's account on
 2 the date of receipt, except when a delay in crediting does not result in a
 3 finance charge or other charge.

4 (2) Notwithstanding subsection (1), if a creditor specifies, in a writing
 5 delivered to the consumer, reasonable requirements for the consumer to
 6 follow in making payments, but accepts a payment that does not conform
 7 to those requirements, then the creditor shall credit the payment within
 8 five days after receipt.

9 ~~(3) This section shall be supplemental to and a part of the uniform
 10 consumer credit code.~~

11 Sec. 40. K.S.A. 16a-2-201 is hereby amended to read as follows: 16a-
 12 2-201. (1) This section applies only to a ~~closed-end~~ *closed-end* consumer
 13 credit sale.

14 (2) A seller may charge a finance charge at any rate agreed to by the
 15 parties, subject, however, to the limitations on prepaid finance charges set
 16 forth in subsection (3).

17 (3) A seller may charge a prepaid finance charge:

18 ~~(a) For a consumer credit sale secured by a security interest in a
 19 manufactured home as defined by 42 U.S.C. § 5402(6), in an amount not
 20 to exceed 5% of the amount financed for the sole purpose of reducing the
 21 interest rate of the consumer credit sale; or~~

22 (b) For any ~~other~~ consumer credit sale, an amount not to exceed the
 23 lesser of 2% of the amount financed or ~~\$100~~ *\$300*.

24 ~~(e)(b)~~ A prepaid finance charge permitted under this subsection is in
 25 addition to finance charges permitted under subsection (2). A prepaid
 26 finance charge permitted under this subsection is fully earned when paid
 27 and is nonrefundable, unless the parties agree otherwise in writing.

28 ~~(4) If the sale is precomputed:~~

29 ~~(a) The finance charge may be calculated on the assumption that all
 30 scheduled payments will be made when due, and the fact that payments are
 31 made either before or after the due date does not affect the amount of
 32 finance charge which the creditor may charge or receive; and~~

33 ~~(b) the effect of prepayment is governed by subsection (5).~~

34 ~~(5) Rebate upon prepayment:~~

35 ~~(a) Except as provided for in this section, upon prepayment in full of
 36 a precomputed consumer credit transaction, the creditor shall rebate to the
 37 consumer an amount not less than the amount of rebate provided in
 38 subsection (b), paragraph (1), or redetermine the earned finance charge as
 39 provided in subsection (b), paragraph (2), and rebate any other unearned
 40 charges including charges for insurance. The rebate for charges for
 41 insurance shall be as prescribed by statute, rules and regulations and
 42 administrative interpretations by the administrator. If the rebate otherwise
 43 required is less than \$1, no rebate need be made.~~

1 (b) ~~The amount of rebate and redetermined earned finance charge~~
2 ~~shall be as follows:~~

3 (1) ~~The amount of rebate shall be determined by applying, according~~
4 ~~to the actuarial method, the rate of finance charge which was required to~~
5 ~~be disclosed in the transaction:~~

6 (i) ~~Where no deferral charges have been made in a transaction, to the~~
7 ~~unpaid balances for the actual time remaining as originally scheduled for~~
8 ~~the period following prepayment; and~~

9 (ii) ~~where deferral charges have been made in a transaction, to the~~
10 ~~unpaid balances for the actual time remaining as extended by deferral for~~
11 ~~the period following prepayment.~~

12 ~~The time remaining for the period following prepayment shall be either~~
13 ~~the full days following prepayment; or both the full days, counting the date~~
14 ~~of prepayment, between the prepayment date and the end of the~~
15 ~~computational period in which the prepayment occurs, and the full~~
16 ~~computational periods following the date of prepayment to the scheduled~~
17 ~~due date of the final installment of the transaction.~~

18 (2) ~~The redetermined earned finance charge shall be determined by~~
19 ~~applying, according to the actuarial method, the rate of finance charge~~
20 ~~which was required to be disclosed in the transaction to the actual unpaid~~
21 ~~balances of the amount financed for the actual time the unpaid balances~~
22 ~~were outstanding as of the date of prepayment. Any delinquency or~~
23 ~~deferral charges collected before the date of prepayment do not become a~~
24 ~~part of the total finance charge for purposes of rebating unearned charges.~~

25 (e) ~~Upon prepayment, but not otherwise, of a consumer credit~~
26 ~~transaction whether or not precomputed, other than a consumer lease, a~~
27 ~~consumer rental purchase agreement, or a transaction pursuant to open end~~
28 ~~credit:~~

29 (1) ~~If the prepayment is in full, the creditor may collect or retain a~~
30 ~~minimum charge not exceeding \$5 in a transaction which had an amount~~
31 ~~financed of \$75 or less, or not exceeding \$7.50 and in a transaction which~~
32 ~~had an amount financed of more than \$75, if the finance charge earned at~~
33 ~~the time of prepayment is less than the minimum allowed pursuant to this~~
34 ~~subsection.~~

35 (2) ~~If the prepayment is in part, the creditor may not collect or retain~~
36 ~~a minimum finance charge.~~

37 (d) ~~For the purposes of this section, the following defined terms~~
38 ~~apply:~~

39 (1) ~~"Computational period" means the interval between scheduled~~
40 ~~due dates of installments under the transaction if the intervals are~~
41 ~~substantially equal or, if the intervals are not substantially equal, one~~
42 ~~month if the smallest interval between the scheduled due dates of~~
43 ~~installments under the transaction is one month or more, and otherwise one~~

1 week.

2 ~~(2) The "interval" between specified dates means the interval between~~
3 ~~them including one or the other but not both of them. If the interval~~
4 ~~between the date of the transaction and the due date of the first scheduled~~
5 ~~installment does not exceed one month by more than fifteen days when the~~
6 ~~computational period is one month, or eleven days when the computational~~
7 ~~period is one week, the interval may be considered by the creditor as one~~
8 ~~computational period.~~

9 ~~(e) This section does not preclude the collection or retention by the~~
10 ~~creditor of delinquency charges.~~

11 ~~(f) If the maturity is accelerated by any reason and judgment is~~
12 ~~obtained, the consumer is entitled to the same rebate as if payment had~~
13 ~~been made on the date maturity is accelerated.~~

14 ~~(g) Upon prepayment in full of a precomputed consumer credit~~
15 ~~transaction by the proceeds of consumer credit insurance, the consumer or~~
16 ~~the consumer's estate is entitled to the same rebate as though the consumer~~
17 ~~had prepaid the agreement on the date the proceeds of the insurance are~~
18 ~~paid to the creditor, but no later than ten business days after satisfactory~~
19 ~~proof of loss is furnished to the creditor.~~

20 ~~(6) This section does not apply to a sale of an interest in land.~~
21 ~~Subsection (11) of K.S.A. 16a-2-401, and amendments thereto, governs~~
22 ~~the limitations on finance charges for a contract for deed to real estate~~
23 ~~where the parties agree in writing to make the transaction subject to the~~
24 ~~uniform consumer credit code.~~

25 Sec. 41. K.S.A. 16a-2-202 is hereby amended to read as follows: 16a-
26 2-202. (1) *This section shall apply only to open-end consumer credit sales.*

27 ~~(2) With respect to a consumer credit sale made pursuant to open-end~~
28 ~~credit, A seller may charge a finance charge at any rate agreed to by the~~
29 ~~parties.~~

30 ~~(2)(3) A charge may be made in each billing cycle which is a~~
31 ~~percentage of an amount no greater than:~~

32 ~~(a) The average daily balance of the account, which is the sum of the~~
33 ~~actual amounts outstanding each day during the billing cycle divided by~~
34 ~~the number of days in the cycle; or~~

35 ~~(b) the unpaid balance of the account on the last day of the billing~~
36 ~~cycle.~~

37 ~~(3)(4) If the billing cycle is monthly, the charges may not exceed 1/12~~
38 ~~of the annual rate agreed to by the consumer. If the billing cycle is not~~
39 ~~monthly, the maximum charge is that percentage which bears the same~~
40 ~~relation to the applicable monthly percentage as the number of days in the~~
41 ~~billing cycle bears to 30. For purposes of this subsection, a variation of not~~
42 ~~more than four days from month to month is "the last day of the billing~~
43 ~~cycle."~~

1 ~~(4)(5)~~ For any period in which a finance charge is due, the parties
2 may agree *in writing* on a minimum amount.

3 ~~(5)~~ This section does not apply to a sale of an interest in land.
4 Subsection (11) of K.S.A. 16a-2-401, and amendments thereto, governs
5 the limitations on finance charges for a contract for deed to real estate
6 where the parties agree in writing to make the transaction subject to the
7 uniform consumer credit code.

8 Sec. 42. K.S.A. 16a-2-301 is hereby amended to read as follows: 16a-
9 2-301. (1) Unless a person is a supervised financial organization; or has
10 first obtained a license from the administrator authorizing such person to
11 make supervised loans; or is the federal deposit insurance corporation
12 acting in its corporate capacity or as receiver *exempt from licensing*
13 pursuant to section 15, and amendments thereto, such person shall not
14 engage in the business of:

15 (a) Making supervised loans; or

16 (b) taking assignments of and directly or indirectly, including through
17 the use of *supervised loans* servicing contracts or otherwise, and either:

18 (i) Undertaking collection of payments from debtors arising from
19 supervised loans, but such person may collect for three months without a
20 license if the person promptly applies for a license and such person's
21 application has not been denied; or

22 (e)(ii) taking assignments of and directly or indirectly, including
23 through the use of servicing contracts or otherwise, enforcing rights
24 against debtors arising from supervised loans, but such person may enforce
25 for three months without a license if the person promptly applies for a
26 license and such person's application has not been denied.

27 (2) Residential mortgage loan origination shall only be conducted in
28 this state by an individual who has first been registered with the
29 administrator as a residential mortgage loan originator and maintains a
30 valid unique identifier issued by the nationwide mortgage licensing system
31 and registry if operational at the time of registration.

32 (a) Residential mortgage loan origination shall only be conducted at
33 or from a supervised lender and a registrant shall only engage in
34 residential mortgage loan origination on behalf of one supervised lender.

35 (b) A supervised lender shall be responsible for all mortgage loan
36 origination conducted on their behalf by residential mortgage loan
37 originators or other employees.

38 (3) Nothing in this section shall be construed to require the licensing
39 of an attorney who is forwarded contracts for collection. *If any person is*
40 *engaged in the business of subsection (1)(b), such person shall promptly*
41 *apply for a license and may for three months collect and enforce without*
42 *such license, provided such person's application has not been denied.*

43 Sec. 43. K.S.A. 16a-2-302 is hereby amended to read as follows: 16a-

1 2-302. (1) (a) The administrator shall receive and act on all applications
2 for licenses to make supervised loans ~~and all applications for residential~~
3 ~~mortgage loan originator registrations under this act. Applications shall be~~
4 ~~filed.~~ *Any person required to be licensed pursuant to this act shall submit*
5 *an application in the manner prescribed by the administrator and that shall*
6 *contain the information the administrator may require by rule and*
7 *regulation to make an evaluation of the financial responsibility, character*
8 *and fitness of the applicant.*

9 (b) Submitted with each application shall be a nonrefundable
10 application fee. ~~Application, license and registration fees shall be in such~~
11 ~~amounts as are established pursuant to subsection (5) of K.S.A. 16a-6-~~
12 ~~104(5), and amendments thereto. A license shall become effective as of the~~
13 ~~date specified in writing by the administrator. The license year shall be the~~
14 ~~calendar year and the license shall expire on December 31 of the year~~
15 ~~unless the license is renewed pursuant to subsection (1)(d). Each license~~
16 ~~shall be nonrefundable nontransferable and nonassignable, and shall~~
17 ~~remain in force until it has expired, is surrendered, suspended or revoked.~~

18 (c) ~~The administrator shall remit all moneys received under K.S.A.~~
19 ~~16a-1-101 to 16a-6-414, inclusive, and amendments thereto, to the state~~
20 ~~treasurer in accordance with the provisions of K.S.A. 75-4215, and~~
21 ~~amendments thereto. Upon receipt of each such remittance, the state~~
22 ~~treasurer shall deposit the entire amount in the state treasury. Of each~~
23 ~~deposit 10% shall be credited to the state general fund and the balance~~
24 ~~shall be credited to the bank commissioner fee fund. All expenditures from~~
25 ~~such fund shall be made in accordance with appropriation acts upon~~
26 ~~warrants of the director of accounts and reports issued pursuant to~~
27 ~~vouchers approved by the administrator or by a person or persons~~
28 ~~designated by the administrator. The administrator shall consider an~~
29 ~~application for a license abandoned if the applicant fails to complete the~~
30 ~~application within 60 days after the administrator provides the applicant~~
31 ~~with written notice of the incomplete application. An applicant whose~~
32 ~~application is abandoned under this section may reapply to obtain a~~
33 ~~license and shall pay the fee set forth in subsection (1) upon such~~
34 ~~application. If an application is considered abandoned pursuant to K.S.A.~~
35 ~~16a-2-302, and amendments thereto, an applicant may make a written~~
36 ~~request for a hearing. The administrator shall conduct a hearing in~~
37 ~~accordance with the Kansas administrative procedure act.~~

38 (d) ~~Every licensee and registrant shall, on or before the first day of~~
39 ~~January, pay to the administrator the license or registration fee prescribed~~
40 ~~under this subsection (1) for each license or registration held for the~~
41 ~~succeeding license year. Failure to pay the fee within the time prescribed~~
42 ~~shall automatically revoke the license or registration. A license shall be~~
43 ~~renewed annually for the subsequent year by filing with the administrator;~~

1 on or before December 1 of the current year; a renewal application
2 accompanied with the fee prescribed under subsection (1) for each license.
3 Such application shall be filed in the form and manner prescribed by the
4 administrator and shall contain such information that the administrator
5 requires to determine the existence of any material changes from the
6 information contained in the applicant's original license application or
7 prior renewal application. A late fee may be assessed if a renewal
8 application is filed after December 1.

9 (e) Each renewal application shall be accompanied by a
10 nonrefundable fee that shall be established by rules and regulations
11 pursuant to K.S.A. 16a-6-104, and amendments thereto.

12 (f) There is hereby established a reinstatement period. Licensees may
13 submit a complete renewal application through the last day of February
14 each year. If approved, there will be no lapse in license coverage. An
15 application for renewal or reinstatement received after the last day of
16 February shall be treated as an original application and shall be subject
17 to all reporting and fees associated therewith.

18 (2) No license or registration shall be issued unless the administrator,
19 upon investigation, finds that the financial responsibility, character and
20 fitness of the applicant, and of the members thereof if the applicant is a
21 copartnership or association and of the officers and directors thereof, if the
22 applicant is a corporation, are such as to warrant belief that the business
23 will be operated honestly and fairly. ~~The administrator shall not base a~~
24 ~~registration denial solely on the applicant's credit score.~~ An applicant
25 meets the minimum standard of financial responsibility for engaging in the
26 business of making supervised loans, under subsection (1) of K.S.A. 16a-
27 2-301(I), and amendments thereto, only if:

28
29 (a) The applicant has filed with the administrator a proper surety
30 bond of at least \$100,000 which has been approved by the administrator.
31 The bond must provide within its terms that the bond shall not expire for
32 two years after the date of the surrender, revocation or expiration of the
33 subject license, whichever shall first occur. The required surety bond may
34 not be canceled by the licensee without providing the administrator at least
35 30 days' prior written notice, provided that such cancellation shall not
36 affect the surety's liability for violations of the uniform consumer credit
37 code occurring prior to the effective date of cancellation and principal and
38 surety shall be and remain liable for a period of two years from the date of
39 any action or inaction of the principal that gives rise to a claim under the
40 bond; and

41 (b) the applicant provides evidence in a form and manner prescribed
42 by the administrator that establishes the applicant will maintain a
43 satisfactory minimum net worth, as determined by the administrator, to

1 engage in credit transactions of the nature proposed by the applicant. Such
2 net worth requirements shall be established by the administrator pursuant
3 to rule and regulation and shall not exceed \$500,000 for each applicant or
4 licensee.

5 ~~(3)(a) The administrator may deny any application or renewal for a~~
6 ~~supervised loan license or a residential mortgage loan originator~~
7 ~~registration, if the administrator finds:~~

8 ~~(a) There is a refusal to furnish information required by the~~
9 ~~administrator within a reasonable time as fixed by the administrator; or~~
10 ~~A licensee shall provide written notice to the administrator within 10~~
11 ~~business days of the occurrence of any of the following events:~~

12 ~~(1) The closing or relocation of any place of business;~~

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

14 ~~(3) the addition or loss of any owner, officer, member or director.~~

15 ~~(b) any of the factors stated as grounds for denial, revocation or~~
16 ~~suspension of a license in K.S.A. 16a-2-303 or K.S.A. 16a-2-303a, and~~
17 ~~amendments thereto. The administrator may request additional information~~
18 ~~concerning any written notice received pursuant to subsection (a) and~~
19 ~~charge a reasonable fee for any action required by the administrator as a~~
20 ~~result of such notice and additional information.~~

21 ~~(4) Upon written request the applicant is entitled to a hearing on the~~
22 ~~question of license qualifications if: (a) The administrator has notified the~~
23 ~~applicant in writing that the application has been denied; or (b) the~~
24 ~~administrator has not issued a license within 60 days after the application~~
25 ~~for the license was filed. A request for a hearing may not be made more~~
26 ~~than 15 days after the administrator has mailed a writing to the applicant~~
27 ~~notifying the applicant that the application has been denied and stating in~~
28 ~~substance the administrator's findings supporting denial of the application.~~

29 ~~(5) The administrator shall adopt rules and regulations regarding~~
30 ~~whether a licensee shall be required to obtain a single license for each~~
31 ~~place of business or whether a licensee may obtain a master license for all~~
32 ~~of its places of business, and in so doing the administrator may~~
33 ~~differentiate between licensees located in this state and licensees located~~
34 ~~elsewhere. Each license shall remain in full force and effect until~~
35 ~~surrendered, suspended or revoked.~~

36 ~~(6) No licensee shall change the location of any place of business~~
37 ~~without giving the administrator at least 15 days prior written notice.~~

38 ~~(7)(4) A licensee may conduct the business of making loans for~~
39 ~~personal, family or household purposes only at or from any place of~~
40 ~~business for which the licensee holds a license and not under any other~~
41 ~~name than that in the license. Loans made pursuant to a lender credit card~~
42 ~~do not violate this subsection.~~

43 ~~(5) All solicitations and published advertisements concerning~~

1 consumer credit transactions directed at Kansas residents, including those
 2 on the internet or by other electronic means, shall contain the name and
 3 license number or unique identifier of the licensee on record with the
 4 administrator. Each licensee shall maintain a record of all solicitations or
 5 advertisements for a period of 36 months. As used in this subsection,
 6 "advertising" excludes business cards or promotional items, including, but
 7 not limited to, pens, pencils, hats and other such novelty items.

8 (6) The administrator shall remit all moneys received under K.S.A.
 9 16a-1-101 et seq., and amendments thereto, to the state treasurer in
 10 accordance with the provisions of K.S.A. 75-4215, and amendments
 11 thereto. Upon receipt of each such remittance, the state treasurer shall
 12 deposit the entire amount in the state treasury. Of each such deposit, 10%
 13 shall be credited to the state general fund and the balance shall be
 14 credited to the bank commissioner fee fund. All expenditures from such
 15 fund shall be made in accordance with appropriation acts upon warrants
 16 of the director of accounts and reports issued pursuant to vouchers
 17 approved by the administrator or the administrator's designee. Late fees
 18 paid under this section may be designated by the administrator for
 19 consumer education.

20 Sec. 44. K.S.A. 16a-2-303 is hereby amended to read as follows: 16a-
 21 2-303. (1) The administrator may deny, *an application or renewal* or
 22 revoke or suspend ~~the a supervised loan license of a supervised lender~~ if
 23 the administrator finds, *after notice and opportunity for a hearing*
 24 *conducted in accordance with the provisions of the Kansas administrative*
 25 *procedure act*, that:

26 (a) The applicant or licensee has repeatedly or willfully violated the
 27 provisions of K.S.A. 16a-1-101 ~~through 16a-9-102 et seq.~~, and
 28 amendments thereto, or any ~~rule and regulation~~ *rules and regulations*,
 29 order or administrative interpretation lawfully made pursuant to ~~such~~
 30 ~~sections of this act~~;

31 (b) ~~the applicant or licensee has failed to file and maintain the surety~~
 32 ~~bond or net worth required in K.S.A. 16a-2-302, and amendments~~
 33 ~~thereto~~ *facts or conditions exist that would clearly have justified the*
 34 *administrator in refusing to grant a license had such facts or conditions*
 35 *been known to exist at the time the application for the license was made*;

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

37 (d) the applicant or licensee has filed with the administrator any
 38 document or statement falsely representing or omitting a material fact;

39 (e) ~~(d)~~ the applicant, licensee, members ~~thereof~~ *if of a copartnership or*
 40 *association*; or officers and directors ~~thereof~~ *if of a corporation* have been
 41 convicted of a felony crime or any crime involving fraud, dishonesty or
 42 deceit or the applicant or licensee knowingly or repeatedly contracts with
 43 or employs persons to directly engage in lending activities who have been

1 convicted of a felony crime or any crime involving fraud, dishonesty or
2 deceit;

3 *(e) the applicant or licensee has engaged in deceptive business*
4 *practices;*

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

8 ~~(g)~~ the applicant or licensee has been the subject of any disciplinary
9 action by this or any other state or federal agency;

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

14 *(h) the applicant or licensee has failed to keep and maintain*
15 *sufficient records to permit an audit satisfactorily disclosing to the*
16 *administrator the applicant or licensee's compliance with the provisions of*
17 *this act; or*

18 ~~(i) the applicant or licensee has engaged in deceptive business~~
19 ~~practices; or the applicant or licensee has failed to file and maintain the~~
20 ~~surety bond or net worth required in K.S.A. 16a-2-302, and amendments~~
21 ~~thereto.~~

22 ~~(j) facts or conditions exist which would clearly have justified the~~
23 ~~administrator in refusing to grant a license had these facts or conditions~~
24 ~~been known to exist at the time the application for the license was made.~~

25 *(2) Upon written request, the applicant or licensee is entitled to a*
26 *hearing in accordance with the Kansas administrative procedure act,*
27 *K.S.A. 77-501 et seq., and amendments thereto, if the administrator denies*
28 *an application, fails to issue a new license within 60 days of receipt of a*
29 *complete application, revokes a license, suspends a license or fails to issue*
30 *a renewal within 30 days after receipt of a complete application.*

31 ~~(2)~~(3) Any person holding a license to make supervised loans may
32 surrender the license by notifying the administrator in writing of its
33 surrender, but this surrender shall not affect such person's liability for acts
34 previously committed.

35 ~~(3)~~(4) No revocation, suspension; or relinquishment of a license shall
36 impair or affect the obligation of any preexisting lawful contract between
37 the licensee and any debtor.

38 ~~(4)~~(5) None of the following actions shall deprive the administrator of
39 any jurisdiction or right to institute or proceed with any disciplinary
40 proceeding against such licensee, to render a decision suspending,
41 revoking or refusing to renew such license; or to establish and make a
42 record of the facts of any violation of law for any lawful purpose:

43 (a) The imposition of an administrative penalty under this section;

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

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

4 (d) the licensee's voluntary surrender of any license issued under this
5 act.

6 ~~(5)~~(6) The administrator may reinstate a license, terminate a
7 suspension; or grant a new license to a person whose license has been
8 revoked or suspended if no fact or condition then exists which clearly
9 would have justified the administrator in refusing to grant a license.

10 Sec. 45. K.S.A. 16a-2-304 is hereby amended to read as follows: 16a-
11 2-304. (1) Every licensee and any assignee or servicer of a consumer credit
12 transaction and every ~~person required to file notification~~ *consumer credit*
13 *filer* shall maintain records in conformity with generally accepted
14 accounting principles and practices in a manner that will enable the
15 administrator and, in the case of a supervised financial organization its
16 supervisory official or agency, to determine whether the licensee, assignee,
17 servicer or ~~person required to file notification~~ *consumer credit filer* is
18 complying with the provisions of K.S.A. 16a-1-101 through ~~16a-9-102~~ *et*
19 *seq.*, and amendments thereto. The record keeping system of a licensee,
20 assignee, servicer or ~~person required to file notification~~ *consumer credit*
21 *filer* shall be sufficient if the licensee, assignee, servicer or any ~~person~~
22 ~~required to file notification~~ *consumer credit filer* makes the required
23 information reasonably available. The records need not be kept in the place
24 of business where supervised loans are made, if the administrator or
25 supervisory official or agency is given free access to the records wherever
26 located. Every licensee and ~~any assignee or servicer of a consumer credit~~
27 ~~transaction and every person required to file notification~~ *every consumer*
28 *credit filer* shall provide the administrator with the name, address,
29 telephone number, *email address*, contact person and any other reasonable
30 information regarding the location and availability of current records of a
31 consumer credit transaction. The records pertaining to any loan shall be
32 kept for the minimum time frames established by the administrator
33 pursuant to rules and regulations.

34 (2) Every licensee and any assignee or servicer of a consumer credit
35 transaction, and every ~~person required to file notification~~ *consumer credit*
36 *filer* shall establish, maintain and enforce written policies and procedures
37 regarding security of records which are reasonably designed to prevent the
38 misuse of a consumer's personal or financial information.

39 (3) Before ceasing to conduct or discontinuing business, a licensee,
40 *assignee, servicer* or ~~person required to file notification~~ *consumer credit*
41 *filer* shall arrange for and be responsible for the preservation of the books
42 and records required to be maintained and preserved under this act and
43 applicable rules and regulations for the remainder of each period specified.

1 (4) ~~Any~~ *All books, records and any other documents* required to be
2 retained may be maintained and preserved by nonerasable, nonalterable
3 electronic imaging or by photograph on film in a photographic,
4 reproduced or electronic format. If the records are produced or reproduced
5 by photographic film, electronic imaging or computer storage medium
6 photographed, reproduced or retained in an electronic format, the
7 licensee, assignee or person required to file notification consumer credit
8 filer shall meet the following criteria:

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

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

15 (e)(b) with respect to electronic images and records stored on
16 computer storage medium, maintain procedures for maintenance and
17 preservation of, and access to, records in order to reasonably safeguard
18 these records from loss, alteration or destruction; and

19 (c) *all books, records and any other documents shall be made*
20 *available for examination and inspection by the administrator or the*
21 *administrator's designee. All records shall be delivered to the*
22 *administrator within three business days of the date such documents are*
23 *requested.*

24 (5) *In lieu of retention of the original records, any such photograph*
25 *or reproduction shall have the same force and effect as the original thereof*
26 *and be admitted in evidence equally with the original.*

27 (6) On or before April 15 of each year every licensee shall file with
28 the administrator and, in the case of a supervised financial organization
29 with its supervisory official or agency, a composite annual report in the
30 form prescribed by the administrator relating to all loans made by such
31 licensee. The administrator shall consult with comparable officials in other
32 states for the purpose of making the kinds of information required in
33 annual reports uniform among the states. Information contained in annual
34 reports shall be confidential and may be published only in composite form.

35 (6)(7) No person required to be licensed or file notification a licensee
36 or a consumer credit filer or an assignee or servicer of a consumer credit
37 transaction under this act shall:

38 (a) alter, destroy, shred, mutilate, conceal, cover up or falsify any
39 record with the intent to impede, obstruct or influence any investigation by
40 the administrator or the administrator's designee; or

41 (b) alter, destroy, shred, mutilate or conceal a record with the intent to
42 impair the object's integrity or availability for use in a proceeding before
43 the administrator or a proceeding brought by the administrator or any

1 *proceeding brought by or before the administrator.*

2 Sec. 46. K.S.A. 16a-2-308 is hereby amended to read as follows: 16a-
3 2-308. ~~If consumer loans in which the finance charge exceeds twelve~~
4 ~~percent (12%), not made pursuant to open end credit or lender credit cards~~
5 ~~issued by a licensed lender, and in which the amount financed is one~~
6 ~~thousand dollars (\$1,000) or less are payable in installments, they shall be~~
7 ~~scheduled to be payable in substantially equal installments at substantially~~
8 ~~equal periodic intervals except to the extent that the schedule of payments~~
9 ~~is adjusted to the seasonal or irregular income of the debtor, and~~

10 (a) ~~over a period of not more than thirty-seven (37) calendar months~~
11 ~~if the amount financed is more than three hundred dollars (\$300), or~~

12 (b) ~~over a period of not more than twenty-five (25) calendar months~~
13 ~~if the amount financed is three hundred dollars (\$300) or less. The debtor's~~
14 ~~schedule of payments may be extended to a longer repayment period~~
15 ~~subsequent to the execution of the loan agreement pursuant to K.S.A. 16a-~~
16 ~~2-502 or 16a-2-503, and amendments thereto. The default of the borrower~~
17 ~~shall not be considered as having extended the loan beyond the prescribed~~
18 ~~time limits.~~
19 *Supervised loans not made pursuant to open-end credit or*
20 *lender credit cards issued by a supervised lender and in which the amount*
21 *financed is \$1,000 or less and the principal of which is payable in more*
22 *than a single payment must be scheduled to be payable in substantially*
23 *equal installments at equal periodic intervals except to the extent that the*
24 *schedule of payments is adjusted to the seasonal or irregular income of*
25 *the debtor and over a period of not more than 25 months.*

25 Sec. 47. K.S.A. 16a-2-309 is hereby amended to read as follows: 16a-
26 2-309. A licensee may conduct the business of making loans under K.S.A.
27 16a-1-101 through 16a-9-102 *et seq.*, and amendments thereto, within any
28 office, room or place of business in which any other business is solicited or
29 engaged in; or in association or conjunction therewith, unless the
30 ~~commissioner shall find, after a hearing,~~ *administrator finds* that the other
31 business is of such nature that such conduct tends to conceal ~~evasion of~~
32 ~~such portion a violation~~ of this act or of the rules and regulations made
33 thereunder and shall order such licensee in writing to desist from such
34 conduct.

35 Sec. 48. K.S.A. 16a-2-310 is hereby amended to read as follows: 16a-
36 2-310. (†) No person required to be licensed or ~~registered~~ *required to be a*
37 *consumer credit filer* under this act shall directly or indirectly:

38 (a) Delay closing of a loan for the purpose of increasing interest,
39 costs, fees or charges payable by the borrower;

40 (b) misrepresent the material facts or make false promises intended to
41 influence, persuade or induce a consumer to enter into a loan;

42 (c) misrepresent to or conceal from an applicant for a loan, a
43 ~~mortgagor~~ *guarantor* or a lender, material facts, terms or conditions of a

1 transaction to which the person required to be licensed or ~~registered~~
2 *required to be a consumer credit filer* is a party;

3 (d) engage in any transaction, practice or business conduct that is not
4 in good faith or that operates a fraud upon any person in connection with
5 ~~the making of or purchase or sale of any loan~~ *any consumer credit*
6 *transaction*;

7 (e) ~~receive compensation for making a residential mortgage loan~~
8 ~~where the licensee or registrant has otherwise acted as a real estate broker~~
9 ~~or agent in connection with the sale of the real estate which secures the~~
10 ~~mortgage transaction unless the person required to be licensed or~~
11 ~~registered has provided written disclosure to the person from whom~~
12 ~~compensation is collected that the person is receiving compensation both~~
13 ~~for making the loan and for real estate broker or agent services;~~

14 (f) ~~engage in any fraudulent lending or underwriting practices;~~

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

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

24 (i) ~~(e)~~ transfer, assign or attempt to transfer or assign, a license or
25 registration to any other person; or assist or ~~aid~~ *aid* and abet any person
26 who does not hold a valid license or registration under this act in engaging
27 in the conduct of mortgage business *requiring a license*;

28 (j) ~~(f)~~ solicit or enter into a contract with a borrower that provides in
29 substance that the person required to be licensed or ~~registered~~ *required to*
30 *be a consumer credit filer* may earn a fee or commission through best
31 efforts to obtain a loan even though no loan is actually obtained for the
32 borrower; *or*

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

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

43 (m) ~~(g)~~ fail to comply with the uniform consumer credit code, or rules

1 and regulations promulgated thereunder; or fail to comply with any other
2 state or federal law, including the rules and regulations promulgated
3 thereunder, applicable to any business authorized or conducted under the
4 uniform consumer credit code.

5 ~~(2) This section shall be part of and supplemental to the uniform~~
6 ~~consumer credit code.~~

7 Sec. 49. K.S.A. 16a-2-401 is hereby amended to read as follows: 16a-
8 2-401. (1) For any consumer loan incurred pursuant to ~~open-end~~ *open-end*
9 credit, including, without limitation, a loan pursuant to a lender credit card,
10 a lender may charge a finance charge at any rate agreed to by the parties,
11 subject, however, to the limitations on prepaid finance charges set forth in
12 subsection ~~(6)~~ (4). This subsection does not apply to a consumer loan
13 secured by a first mortgage or a second mortgage.

14 (2) For any consumer loan incurred pursuant to ~~closed-end~~ *closed-*
15 *end* credit, a lender may charge a periodic finance charge, calculated
16 accordingly to the actuarial method, not to exceed: ~~(a) 36% per annum on~~
17 ~~the portion of the unpaid balance which is \$860 or less, and (b) 21% per~~
18 ~~annum on the portion of the unpaid balance which exceeds \$860, subject,~~
19 ~~however to the limitations on prepaid finance charges set forth in~~
20 ~~subsection (6). This subsection does not apply to a consumer loan secured~~
21 ~~by a first mortgage or a second mortgage.~~

22 (3) For any consumer loan secured by a second mortgage or a
23 consumer loan secured by an interest in a manufactured home as defined
24 by 42 U.S.C. § 5402(6), a lender may charge a periodic finance charge,
25 calculated according to the actuarial method, not to exceed 18% per
26 annum, subject, however to the limitations on prepaid finance charges set
27 forth in subsection (6). This subsection does not apply if the lender and the
28 consumer agree in writing that the finance charge for the loan is governed
29 by K.S.A. 16-207(b), and amendments thereto.

30 (4) If the parties to a consumer loan secured by a first mortgage or a
31 consumer loan secured by an interest in a manufactured home as defined
32 by 42 U.S.C. § 5402(6) agree in writing to make the transaction subject to
33 the uniform consumer credit code, then the periodic finance charge for the
34 loan, calculated according to the actuarial method, may not exceed 18%
35 per annum, subject, however to the limitations on prepaid finance charges
36 set forth in subsection (6).

37 ~~(5)~~(3) This section does not limit or restrict the manner of calculating
38 the finance charge, whether by way of add-on, discount or otherwise, so
39 long as the rate and the amount of the finance charge does not exceed that
40 permitted by this section.

41 ~~(6)~~(4) Prepaid finance charges on consumer loans are limited ~~as~~
42 ~~follows:~~

43 ~~(a) For a consumer loan secured by a first mortgage or a second~~

1 mortgage, or a consumer loan secured by an interest in a manufactured
2 home as defined by 42 U.S.C. § 5402(6), prepaid finance charges in an
3 amount not to exceed 8% of the amount financed may be charged,
4 provided that the aggregate amount of prepaid finance charges payable to
5 the lender or any person related to the lender do not exceed 5% of the
6 amount financed; and

7 (b) ~~for any other consumer loan, prepaid finance charges in to an~~
8 amount not to exceed the lesser of 2% of the amount financed or \$100 ~~may~~
9 ~~be charged \$300.~~

10 Prepaid finance charges permitted under this subsection are in addition
11 to finance charges permitted under subsection (1), ~~(2), (3) and (4)~~ (2), as
12 applicable. Prepaid finance charges permitted under this subsection are
13 fully earned when paid and are non-refundable, unless the parties agree
14 otherwise in writing.

15 ~~(7) The finance charge limitations in subsections (3) and (4) do not~~
16 ~~apply to a consumer loan the finance charge for which is governed by~~
17 ~~subsection (h) of K.S.A. 16-207, and amendments thereto.~~

18 ~~(8) If a loan secured by a first mortgage constitutes a "consumer loan"~~
19 ~~under subsection (17) of K.S.A. 16a-1-301, and amendments thereto, by~~
20 ~~virtue of the loan-to-value ratio exceeding 100% at the time the loan is~~
21 ~~made, then the periodic finance charge for the loan shall not exceed that~~
22 ~~authorized by subsection (b) of K.S.A. 16-207, and amendments thereto,~~
23 ~~but the loan is subject to the limitations on prepaid finance charges set~~
24 ~~forth in paragraph (a) of subsection (6), which prepaid finance charges~~
25 ~~may be charged in addition to the finance charges permitted under~~
26 ~~subsection (b) of K.S.A. 16-207, and amendments thereto.~~

27 ~~(9)(5) If, within 12 months after the date of the original loan, a lender~~
28 ~~or a person related to the lender refinances a loan with respect to which a~~
29 ~~prepaid finance charge was payable to the same lender pursuant to~~
30 ~~subsection (6) (4), then the following apply:~~

31 ~~(a) If a prepaid finance charge with respect to the original loan was~~
32 ~~payable to the lender pursuant to paragraph (a) of subsection (6), then the~~
33 ~~aggregate amount of prepaid finance charges payable to the lender or any~~
34 ~~person related to the lender with respect to the new loan may not exceed~~
35 ~~5% of the additional amount financed.~~

36 ~~(b) If a prepaid finance charge with respect to the original loan was~~
37 ~~payable to the lender pursuant to paragraph (b) of subsection (6) (4), then~~
38 ~~the aggregate amount of prepaid finance charges payable to the lender or~~
39 ~~any person related to the lender with respect to the new loan may not~~
40 ~~exceed the lesser of 2% of the additional amount financed or \$100 \$300.~~

41 ~~(e)(b) For purposes of this subsection, "additional amount financed"~~
42 ~~means the difference between:~~

43 (i) The amount financed for the new loan, less the amount of all

1 closing costs incurred in connection with the new loan which are not
2 included in the prepaid finance charges for the new loan; and

3 (ii) the unpaid principal balance of the original loan.

4 ~~(10)(6)~~ For any period in which a finance charge is due on a
5 consumer loan pursuant to ~~open-end~~ *open-end* credit, the parties may agree
6 on a minimum amount.

7 ~~(11) If the parties to a contract for deed to real estate agree in writing~~
8 ~~to make the transaction subject to the uniform consumer credit code, then~~
9 ~~the transaction is subject to the same limitations as set forth in subsections~~
10 ~~(4) and (6) for a consumer loan secured by a first mortgage.~~

11 ~~(12)(7)~~ This section does not apply to a payday loan governed by
12 K.S.A. 16a-2-404, and amendments thereto.

13 Sec. 50. K.S.A. 16a-2-402 is hereby amended to read as follows: 16a-
14 2-402. (1) This section applies only to consumer loans pursuant to ~~open-~~
15 ~~end~~ *open-end* credit.

16 (2) A charge may be made in each billing cycle which is a percentage
17 of an amount no greater than:

18 (a) The average daily balance of the account, which is the sum of the
19 actual amounts outstanding each day during the billing cycle divided by
20 the number of days in the cycle; *or*

21 (b) the unpaid balance of the account on the last day of the billing
22 cycle.

23 (3) If the billing cycle is monthly, the charge may not exceed $\frac{1}{12}$ of
24 the annual rate agreed to by the consumer. If the billing cycle is not
25 monthly, the maximum charge is that percentage which bears the same
26 relation to the applicable monthly percentage as the number of days in the
27 billing cycle bears to 30. For the purposes of this section, a variation of not
28 more than four days from month to month is "the last day of the billing
29 cycle."

30 Sec. 51. K.S.A. 16a-2-403 is hereby amended to read as follows: 16a-
31 2-403. No ~~seller or lessor person or retailer doing business~~ in any sales,
32 ~~service or lease transaction or any credit or debit card issuer with a~~
33 ~~customer~~ may impose a surcharge on a ~~card holder~~ *customer* who elects to
34 use a credit or debit card in lieu of payment by cash, check or similar
35 means. A surcharge is any additional amount imposed at the time of the
36 sales or lease transaction by the merchant, seller or lessor that increases the
37 charge to the buyer or lessee for the privilege of using a credit or debit
38 card as payment unless such person or retailer discloses the amount of
39 such a surcharge through a clear and conspicuous notice to the customer
40 at the point of entry or the point of sale and in advance of such
41 transaction.

42 Sec. 52. K.S.A. 16a-2-404 is hereby amended to read as follows: 16a-
43 2-404. (1) On consumer loan transactions in which cash is advanced:

- 1 (a) With a short term,
- 2 (b) a single payment repayment is anticipated, and
- 3 (c) such cash advance is equal to or less than \$500, a licensed or
- 4 supervised lender may charge an amount not to exceed 15% of the amount
- 5 of the cash advance.

6 (2) The minimum term of any loan under this section shall be 7 days

7 and the maximum term of any loan made under this section shall be 30

8 days.

9 (3) A lender and related interest shall not have more than two loans

10 made under this section outstanding to the same borrower at any one time

11 and shall not make more than three loans to any one borrower within a 30

12 calendar day period. Each lender shall maintain a journal of loan

13 transactions for each borrower which shall include at least the following

14 information:

- 15 (a) Name, address and telephone number of each borrower; and
- 16 (b) date made and due date of each loan.

17 (4) Each loan agreement made under this section shall contain the

18 following notice in at least 10 point bold face type: NOTICE TO

19 BORROWER: KANSAS LAW PROHIBITS THIS LENDER AND

20 THEIR RELATED INTEREST FROM HAVING MORE THAN TWO

21 LOANS OUTSTANDING TO YOU AT ANY ONE TIME. A LENDER

22 CANNOT DIVIDE THE AMOUNT YOU WANT TO BORROW INTO

23 MULTIPLE LOANS IN ORDER TO INCREASE THE FEES YOU PAY.

24 Prior to consummation of the loan transaction, the lender must:

- 25 (a) Provide the notice set forth in this subsection in both English and
- 26 Spanish; and
- 27 (b) obtain the borrower's signature or initials next to the English
- 28 version of the notice or, if the borrower advises the lender that the
- 29 borrower is more proficient in Spanish than in English, then next to the
- 30 Spanish version of the notice.

31 (5) The contract rate of any loan made under this section shall not be

32 more than 3% per month of the loan proceeds after the maturity date. No

33 insurance charges or any other charges of any nature whatsoever shall be

34 permitted, except as stated in subsection (7), including any charges for

35 cashing the loan proceeds if they are given in check form.

36 (6) Any loan made under this section shall not be repaid by proceeds

37 of another loan made under this section by the same lender or related

38 interest. The proceeds from any loan made under this section shall not be

39 applied to any other loan from the same lender or related interest.

40 (7) *A consumer who is unable to repay a payday loan as*

41 *contemplated under this section when due may elect once every 12 months*

42 *to repay the payday loan by means of an extended payment plan. The 12-*

43 *month period shall be measured from the date that the consumer pays in*

1 full an extended payment plan with the lender until the date that the
2 consumer enters another extended payment plan with the lender.

3 (a) To request an extended payment plan, the consumer shall request
4 the plan before close of business on the last business day before the due
5 date of the outstanding payday loan and sign an amendment to the
6 original agreement which memorializes the plan terms.

7 (b) The extended payment plan terms shall allow the consumer to
8 repay the outstanding payday loan including any fee due in at least four
9 substantially equal installments. Each plan installment shall be due on or
10 after a date on which the consumer receives regular income, or, if the
11 consumer has no regular income, due dates shall be a minimum of two
12 weeks between installments. The consumer may prepay an extended
13 payment plan in full at any time without penalty. As long as the consumer
14 complies with the terms of the extended payment plan, the plan shall be at
15 no additional cost to the consumer and the lender shall not charge the
16 consumer any interest or additional fees during the term of the extended
17 payment plan. The lender may, with each payment under the plan by the
18 consumer, provide for the return of the consumer's prior held check and
19 require a new check for the remaining balance under the plan.

20 (c) If the consumer fails to pay any extended payment plan
21 installment when due, the consumer shall be in default of the payment plan
22 and the lender may immediately accelerate payment on the remaining
23 balance and take action to collect all amounts due.

24 (d) No additional payday loan shall be made to the consumer under
25 this section during an extended payment plan.

26 (e) Lenders shall prominently display the availability of extended
27 payment plans where loans are made and shall disclose the availability of
28 extended payment plans in payday loan agreements.

29 (8) On a consumer loan transaction in which cash is advanced in
30 exchange for a personal check, one return check charge may be charged if
31 the check is deemed insufficient as defined in ~~paragraph (e) of subsection~~
32 ~~(1) of~~ K.S.A. 16a-2-501(1)(e), and amendments thereto. Upon receipt of
33 the check from the consumer, the lender shall immediately stamp the back
34 of the check with an endorsement that states: "Negotiated as part of a loan
35 made under K.S.A. 16a-2-404. Holder takes subject to claims and defenses
36 of maker. No criminal prosecution."

37 (8)(9) In determining whether a consumer loan transaction made
38 under the provisions of this section is unconscionable conduct under
39 K.S.A. 16a-5-108, and amendments thereto, consideration shall be given,
40 among other factors, to:

41 (a) The ability of the borrower to repay within the terms of the loan
42 made under this section; or

43 (b) the original request of the borrower for amount and term of the

1 loan are within the limitations under this section.

2 ~~(9)~~(10) A consumer may rescind any consumer loan transaction made
 3 under the provisions of this section without cost not later than the end of
 4 the business day immediately following the day on which the loan
 5 transaction was made. To rescind the loan transaction:

6 (a) A consumer shall inform the lender that the consumer wants to
 7 rescind the loan transaction;

8 (b) the consumer shall return the cash amount of the principal of the
 9 loan transaction to the lender; and

10 (c) the lender shall return any fees that have been collected in
 11 association with the loan.

12 ~~(10)~~(11) A person shall not commit or cause to be committed any of
 13 the following acts or practices in connection with a consumer loan
 14 transaction subject to the provisions of this section:

15 (a) Use any device or agreement that would have the effect of
 16 charging or collecting more fees, charges or interest; or ~~which~~ *that* results
 17 in more fees, charges; or interest being paid by the consumer, than allowed
 18 by the provisions of this section, including, but not limited to:

19 (i) Entering into a different type of transaction with the consumer;

20 (ii) entering into a sales/leaseback or rebate arrangement;

21 (iii) catalog sales; or

22 (iv) entering into any other transaction with the consumer or any
 23 other person that is designed to evade the applicability of this section;

24 (b) use, or threaten to use the criminal process in any state to collect
 25 on the loan;

26 (c) sell any other product of any kind in connection with the making
 27 or collecting of the loan;

28 (d) include any of the following provisions in a loan document:

29 (i) A hold harmless clause;

30 (ii) a confession of judgment clause;

31 (iii) a provision in which the consumer agrees not to assert a claim or
 32 defense arising out of the contract.

33 ~~(11)~~(12) As used in this section, "related interest" shall have the same
 34 meaning as "person related to" in K.S.A. 16a-1-301, and amendments
 35 thereto.

36 ~~(12)~~(13) Any person who facilitates, enables or acts as a conduit or
 37 agent for any third party who enters into a consumer loan transaction with
 38 the characteristics set out in ~~paragraphs (a) and (b) of subsection (1)~~
 39 *subsections (1)(a) and (1)(b)* shall be required to obtain a supervised loan
 40 license pursuant to K.S.A. 16a-2-301, and amendments thereto, regardless
 41 of whether the third party may be exempt from licensure provisions of the
 42 Kansas uniform consumer credit code.

43 ~~(13)~~(14) Notwithstanding that a person may be exempted by virtue of

1 federal law from the interest rate, finance charge and licensure provisions
2 of the Kansas uniform consumer credit code, all other provisions of the
3 code shall apply to both the person and the loan transaction.

4 ~~(14)~~(15) This section shall be supplemental to and a part of the
5 uniform consumer credit code.

6 Sec. 53. K.S.A. 16a-2-501 is hereby amended to read as follows: 16a-
7 2-501. (1) In addition to the finance charge permitted by the parts of this
8 article on maximum finance charges for consumer credit sales and
9 consumer loans ~~(parts 2 and 4)~~, a creditor may contract for and receive the
10 following additional charges in connection with a consumer credit
11 transaction:

12 (a) Official fees and taxes;

13 (b) charges for insurance as described in subsection (2);

14 (c) ~~delinquency charges~~late fees permitted under K.S.A. 16a-2-502,
15 and amendments thereto, and service charges for insufficient ~~checks~~
16 *payment methods* permitted under paragraph (e);

17 (d) charges for other benefits, including insurance, conferred on the
18 consumer, if the benefits are of value to the consumer and if the charges
19 are reasonable in relation to the benefits, are of a type which is not for
20 credit, and are excluded as permissible additional charges from the finance
21 charge by rules and regulations adopted by the administrator;

22 (e) a service charge for an insufficient ~~check as defined and~~
23 ~~authorized by payment method, not to exceed \$30, subject to the~~
24 *limitations contained in this subsection:*

25 (i) For the purposes of this subsection, "~~insufficient-check payment~~
26 *method*" means any ~~check, order or draft instrument as defined in K.S.A.~~
27 ~~84-3-104, and amendments thereto,~~ drawn on any ~~bank, credit union,~~
28 ~~savings and loan association, or other~~ financial institution for the payment
29 of money ~~and delivered in payment, in whole or in part,~~ of preexisting
30 indebtedness of the drawer or maker, which is refused payment by the
31 drawee because the drawer or maker does not have sufficient funds in or
32 credits with the drawee to pay the amount of the ~~check, order or draft~~
33 *instrument* upon presentation, ~~provided that. Any check, order or draft~~
34 ~~which payment instrument that~~ is postdated or delivered to a payee who
35 has knowledge at the time of delivery that the drawer or maker did not
36 have sufficient funds in or credits with the drawee to pay the amount of the
37 check, draft or order upon presentation shall not be deemed an insufficient
38 *check payment instrument.*

39 (ii) ~~"Written notice" shall be presumed to have been given a drawer or~~
40 ~~maker of an insufficient check when notice is sent by first class mail~~
41 ~~addressed to the person to be given notice of such person's address as it~~
42 ~~appears on the insufficient check or to such person's last known address or~~
43 ~~notice provided on a regular monthly statement provides clear notice of the~~

1 ~~insufficient check charge being assessed~~ "Notice" shall be given to a
 2 consumer providing an insufficient payment method by one of the
 3 following methods:

4 (1) First class mail addressed to the consumer's last known address;
 5 or

6 (2) a clear notice of the insufficient payment method charge on the
 7 consumer's regular monthly statement.

8 (iii) ~~When an insufficient check has been given to a payee, the payee~~
 9 ~~may charge and collect a \$10 insufficient check service charge from the~~
 10 ~~drawer or maker, subject to limitations contained in this subsection or, if a~~
 11 ~~larger amount is provided within the contract, the larger amount, if the~~
 12 ~~payee has given the drawer or maker oral or written notice of demand that~~
 13 ~~the amount of the insufficient check plus the insufficient check service~~
 14 ~~charge be paid to the payee within 14 days from the giving of notice. In no~~
 15 ~~event shall the amount of such insufficient check service charge exceed~~
 16 ~~\$30.~~

17 (iv) ~~If the drawer or maker of an insufficient check consumer~~ does
 18 not pay the amount of the insufficient check payment plus the insufficient
 19 check service charge provided for in subsection (iii) to the payee within 14
 20 days from the giving of notice as provided in subsection (iii), the payee
 21 may add the insufficient check service charge to the outstanding balance of
 22 the preexisting indebtedness of the ~~drawer or maker consumer~~ to draw
 23 interest at the contract rate applicable to the preexisting indebtedness.

24 ~~(v)(f)~~ Notwithstanding the provisions of ~~subparagraph (iii) subsection~~
 25 ~~(e)~~, if an insufficient check payment method has been given to a creditor
 26 under a lender credit card, the creditor may charge a service charge for the
 27 insufficient check payment method in an amount not to exceed the amount
 28 agreed to by the drawer or maker.

29 (2) ~~An additional charge may be made for insurance written in~~
 30 ~~connection~~ Except as otherwise provided for in this act, a creditor may
 31 agree to provide insurance and may contract for and receive an additional
 32 charge for insurance written in connection with the transaction, including
 33 vendor's single interest insurance with respect to which the insurer has no
 34 right of subrogation against the consumer but excluding other insurance
 35 protecting the creditor against the consumer's default or other credit loss:

36 (a) With respect to insurance against loss of or damage to property; or
 37 against liability, if the creditor furnishes a clear and specific statement in
 38 writing to the consumer setting forth the cost of the insurance if obtained
 39 from or through the creditor and stating that the consumer may choose the
 40 person through whom the insurance is to be obtained; ~~and~~

41 (b) with respect to consumer credit insurance providing life, accident
 42 and health; or loss of employment coverage, if the insurance coverage is
 43 not a factor in the approval by the creditor of the extension of credit, and

1 this fact is clearly disclosed in writing to the consumer, and if, in order to
 2 obtain the insurance in connection with the extension of credit, the
 3 consumer gives specific affirmative written indication of the consumer's
 4 desire to do so after written disclosure to the consumer of the cost thereof;

5 *(c) a creditor need not make a separate charge for insurance*
 6 *provided or required by such creditor. This act does not authorize the*
 7 *issuance of any insurance prohibited under any statute, or rule thereunder,*
 8 *governing the business of insurance; and*

9 *(d) the excess amount of a charge for insurance provided for in*
 10 *agreements in violation of this act is an excess charge for the purposes of*
 11 *this act.*

12 (3) With respect to a consumer loan or a consumer credit sale in
 13 either case pursuant to ~~open-end~~ *open-end* credit, a creditor may charge the
 14 following fees in an amount not to exceed that agreed to by the consumer:

15 (a) Fees on a monthly or annual basis;

16 (b) over-limit fees; and

17 (c) cash advance fees. The fees permitted under this subsection are in
 18 addition to any finance charges, additional charges or other charges
 19 permitted by the uniform consumer credit code.

20 (4) A charge not exceeding \$5 per payment, if the borrower makes a
 21 single installment payment by authorizing a creditor, verbally or in
 22 writing, to ~~write a check or process a payment through use of the~~
 23 ~~automated clearing house procedures on the borrower's checking account,~~
 24 *make a payment through electronic methods* subject to the following
 25 limitations:

26 ~~(A)(a)~~ *(a)* No charge shall be assessed if the creditor also collects a
 27 ~~delinquency late fee~~ *delinquency late fee* on the same installment; and

28 ~~(B)(b)~~ *(b)* no charge shall be assessed where the consumer has agreed in
 29 writing with the creditor to make all scheduled payments through the use
 30 of ~~the automated clearing house procedures~~ *electronic methods*.

31 Sec. 54. K.S.A. 16a-2-502 is hereby amended to read as follows: 16a-
 32 2-502. (1) The parties to a consumer credit transaction may contract for a
 33 ~~delinquency charge late fee~~ *delinquency charge late fee* on any installment not paid in full within 10
 34 *calendar* days after its scheduled or deferred due date in an amount not
 35 exceeding 5% of the unpaid amount of the installment or \$25, whichever is
 36 less.

37 (2) As an alternative to the ~~delinquency charge late fee~~ *delinquency charge late fee* set forth in
 38 subsection (1), the parties to a consumer credit transaction may contract
 39 for a ~~delinquency charge late fee~~ *delinquency charge late fee* not to exceed \$10 on any installment not
 40 paid in full within 10 *calendar* days after its scheduled or deferred due
 41 date, except that if the scheduled payment amount is \$25 or less, the
 42 maximum ~~delinquency charge late fee~~ *delinquency charge late fee* shall be \$5.

43 (3) A ~~delinquency charge late fee~~ *delinquency charge late fee* may be collected only once on an

1 installment however long it remains in default. A ~~delinquency charge late~~
 2 ~~fee~~ may be collected at the time it ~~accrues~~ *is assessed* or at any time
 3 thereafter.

4 (4) ~~No delinquency charge may be collected on an installment which~~
 5 ~~is paid in full within 10 days after its scheduled or deferred installment due~~
 6 ~~date even though an earlier maturing installment or a delinquency charge~~
 7 ~~on an earlier installment may not have been paid in full~~ *No late fee may be*
 8 *assessed when such a fee or charge is attributable solely to failure of the*
 9 *consumer to pay a late fee on an earlier installment and the payment is*
 10 *otherwise a periodic payment received on the due date, or within 10*
 11 *calendar days after its scheduled or deferred installment due date.*

12 (5) ~~For delinquency charge purposes, a payment made prior to the~~
 13 ~~due date of the next installment payment shall be applied to the previous~~
 14 ~~installment. For all other purposes, payments are applied to installments in~~
 15 ~~the order in which they fall due.~~

16 (6) ~~Notwithstanding subsections (1), (2), (4) and (5) (4), the parties to~~
 17 ~~a lender credit card agreement may contract for a delinquency charge late~~
 18 ~~fee in an amount agreed to by the consumer and may impose such charge~~
 19 ~~on any installment not paid in full on the next business day following the~~
 20 ~~scheduled due date of the delinquent late payment.~~

21 (7)(6) ~~Notwithstanding subsections (1), (2), (4), (5) and (6) (4), no~~
 22 ~~delinquency charge late fee may be collected on a lender credit card~~
 23 ~~installment which is paid in full on the next business day following the~~
 24 ~~scheduled or deferred due date even though an earlier maturing installment~~
 25 ~~or a delinquency charge late fee on an earlier installment may not have~~
 26 ~~been paid in full.~~

27 Sec. 55. K.S.A. 16a-2-504 is hereby amended to read as follows: 16a-
 28 2-504. With respect to a consumer credit transaction, the creditor may by
 29 agreement with the consumer refinance the unpaid balance ~~and may~~
 30 ~~contract for and receive a finance charge based on the amount financed~~
 31 ~~resulting from the refinancing at a rate not exceeding that permitted by the~~
 32 ~~provisions on finance charge for consumer credit sales other than open end~~
 33 ~~credit (section 16a-2-201) if a consumer credit sale is refinanced, or for~~
 34 ~~consumer loans (subsections (1) or (2) of section 16a-2-401, whichever is~~
 35 ~~appropriate) if a consumer loan is refinanced, including any accrued~~
 36 ~~charges.~~ For the purpose of determining the finance charge permitted, the
 37 amount financed resulting from the refinancing *refinanced* shall be
 38 ~~comprised~~ of the total of the unpaid balance and the accrued charges on
 39 the date of the refinancing.

40 Sec. 56. K.S.A. 16a-2-505 is hereby amended to read as follows: 16a-
 41 2-505. (1) If a consumer owes an unpaid balance to a creditor with respect
 42 to a consumer credit transaction and becomes obligated on another
 43 consumer credit transaction with the same creditor, the parties may agree

1 to a consolidation resulting in a single schedule of payments. The parties
 2 may agree to add the unpaid amount of the amount financed and accrued
 3 charges on the date of consolidation to the amount financed with respect to
 4 the subsequent consumer credit transaction.

5 The creditor may contract for and receive a finance charge as provided
 6 in subsection (2) based on the aggregate amount financed resulting from
 7 the consolidation.

8 (2) If the debts consolidated arise exclusively from consumer credit
 9 sales the transaction is a consolidation ~~with respect to~~ *as* a consumer credit
 10 sale and the amount of the finance charge is governed by the provisions on
 11 finance charge for consumer credit sales other than ~~open end~~ *open-end*
 12 credit ~~(section 16a-2-201)~~. If the debts consolidated include a debt arising
 13 from a consumer loan, the transaction is a consolidation ~~with respect to~~ *as*
 14 a consumer loan and the amount of the finance charge is governed by the
 15 provisions on finance ~~charge~~ *charges* for consumer loans ~~(subsection (1)~~
 16 ~~or (2) of section 16a-2-401)~~, as appropriate.

17 ~~(3) If a consumer owes an unpaid balance to a creditor with respect to~~
 18 ~~a consumer credit transaction arising out of a consumer credit sale, and~~
 19 ~~becomes obligated on another consumer credit transaction arising out of~~
 20 ~~another consumer credit sale by the same seller, the parties may agree to a~~
 21 ~~consolidation resulting in a single schedule of payments either pursuant to~~
 22 ~~subsection (1) or by adding together the unpaid balances with respect to~~
 23 ~~the two sales.~~

24 Sec. 57. K.S.A. 16a-2-506 is hereby amended to read as follows: 16a-
 25 2-506. ~~(1) If the agreement with respect to a consumer credit transaction~~
 26 ~~contains covenants by the consumer to perform certain duties pertaining to~~
 27 ~~insuring or preserving collateral and the creditor pursuant to the agreement~~
 28 ~~pays for performance of the duties on behalf of the consumer, he may, after~~
 29 ~~giving prior notification and giving the buyer reasonable opportunity to~~
 30 ~~perform, add the amounts paid to the debt~~ *If a consumer credit transaction*
 31 *agreement requires a consumer to insure or preserve the collateral and the*
 32 *consumer fails to do so, after providing the consumer prior notification*
 33 *and a reasonable opportunity to perform, the creditor may pay for the*
 34 *performance of insuring or preserving the collateral on the consumer's*
 35 *behalf and may add the payment to the unpaid debt balance. Within a*
 36 *reasonable time after advancing any sums, ~~he~~ the creditor shall state to the*
 37 *buyer in writing the amount of the sums advanced, any charges with*
 38 *respect to this amount, and any revised payment schedule and, if the duties*
 39 *of the consumer performed by the creditor pertain to insurance, a brief*
 40 *description of the insurance paid for by the creditor including the type and*
 41 *amount of coverages. No further information need be given.*

42 (2) A finance charge may be made for sums advanced pursuant to
 43 subsection (1) at a rate not ~~exceeding~~ *to exceed* the rate stated to the

1 consumer pursuant to law in a disclosure statement, except that with
 2 respect to ~~open-end~~ *open-end* credit the amount of the advance may be
 3 added to the unpaid balance of the debt and the creditor may make a
 4 finance charge not exceeding that permitted by the appropriate provisions
 5 on finance charge for consumer credit sales pursuant to ~~open-end~~ *open-end*
 6 credit (~~section 16a-2-202~~) or for consumer loans (~~subsection (1) or (2) of~~
 7 ~~section 16a-2-401~~), whichever is appropriate.

8 Sec. 58. K.S.A. 16a-2-507 is hereby amended to read as follows: 16a-
 9 2-507. (1) (a) With respect to a consumer credit transaction, the agreement
 10 may provide for the payment by the debtor of reasonable costs of
 11 collection *paid to outside parties*, including, but not limited to, court costs,
 12 attorney fees and collection agency fees, except that such costs of
 13 collection *shall not*:

14 (1)(A) ~~May not~~ Include costs that were incurred by a salaried
 15 employee of the creditor or its assignee;

16 (2)(B) ~~may not~~ include the recovery of both attorney fees and
 17 collection agency fees; ~~and~~ *or*

18 (3)(C) ~~shall not~~ be in excess of 15% of the unpaid debt after default.

19 (2) A provision in violation of this ~~section~~ *is subsection shall be*
 20 unenforceable.

21 (b) *Reasonable collection costs and attorney fees pursuant to*
 22 *subsection (a) shall be considered separate from reasonable expenses*
 23 *incurred on realizing a security interest pursuant to K.S.A. 16a-3-402, and*
 24 *amendments thereto.*

25 Sec. 59. K.S.A. 16a-2-508 is hereby amended to read as follows: 16a-
 26 2-508. The parties may agree to add the unpaid balance of a consumer
 27 credit transaction not made pursuant to ~~open-end~~ *open-end* credit to the
 28 consumer's ~~open-end~~ *open-end* credit account with the creditor. The unpaid
 29 balance so added ~~is~~ *shall be* an amount equal to the amount financed
 30 determined according to the provisions on finance charge on refinancing
 31 (~~section 16a-2-504~~).

32 Sec. 60. K.S.A. 16a-2-510 is hereby amended to read as follows: 16a-
 33 2-510. (1) Upon prepayment in full, but not upon a refinancing (~~K.S.A.~~
 34 ~~16a-2-504, and amendments thereto~~), of a consumer credit transaction
 35 other than one pursuant to ~~open-end~~ *open-end* credit, the creditor may
 36 collect or retain a minimum charge of ~~\$5 in a transaction which had an~~
 37 ~~amount financed of \$75 or less, or \$7.50 in a transaction which had an~~
 38 ~~amount financed of more than \$75~~ *\$10*, if the minimum charge was
 39 contracted for and the finance charge earned at the time of prepayment is
 40 less than the minimum charge contracted for. ~~In those instances where the~~
 41 ~~amounts financed are under or over \$75 and~~ *If* the finance charge is less
 42 than the minimum provided therefor, then the finance charge so contracted
 43 may be retained as the minimum finance charge.

1 (2) If the maturity is accelerated for any reason and judgment is
 2 obtained, the judgment shall be taken in accordance with the provisions of
 3 K.S.A. 16-205, and amendments thereto.

4 (3) Upon prepayment in full of a consumer credit contract by
 5 proceeds of consumer credit insurance, ~~K.S.A. 16a-4-103, and~~
 6 ~~amendments thereto~~, the consumer or the consumer's estate *is shall be*
 7 entitled to the same rebate as though the consumer had prepaid the
 8 agreement on the date the proceeds of the insurance are paid to the
 9 creditor, but no later than 10 business days after satisfactory proof of loss
 10 is furnished to the creditor.

11 Sec. 61. K.S.A. 16a-3-201 is hereby amended to read as follows: 16a-
 12 3-201. A lessor shall disclose to the consumer the information required by
 13 rules and regulations adopted by the administrator pursuant to K.S.A. ~~16a-~~
 14 ~~6-117 16a-6-104~~, and amendments thereto.

15 Sec. 62. K.S.A. 16a-3-202 is hereby amended to read as follows: 16a-
 16 3-202. (1) A written agreement ~~which that~~ requires or provides for the
 17 signature of the consumer and ~~which that~~ evidences a consumer ~~credit~~
 18 ~~transaction loan or consumer credit sale~~ other than one pursuant to ~~open~~
 19 ~~end open-end~~ credit shall contain a clear, conspicuous, and printed notice
 20 to the consumer ~~that he such consumer~~ should not sign the agreement
 21 before reading it, and ~~that he such consumer~~ is entitled to a copy of the
 22 agreement and ~~to~~ may prepay the unpaid balance at any time without
 23 penalty. The following notice if clearly and conspicuously printed
 24 complies with this ~~section~~ subsection:

25 NOTICE TO CONSUMER: 1. Do not sign this agreement before you
 26 read it. 2. You are entitled to a copy of this agreement. 3. You may prepay
 27 the unpaid balance at any time without penalty.

28 (2) *A written agreement that requires or provides for the signature of*
 29 *the consumer and that evidences a consumer lease shall contain a clear,*
 30 *conspicuous and printed notice to the consumer that such consumer*
 31 *should not sign the agreement before reading it and that such consumer is*
 32 *entitled to a copy of the agreement. The following notice if clearly and*
 33 *conspicuously printed complies with this subsection:*

34 NOTICE TO CONSUMER: 1. Do not sign this agreement before you
 35 read it. 2. You are entitled to a copy of this agreement.

36 Sec. 63. K.S.A. 16a-3-203 is hereby amended to read as follows: 16a-
 37 3-203. (1) The consumer is authorized to pay the original creditor until he
 38 receives notification of assignment of rights to payment pursuant to a
 39 consumer credit transaction and that payment is to be made to the
 40 assignee. A notification which does not reasonably identify the rights
 41 assigned is ineffective. If requested by the consumer, the assignee must
 42 ~~seasonably furnish~~ *provide* reasonable proof that the assignment has been
 43 made ~~and unless he does so~~ or the consumer may pay the original creditor.

1 (2) *If the payment is received by the assignor of a consumer credit*
2 *contract for the benefit of the assignee, the date of payment shall be*
3 *deemed to be the day payment is received by the assignor.*

4 Sec. 64. K.S.A. 16a-3-204 is hereby amended to read as follows: 16a-
5 3-204. (1) If a creditor makes a change in the terms of an ~~open-end~~ *open-*
6 *end* credit account without complying with this section any additional cost
7 or charge to the consumer resulting from the change is an excess charge
8 and subject to the remedies available to consumers ~~(section 16a-5-201)~~
9 and to the administrator ~~(section 16a-6-113)~~.

10 (2) A creditor may change the terms, including the finance charge, of
11 an ~~open-end~~ *open-end* credit account whether or not the change is
12 authorized by prior agreement. Except as provided in subsection (3), the
13 ~~lender~~ *creditor* shall give to the consumer written notice of any change at
14 least 30 days before the effective date of the change.

15 (3) The notice specified in subsection (2) is not required if:

16 (a) The consumer elects to pay an amount designated on a billing
17 statement as including a new charge for a benefit offered to the consumer
18 when the benefit and charge constitute the change in terms and when the
19 billing statement also states the amount payable if the new charge is
20 excluded;

21 (b) the change involves no significant cost to the consumer; or

22 (c) the change applies only to debts incurred after a date specified in a
23 notice of the change.

24 (4) The notice provided for in this section is given to the consumer
25 when mailed to the consumer at the address used by the creditor for
26 sending periodic billing statements.

27 Sec. 65. K.S.A. 16a-3-205 is hereby amended to read as follows: 16a-
28 3-205. (1) The creditor shall deliver or mail to the consumer, without
29 request, a written receipt for each payment by coin or currency on an
30 obligation pursuant to a consumer credit transaction. A periodic statement
31 showing a payment received by mail ~~complies~~ *or electronic methods shall*
32 *comply* with this subsection.

33 (2) Upon written request of the consumer, the person to whom an
34 obligation is owed pursuant to a consumer credit transaction, other than
35 one pursuant to ~~open-end~~ *open-end* credit, shall provide a written
36 statement of the dates and amounts of payments made within the past 15
37 months and the amount required to pay the debt in full. The statement shall
38 be provided without charge.

39 (3) After a consumer has fulfilled all obligations with respect to a
40 consumer credit transaction, other than one pursuant to ~~open-end~~ *open-end*
41 credit, the person to whom the obligation was owed shall upon request of
42 the consumer, deliver or mail to the consumer written evidence
43 acknowledging payment in full of all obligations with respect to the

1 transaction.

2 Sec. 66. K.S.A. 16a-3-206 is hereby amended to read as follows: 16a-
3 3-206. A creditor shall disclose to the consumer the information required
4 by the rules and regulations adopted by the administrator pursuant to
5 K.S.A. ~~16a-6-117~~ 16a-6-104, and amendments thereto.

6 Sec. 67. K.S.A. 16a-3-208 is hereby amended to read as follows: 16a-
7 3-208. (1) ~~A supervised lender shall not~~ *No person shall make*, directly or
8 indirectly, ~~make~~ a false, misleading or deceptive advertisement regarding
9 loans or the availability of loans.

10 (2) ~~A supervised lender shall not~~ *No person shall advertise any size*
11 ~~of loan~~ *the size of any loan*, security required for a loan, rate of charge or
12 other conditions of lending except with the full intent of making loans at
13 those rates, or lower rates, and under those conditions or conditions more
14 favorable to the consumer, to loan applicants who meet the standards or
15 qualifications prescribed ~~by the supervised lender~~.

16 (3) This section shall be supplemental to and a part of the uniform
17 consumer credit code.

18 Sec. 68. K.S.A. 16a-3-209 is hereby amended to read as follows: 16a-
19 3-209. (a) Unless otherwise specifically stated, for the purposes of K.S.A.
20 16a-1-101 ~~through 16a-9-102~~ *et seq.*, and amendments thereto, in
21 computing any period of time, calendar days shall be used. The day of the
22 act, event or default from which the designated period of time begins to
23 run shall not be included. Saturdays, Sundays and legal holidays are
24 included, unless the last day of the period so computed is a Saturday,
25 Sunday or a legal holiday, in which event the period runs until the end of
26 the next day which is not a Saturday, Sunday or a legal holiday. "Legal
27 holiday" includes any day designated as a holiday by the Federal Reserve
28 Bank.

29 (b) This section shall be part of and supplemental to the uniform
30 consumer credit code.

31 Sec. 69. K.S.A. 16a-3-301 is hereby amended to read as follows: 16a-
32 3-301. (1) With respect to a consumer credit sale, a seller may take a
33 security interest in the property sold. In addition, a seller may take a
34 security interest in goods upon which services are performed or in which
35 goods sold are installed or to which they are annexed; or in land to which
36 the goods are affixed or which is maintained, repaired or improved as a
37 result of the sale of the goods or services, if in the case of a security
38 interest in land the debt secured is \$3,000 or more, or, in the case of a
39 security interest in goods the debt secured is \$900 or more. Except as
40 provided with respect to ~~cross-collateral (K.S.A. 16a-3-302, and~~
41 ~~amendments thereto)~~ *cross-collateral*, a seller may not otherwise take a
42 security interest in property of the buyer to secure the debt arising from a
43 consumer credit sale.

1 (2) With respect to a consumer lease, a lessor may not take a security
2 interest in property of the lessee to secure the ~~debt~~ *amount payable* arising
3 from the lease.

4 (3) A security interest taken in violation of this section ~~is~~ *shall be*
5 void.

6 Sec. 70. K.S.A. 16a-3-302 is hereby amended to read as follows: 16a-
7 3-302. (1) In addition to contracting for a security interest pursuant to the
8 provisions on security in sales or leases (~~section 16a-3-301~~), a seller in a
9 consumer credit sale may secure the debt arising from the sale by
10 contracting for a security interest in other property if as a result of a prior
11 sale the seller has an existing security interest in the other property. The
12 seller may also contract for a security interest in the property sold in the
13 subsequent sale as security for the previous debt.

14 (2) If the seller contracts for a security interest in other property
15 pursuant to this section, the ~~rate of credit service~~ *finance* charge thereafter
16 on the aggregate unpaid balances so secured may not exceed that permitted
17 if the balances so secured were consolidated pursuant to the provisions on
18 consolidation involving a refinancing (~~subsection (1) of section 16a-2-~~
19 ~~505~~). The seller ~~has~~ *shall have* a reasonable time after so contracting to
20 make any adjustments required by this section. "Seller" in this section does
21 not include an assignee not related to the original seller.

22 Sec. 71. K.S.A. 16a-3-303 is hereby amended to read as follows: 16a-
23 3-303. (1) If debts arising from two or more consumer credit sales, other
24 than sales pursuant to ~~open end~~ *open-end* credit, are secured by cross-
25 collateral (~~section 16a-3-302~~) or consolidated into one debt payable on a
26 single schedule of payments, and the debt is secured by security interests
27 taken with respect to one or more of the sales, payments received by the
28 seller after the taking of the cross-collateral or the consolidation are
29 deemed, for the purpose of determining the amount of the debt secured by
30 the various security interests, to have been first applied to the payment of
31 the debts arising from the sales first made. To the extent debts are paid
32 according to this section, security interests in items of property *shall*
33 terminate as the ~~debts~~ *debt* originally incurred with respect to each item is
34 paid.

35 (2) Payments received by the seller upon an ~~open end~~ *open-end* credit
36 account are deemed, for the purpose of determining the amount of the debt
37 secured by the various security interests, to have been applied first to the
38 payment of finance charges in the order of their entry to the account and
39 then to the payment of debts in the order in which the entries to the
40 account showing the debts were made.

41 (3) If the debts consolidated arose from two or more sales made on
42 the same day, payments received by the seller are deemed, for the purpose
43 of determining the amount of the debt secured by the various security

1 interests, to have been applied first to the payment of the smallest debt.

2 Sec. 72. K.S.A. 16a-3-304 is hereby amended to read as follows: 16a-
3 3-304. (1) ~~A creditor may not~~ *No creditor may* engage in a pattern or
4 practice of using multiple agreements to obtain a higher finance charge
5 than would otherwise be permitted by the provisions of ~~the article on~~
6 ~~finance charges and related provisions (article 2)~~ *K.S.A. 16a-1-101 et seq.,*
7 *and amendments thereto.*

8 (2) The excess amount of finance charge ~~provided for~~ in this section
9 is an excess charge for the purposes of the provisions on rights of parties
10 (~~K.S.A. 16a-5-201, and amendments thereto~~) and the provisions on civil
11 actions by ~~administrator (K.S.A. 16a-6-113, and amendments thereto)~~ *the*
12 *administrator.*

13 Sec. 73. K.S.A. 16a-3-305 is hereby amended to read as follows: 16a-
14 3-305. (1) ~~A creditor may not~~ *No creditor may* take an assignment of
15 earnings of the consumer for payment or as security for payment of a debt
16 arising out of a consumer credit transaction. An assignment of earnings in
17 violation of this section is unenforceable by the assignee of the earnings
18 and revocable by the consumer. This section does not prohibit an employee
19 from authorizing deductions from ~~his~~ *such employee's* earnings if the
20 authorization is revocable.

21 (2) A sale of unpaid earnings made in consideration of the payment of
22 money to or for the account of the seller of the earnings is deemed to be a
23 loan to ~~him~~ *the consumer* secured by an assignment of earnings.

24 Sec. 74. K.S.A. 16a-3-306 is hereby amended to read as follows: 16a-
25 3-306. ~~A consumer may not~~ *No consumer or any other person acting on*
26 *the consumer's behalf may* authorize any person to confess judgment on a
27 claim arising out of a consumer credit transaction. An authorization in
28 violation of this section ~~is~~ *shall be* void.

29 Sec. 75. K.S.A. 16a-3-307 is hereby amended to read as follows: 16a-
30 3-307. With respect to a consumer credit sale or consumer lease, the
31 creditor ~~may not take a negotiable instrument other than a currently dated~~
32 ~~check~~ *shall only accept currently dated negotiable instruments* as evidence
33 of the obligation of the buyer or lessee. *For purposes of this section, a*
34 *creditor shall not make the consumer credit sale contract or consumer*
35 *lease contract a negotiable instrument.*

36 Sec. 76. K.S.A. 16a-3-308 is hereby amended to read as follows: 16a-
37 3-308. ~~With respect to~~ *In a consumer credit transaction with a balloon*
38 *payment,* other than one pursuant to ~~open end credit if any scheduled~~
39 ~~payment is more than twice as large as the average of earlier scheduled~~
40 ~~payments~~ *open-end credit,* the consumer ~~has~~ *shall have* the right to
41 refinance the amount of that payment at the time it is due without penalty.
42 The terms of the refinancing shall be no less favorable to the consumer
43 than the terms of the original transaction. ~~These provisions do~~ *The*

1 *provisions of this section shall not apply to the extent that the payment*
2 *schedule is adjusted to the seasonal or irregular income of the consumer or*
3 *to a note secured by a real estate mortgage.*

4 Sec. 77. K.S.A. 16a-3-309 is hereby amended to read as follows: 16a-
5 3-309. ~~With respect to a consumer credit sale or consumer lease the seller~~
6 ~~or lessor may not give or offer to give a rebate or discount or otherwise~~
7 ~~pay or offer to pay value to the buyer or lessee as an inducement for a sale~~
8 ~~or lease in consideration of his giving to the seller or lessor the names of~~
9 ~~prospective purchasers or lessees, or otherwise aiding the seller or lessor in~~
10 ~~making a sale or lease to another person, if the earning of the rebate,~~
11 ~~discount or other value is contingent upon the occurrence of an event~~
12 ~~subsequent to the time the buyer or lessee agrees to buy or lease. If a buyer~~
13 ~~or lessee is induced by a violation of this section to enter into a consumer~~
14 ~~credit sale or consumer lease, the agreement is unenforceable by the seller~~
15 ~~or lessor and the buyer or lessee, at his option, may rescind the agreement~~
16 ~~or retain the goods delivered and the benefit of any services performed,~~
17 ~~without any obligation to pay for them~~ (1) *(a) In a consumer credit sale,*
18 *no seller shall offer or give a rebate, discount or otherwise pay value to*
19 *the buyer in consideration of the buyer giving the seller the names of third*
20 *parties, or otherwise assist the seller in making a sale to a third party*
21 *when the earning of the rebate, discount or other value is contingent upon*
22 *an event subsequent to the time of the sale.*

23 *(b) In a consumer lease, no lessor shall offer or give a rebate,*
24 *discount or otherwise pay value to the lessee in consideration of the lessee*
25 *giving to the lessor the names of third parties, or otherwise aiding the*
26 *lessor in leasing to a third party when the earning of the rebate, discount*
27 *or other value is contingent upon an event subsequent to the time of the*
28 *lease.*

29 *(2) If a buyer or lessee is induced by a violation of this section to*
30 *enter into a consumer credit sale or consumer lease, the agreement shall*
31 *be unenforceable by the seller or lessor and the buyer or lessee, at the*
32 *buyer's or lessee's option, may rescind the agreement or retain the goods*
33 *delivered and the benefit of any services performed, without any*
34 *obligation to pay for them.*

35 Sec. 78. K.S.A. 16a-3-402 is hereby amended to read as follows: 16a-
36 3-402. Except for reasonable expenses incurred in realizing on a security
37 interest, the agreement with respect to a consumer credit transaction may
38 not provide for any charges as a result of default by the consumer other
39 than those authorized by K.S.A. 16a-1-101 through 16a-9-102 *et seq.*, and
40 *amendments thereto.* A provision in violation of this section ~~is~~ *shall be*
41 *unenforceable.*

42 Sec. 79. K.S.A. 16a-3-403 is hereby amended to read as follows: 16a-
43 3-403. (1) If the issuer of a credit card, other than a lender credit card, is

1 the seller or lessor or a person related to the seller or lessor, or if the seller
2 or lessor is licensed, franchised; or permitted by the issuer to do business
3 under the business name or trade name or designation of the issuer, the
4 issuer is subject to all claims and defenses of a buyer or lessee against the
5 seller or lessor arising out of a sale or lease of goods or services pursuant
6 to the credit card.

7 (2) The issuer of a lender credit card is not subject to the claims and
8 defenses of a buyer or lessee arising out of a sale or lease of goods or
9 services pursuant to a lender credit card except where a home solicitation
10 sale is involved. For purposes of this section, a "home solicitation sale"
11 means a sale to a consumer of goods (other than equipment used in a
12 business) or services, in which the seller or a person acting for the seller
13 engages in a personal solicitation (other than by telephone or mail) of the
14 sale at a residence of the buyer. It does not include a sale made pursuant to
15 prior negotiations between the parties at a business establishment at a fixed
16 location where goods or services are offered or exhibited for sale.

17 (3) Claims or defenses of a buyer or lessee against a seller or lessor in
18 connection with a home solicitation sale may be asserted against the issuer
19 of the lender credit card only:

20 (a) If the buyer or lessee has attempted in good faith to obtain
21 reasonable satisfaction from the seller or lessor with respect to claims or
22 defenses, and

23 (b) to the extent of the amount owing to the issuer with respect to the
24 sale or lease at the time the issuer has notice of the claims or defenses.
25 Notice of the claims or defenses may be given prior to the attempt
26 specified in paragraph (a). The notice, which may generally state the
27 claims or defenses, ~~must~~ shall be in writing ~~but may be~~ and sent to ~~either~~
28 the seller ~~(or lessor)~~, the lessor or to the issuer.

29 (4) For the purpose of determining the amount owing to the issuer
30 with respect to a sale or lease under a credit card, payments received upon
31 the account are deemed to have been first applied to the payment of
32 finance charges in the order of their entry to the account and then to the
33 payment of debts in the order in which the entries of the debts are made to
34 the account.

35 (5) An agreement may not provide for greater rights for an issuer of a
36 credit card than this section permits.

37 Sec. 80. K.S.A. 16a-3-404 is hereby amended to read as follows: 16a-
38 3-404. (1) An assignee of the rights of the seller or lessor under a
39 consumer credit sale or consumer lease is subject to all claims and
40 defenses of the buyer or lessee against the seller or lessor arising out of the
41 sale or lease, notwithstanding that:

42 (a) There is an agreement to the contrary; or

43 (b) the assignee is a holder in due course of a negotiable instrument

1 issued in violation of the provisions prohibiting certain negotiable
2 instruments (~~section 16a-3-307~~).

3 (2) Claims or defenses of a buyer or lessee specified in subsection (1)
4 may be asserted against the assignee only:

5 (a) If the buyer or lessee has attempted in good faith to obtain
6 reasonable satisfaction from the seller or lessor with respect to claims or
7 defenses;

8 (b) if the buyer or lessee, when requested in writing to do so by the
9 seller, lessor or the assignee, has given notice in writing to the seller or
10 lessee and the assignee stating the claims or defenses;

11 (c) to the extent of the amount owing to the assignee with respect to
12 the sale or lease at the time the assignee has notice of such claims or
13 defenses. Such notice, generally stating the claims or defenses, ~~must~~ *shall*
14 be in writing and shall be sent to the seller (or lessor); and to the assignee
15 if the buyer or lessee has received written notice of the name and address
16 of the assignee; and

17 (d) as a matter of defense to or setoff against claims by the assignee
18 except that the buyer or lessee shall not be prohibited from bringing an
19 action to rescind an obligation against which it has a defense or setoff.

20 (3) For the purpose of determining the amount owing to the assignee
21 with respect to the sale or lease:

22 (a) Payments received by the assignee after the consolidation of two
23 or more consumer credit sales, other than pursuant to ~~open-end~~ *open-end*
24 credit, are deemed to have been first applied to the payment of the sales
25 first made; if the sales consolidated arose from sales made on the same
26 day, payments are deemed to have been first applied to the smaller or
27 smallest sale or sales;

28 (b) payments received upon an ~~open-end~~ *open-end* credit account are
29 deemed to have been first applied to the payment of finance charges in the
30 order of their entry to the account and then to the payment of debts in the
31 order in which the entries of the debts are made to the account.

32 (4) Any action by an assignee or the original seller or lessor who has
33 repurchased an obligation under subsection (5) to enforce an obligation, or
34 any action by a buyer or lessee to rescind; or any request to repurchase the
35 obligation, shall be brought within one year from the date of receipt of the
36 notice of the claim or defense, or default in payment, whichever is later.

37 (5) If a claim or defense of a buyer or lessee against a seller or lessor
38 is asserted against an assignee, the assignee may, regardless of any existing
39 agreement to the contrary, require the seller or lessor to repurchase the
40 obligation for an amount equal to the price for which the obligation was
41 assigned, plus that portion of the finance charge earned by the assignee,
42 minus payments previously made to the assignee by the buyer or lessee. In
43 any action by the buyer or lessee to rescind an obligation held by the

1 assignee, the seller or lessor shall have the right to intervene and any party
2 may join as a defendant any manufacturer or other person who is or may
3 be liable to another party. If the action to rescind is brought against the
4 seller or lessor, such seller or lessor shall have the right to join as a
5 defendant any manufacturer or other person who is or may be liable to
6 such seller or lessor.

7 (6) An agreement may not provide greater rights for an assignee than
8 this section permits.

9 Sec. 81. K.S.A. 16a-3-405 is hereby amended to read as follows: 16a-
10 3-405. (1) A lender, other than the issuer of a lender credit card, who, with
11 respect to a particular transaction, makes a consumer loan for the purpose
12 of enabling a consumer to buy or lease from a particular seller or lessee
13 goods or services is subject to all claims and defenses of the consumer
14 against the seller or lessor arising from that sale or lease of the goods and
15 services if:

16 (a) The lender knows that the seller or lessor arranged, for a
17 commission, brokerage; or referral fee, for the extension of credit by the
18 lender;

19 (b) the lender is a person related to the seller or lessor unless the
20 relationship is remote or is not a factor in the transaction;

21 (c) the seller or lessor guarantees the loan or otherwise assumes the
22 risk or loss by the lender upon the loan;

23 (d) the lender directly supplies the seller or lessor with the contract
24 document used by the consumer to evidence the loan, and the seller or
25 lessor significantly participates in the preparation of the document; or

26 (e) the loan is conditioned upon the consumer's purchase or lease of
27 the goods or services from the particular seller or lessor, but the lender's
28 payment of proceeds of the loan to the seller or lessor does not in itself
29 establish that the loan was so conditioned.

30 (2) Claims or defenses of a buyer or lessee specified in subsection (1)
31 may be asserted against the lender only:

32 (a) If the buyer or lessee has attempted in good faith to obtain
33 reasonable satisfaction from the seller or lessor with respect to the claims
34 or defenses;

35 (b) if the buyer or lessee, when requested in writing to do so by the
36 seller, lessor or the lender, has given notice in writing to the seller or lessee
37 and the lender stating the claims or defenses;:

38 (c) to the extent of the amount owing to the lender with respect to the
39 sale or lease at the time the lender has notice of the claims or defenses.
40 Such notice, generally stating the claims or defenses, ~~must~~ shall be in
41 writing and shall be sent to the seller (or lessor), and to the lender if the
42 buyer or lessee has received written notice of the name and address of the
43 lender; and

1 (d) as a matter of defense to or setoff against claims by the lender
2 except that the buyer or lessee shall not be prohibited from bringing an
3 action to rescind an obligation against which it has a defense or setoff.

4 (3) For the purpose of determining the amount owing to the lender
5 with respect to the sale or lease:

6 (a) Payments received by the lender after the consolidation of two or
7 more consumer loans, other than pursuant to ~~open-end~~ *open-end* credit, are
8 deemed to have been first applied to the payment of the loans first made; if
9 the loans consolidated arose from loans made on the same day, payments
10 are deemed to have been first applied to the smaller or smallest loan or
11 loans; and

12 (b) payments received upon an ~~open-end~~ *open-end* credit account are
13 deemed to have been first applied to the payment of finance charges in the
14 order of their entry to the account and then to the payment of debts in the
15 order in which the entries of the debts are made to the account.

16 (4) An agreement may not provide greater rights for a lender than this
17 section permits.

18 (5) Notwithstanding any of the foregoing, the participation of the
19 lender or lessor in any of the arrangements between seller and buyer to
20 insure the perfection of the lender or lessor's security interest shall not in
21 itself establish a relationship described and controlled by subsection (1).

22 Sec. 82. K.S.A. 16a-4-102 is hereby amended to read as follows: 16a-
23 4-102. (1) Except as provided in subsection (2), this article applies to
24 insurance provided or to be provided in relation to a consumer credit
25 transaction.

26 (2) The provision on cancellation by a creditor ~~(section 16a-4-304)~~
27 applies to loans the primary purpose of which is the financing of
28 insurance. No other provision of this article applies to insurance so
29 financed.

30 Sec. 83. K.S.A. 16a-4-104 is hereby amended to read as follows: 16a-
31 4-104. (1) Except as otherwise provided in this article and subject to the
32 provisions on additional charges ~~(section 16a-2-501)~~ and maximum
33 finance charges ~~(parts 2 and 4 of article 2)~~, a creditor may agree to provide
34 insurance, and may contract for and receive a charge for insurance separate
35 from and in addition to other charges. A creditor need not make a separate
36 charge for insurance provided or required by him. This act does not
37 authorize the issuance of any insurance prohibited under any statute, or
38 rule thereunder, governing the business of insurance.

39 (2) The excess amount of a charge for insurance provided for in
40 agreements in violation of this article is an excess charge for the purposes
41 of the provisions of the article on remedies and penalties ~~(article 5)~~ as to
42 effect of violations on rights of parties ~~(section 16a-5-201)~~ and of the
43 provisions of the article on administration ~~(article 6)~~ as to civil actions by

1 the administrator (~~section 16a-6-113~~).

2 Sec. 84. K.S.A. 16a-4-105 is hereby amended to read as follows: 16a-
3 4-105. If a creditor agrees with a consumer to provide insurance:

4 (1) The insurance shall be evidenced by an individual policy or
5 certificate of insurance delivered to the consumer, or sent to ~~him at his~~
6 ~~address as stated by him, within thirty (30) such consumer at such~~
7 *consumer's address, as provided, within 30 days* after the term of the
8 insurance commences under the agreement between the creditor and
9 consumer; or

10 (2) the creditor shall promptly notify the consumer of any failure or
11 delay in providing the insurance.

12 Sec. 85. K.S.A. 16a-4-106 is hereby amended to read as follows: 16a-
13 4-106. (1) In applying the provisions of this act on unconscionability
14 (~~sections 16a-5-108 and 16a-6-111~~) to a separate charge for insurance,
15 consideration shall be given, among other factors, to:

16 (a) Potential benefits to the consumer including the satisfaction of his
17 obligations;

18 (b) the creditor's need for the protection provided by the insurance;
19 and

20 (c) the relation between the amount and terms of credit granted and
21 the insurance benefits provided.

22 (2) If consumer credit insurance otherwise complies with this article
23 and other applicable law, *then* neither the amount ~~nor~~, the term of the
24 insurance nor the ~~amount of a charge therefor~~ *of the insurance* is
25 unconscionable.

26 Sec. 86. K.S.A. 16a-4-107 is hereby amended to read as follows: 16a-
27 4-107. (1) Except as provided in subsection (2), if a creditor contracts for
28 or receives a separate charge for insurance, the amount charged to the
29 consumer for the insurance may not exceed the premium to be charged by
30 the insurer, as computed at the time the charge to the consumer is
31 determined, conforming to any rate filings required by law and made by
32 the insurer with the commissioner of insurance.

33 (2) A creditor who provides consumer credit insurance in relation to
34 ~~open-end open-end~~ credit may calculate the charge to the consumer in each
35 billing cycle by applying the current premium rate to the unpaid balance of
36 debt in the same manner as is permitted with respect to finance charges ~~by~~
37 ~~the provisions on finance charges~~ for consumer credit sales pursuant to
38 ~~open-end open-end~~ credit (~~section 16a-2-202~~).

39 Sec. 87. K.S.A. 16a-4-108 is hereby amended to read as follows: 16a-
40 4-108. (1) Upon prepayment in full of a consumer credit sale or consumer
41 loan by the proceeds of consumer credit insurance, the consumer or ~~his~~
42 *such consumer's* estate is entitled to a refund of any portion of a separate
43 charge for insurance which by reason or prepayment is retained by the

1 creditor or returned ~~to him~~ by the insurer unless the charge was computed
2 from time to time on the basis of the balances of the consumer's account.

3 (2) This article does not require a creditor to grant a refund or credit
4 to the consumer if all refunds and credits due ~~to him~~ under this article
5 amount to less than ~~one dollar (\$1)~~ \$5, and except as provided in
6 subsection (1) does not require the creditor to account to the consumer for
7 any portion of a separate charge for insurance because:

8 (a) The insurance is terminated by performance of the insurer's
9 obligation;

10 (b) the creditor pays or accounts for premiums to the insurer in
11 amounts and at times determined by the agreement between them; or

12 (c) the creditor receives directly or indirectly under any policy of
13 insurance a gain or advantage not prohibited by law.

14 (3) Except as provided in subsection (2), the creditor shall promptly
15 make or cause to be made an appropriate refund or credit to the consumer
16 ~~with respect to~~ *for* any separate charge made ~~to him~~ *such consumer* for
17 insurance if:

18 (a) The insurance is not provided or is provided for a shorter term
19 than that for which the charge to the consumer for insurance was
20 computed; or

21 (b) the insurance terminates prior to the end of the term for which it
22 was written because of prepayment in full or otherwise.

23 (4) A refund or credit required by subsection (3) is appropriate as to
24 amount if it is computed according to a method prescribed or approved by
25 the commissioner of insurance or a formula filed by the insurer with the
26 commissioner of insurance at least ~~thirty (30)~~ 30 days before the
27 consumer's right to a refund or credit becomes determinable, unless the
28 method or formula is employed after the commissioner of insurance
29 notifies the insurer that ~~he disapproves it~~ *it was not approved*.

30 Sec. 88. K.S.A. 16a-4-109 is hereby amended to read as follows: 16a-
31 4-109. If a creditor requires insurance, the consumer shall have the option
32 of providing the required insurance through an existing policy of insurance
33 owned or controlled by the consumer, or through a policy ~~to be~~ obtained
34 and paid for by the consumer, but the creditor may for reasonable cause
35 decline the insurance provided by the consumer. The creditor shall provide
36 the consumer with a written notice on the loan agreement or other
37 instrument fully informing the consumer of the option authorized by this
38 section.

39 Sec. 89. K.S.A. 16a-4-110 is hereby amended to read as follows: 16a-
40 4-110. (1) A creditor may not contract for or receive a separate charge for
41 insurance in connection with a refinancing ~~(section 16a-2-504)~~ or a
42 consolidation ~~(section 16a-2-505)~~, unless:

43 (a) The consumer agrees at or before the time of refinancing or

1 consolidation that the charge may be made;

2 (b) the consumer is or is to be provided with insurance for an amount
3 or a term, or insurance of a kind, in addition to that to which ~~he said~~
4 *consumer* would have been entitled had there been no refinancing or
5 consolidation;

6 (c) the consumer receives a refund or credit on account of any
7 unexpired term of existing insurance in the amount that would be required
8 if the insurance were terminated (~~section 16a-4-108~~); and

9 (d) the charge does not exceed the amount permitted by this article
10 (~~section 16a-4-107~~).

11 (2) A creditor may not contract for or receive a separate charge for
12 insurance which duplicates insurance with respect to which the creditor
13 has previously contracted for or received a separate charge.

14 Sec. 90. K.S.A. 16a-4-111 is hereby amended to read as follows: 16a-
15 4-111. The administrator and the commissioner of insurance are authorized
16 and directed to consult and assist one another in maintaining compliance
17 with this article. They may jointly pursue investigations, prosecute suits,
18 and take other official action, as may seem to them appropriate, if either of
19 them is otherwise empowered to take the action. If the administrator is
20 informed of a violation or suspected violation by an insurer of this article,
21 or of the insurance laws, rules, and regulations of this state, ~~he the~~
22 *administrator* shall advise the commissioner of insurance of the
23 circumstances.

24 Sec. 91. K.S.A. 16a-4-112 is hereby amended to read as follows: 16a-
25 4-112. (1) To the extent that the commissioner's responsibility under this
26 article requires, the commissioner of insurance shall ~~issue rules with~~
27 ~~respect to~~ *adopt rules and regulations pursuant to this act regarding*
28 *insurers, and with respect to* refunds (~~K.S.A. 16a-4-108, and amendments~~
29 ~~thereto~~), forms, schedules of premium rates and charges (~~K.S.A. 16a-4-~~
30 ~~203, and amendments thereto~~), ~~and~~, the commissioner's approval or
31 disapproval ~~thereof~~ *of such rules and regulations adopted* and, in case of
32 violation, may make an order for compliance.

33 (2) Each provision on administrative procedures and judicial review
34 of the article on administration (~~article 6~~) ~~which~~ *that* applies to and
35 governs administrative action taken by the administrator also applies to
36 and governs all administrative action taken by the commissioner of
37 insurance pursuant to this section.

38 Sec. 92. K.S.A. 16a-4-201 is hereby amended to read as follows: 16a-
39 4-201. (1) Consumer credit insurance provided by a creditor may be
40 subject to the furnishing of evidence of insurability satisfactory to the
41 insurer. Whether or not such evidence is required, the term of the insurance
42 shall commence no later than when the consumer becomes obligated to the
43 creditor or when the consumer applies for the insurance, whichever is later,

1 except as follows:

2 (a) If any required evidence of insurability is not furnished until more
3 than ~~thirty (30)~~ 30 days after the term would otherwise commence, the
4 term may commence on the date when the insurer determines the evidence
5 to be satisfactory; or

6 (b) if the creditor provides insurance not previously provided
7 covering debts previously created, the term may commence on the
8 effective date of the policy.

9 (2) The originally scheduled term of the insurance shall extend at
10 least until the due date of the last scheduled payment of the debt except as
11 follows:

12 (a) If the insurance relates to an ~~open-end~~ *open-end* credit account,
13 the term need extend only until the payment of the debt under the account
14 and may be sooner terminated after at least ~~thirty (30)~~ 30 days' notice to
15 the consumer; or

16 (b) if the consumer is advised in writing that the insurance will be
17 written for a specified shorter time, the term need extend only until the end
18 of the specified time.

19 (3) The term of the insurance shall not extend more than ~~fifteen (15)~~
20 15 days after the originally scheduled due date of the last scheduled
21 payment of the debt unless it is extended without additional cost to the
22 consumer or as an incident to a deferral, refinancing- or consolidation.

23 Sec. 93. K.S.A. 16a-4-202 is hereby amended to read as follows: 16a-
24 4-202. (1) Except as provided in subsection (2):

25 (a) In the case of consumer credit insurance providing life coverage,
26 the amount of insurance may not initially exceed the debt and, if the debt
27 is payable in installments, may not at any time exceed the greater of the
28 scheduled or actual amount of the debt; or

29 (b) in the case of any other consumer credit insurance, the total
30 amount of periodic benefits payable may not exceed the total of scheduled
31 unpaid installments of the debt, and the amount of any periodic benefit
32 may not exceed the original amount of debt divided by the number of
33 periodic installments in which it is payable.

34 (2) If consumer credit insurance is provided in connection with an
35 ~~open-end~~ *open-end* credit account, the amounts payable as insurance
36 benefits may be reasonably commensurate with the amount of debt as it
37 exists from time to time. If consumer credit insurance is provided in
38 connection with a commitment to grant credit in the future, the amounts
39 payable as insurance benefits may be reasonably commensurate with the
40 total from time to time of the amount of debt and the amount of the
41 commitment.

42 Sec. 94. K.S.A. 16a-4-203 is hereby amended to read as follows: 16a-
43 4-203. (1) A creditor may not use a form or a schedule of premium rates or

1 charges, the filing of which is required by this section, if the commissioner
 2 of insurance has disapproved the form or schedule and has notified the
 3 insurer of ~~his~~ *such* disapproval. A creditor may not use a form or schedule
 4 unless:

5 (a) The form or schedule has been on file with the commissioner of
 6 insurance for ~~thirty (30)~~ 30 days, or ~~has earlier been approved by him~~ *was*
 7 *approved by the commissioner prior to such creditor's use*; and

8 (b) the insurer has complied with this section with respect to the
 9 insurance.

10 (2) Except as provided in subsection (3), all policies, certificates of
 11 insurance, notices of proposed insurance, applications for insurance,
 12 endorsements and riders relating to consumer credit insurance delivered or
 13 issued for delivery in this state, and the schedules of premium rates or
 14 charges pertaining thereto, shall be filed by the insurer with the
 15 commissioner of insurance. Within ~~thirty (30)~~ 30 days after the filing of
 16 any form or schedule, ~~he~~ *the commissioner* shall disapprove it if the
 17 premium rates or charges are unreasonable in relation to the benefits
 18 provided under the form, or if the form contains provisions ~~which~~ *that* are
 19 unjust, unfair, inequitable; or deceptive, or encourage misrepresentation of
 20 the coverage, or are contrary to any provision of the insurance code or of
 21 any rule or regulation promulgated thereunder.

22 (3) If a group policy has been delivered in another state, the forms to
 23 be filed by the insurer with the commissioner of insurance are the group
 24 certificates and notices of proposed insurance. ~~He~~ *The commissioner* shall
 25 approve them if:

26 (a) ~~They~~ *Such group certificates and notices of proposed insurance*
 27 provide the information that would be required if the group policy were
 28 delivered in this state; and

29 (b) the applicable premium rates or charges do not exceed those
 30 established by his rules or regulations.

31 Sec. 95. K.S.A. 16a-4-301 is hereby amended to read as follows: 16a-
 32 4-301. (1) A creditor may not contract for or receive a separate charge for
 33 insurance against loss of or damage to property unless:

34 (a) The insurance covers a substantial risk of loss of or damage to
 35 property related to the credit transaction;

36 (b) the amount, terms, and conditions of the insurance are reasonable
 37 in relation to the character and value of the property insured or to be
 38 insured; and

39 (c) the term of the insurance is reasonable in relation to the terms of
 40 credit.

41 (2) The term of the insurance is reasonable if it is customary and does
 42 not extend substantially beyond a scheduled maturity.

43 (3) A creditor may not contract for or receive a separate charge for

1 insurance against loss of or damage to property unless property is
2 purchased pursuant to a credit card or in a transaction pursuant to ~~open-end~~
3 *open-end* credit, or unless the amount financed exclusive of charges for the
4 insurance is \$900 or more, and the value of the property is \$900 or more.

5 Sec. 96. K.S.A. 16a-4-304 is hereby amended to read as follows: 16a-
6 4-304. A creditor shall not request cancellation of a policy of property or
7 liability insurance except after the consumer's default or in accordance
8 with a written authorization by the consumer, and in either case the
9 cancellation ~~does~~ *shall* not take effect until written notice is delivered to
10 the consumer or mailed to ~~him at his address as stated by him such~~
11 *consumer at the address provided*. The notice shall state that the policy
12 may be cancelled on a date not less than ~~ten (10)~~ 10 days after the notice is
13 delivered, or, if the notice is mailed, not less than ~~thirteen (13)~~ 13 days
14 after it is mailed.

15 Sec. 97. K.S.A. 16a-5-103 is hereby amended to read as follows: 16a-
16 5-103. (1) This section applies to a deficiency on a consumer credit sale of
17 goods or services and on a consumer loan in which the lender is subject to
18 defenses arising from sales ~~(K.S.A. 16a-3-405, and amendments thereto)~~;
19 a consumer is not liable for a deficiency unless the creditor has disposed of
20 the goods in good faith and in a commercially reasonable manner.

21 (2) If the seller repossesses or voluntarily accepts surrender of goods
22 which were the subject of the sale and in which ~~he~~ *the seller* has a security
23 interest, the buyer is not personally liable to the seller for the unpaid
24 balance of the debt arising from the sale of a commercial unit of goods of
25 which the cash sale price was \$1,000 or less, and the seller is not obligated
26 to resell the collateral unless the buyer has paid 60% or more of the cash
27 price and has not signed after default a statement renouncing ~~his such~~
28 *buyer's* rights in the collateral.

29 (3) If the seller repossesses or voluntarily accepts surrender of goods
30 which were not the subject of the sale but in which the seller has a security
31 interest to secure a debt arising from a sale of goods or services or a
32 combined sale of goods and services and the cash price of the sale was
33 \$1,000 or less, the buyer is not personally liable to the seller for the unpaid
34 balance of the debt arising from the sale, and the seller's duty to dispose of
35 the collateral is governed by ~~the provisions on disposition of collateral~~
36 ~~(K.S.A. 84-9-610, and amendments thereto)~~ ~~of the uniform commercial~~
37 ~~code~~.

38 (4) If the lender takes possession or voluntarily accepts surrender of
39 goods in which ~~he~~ *such lender* has a security interest to secure a debt
40 arising from a consumer loan in which the lender is subject to defenses
41 arising from sales ~~(K.S.A. 16a-3-405, and amendments thereto)~~, and the
42 net proceeds of the loan paid to or for the benefit of the debtor were
43 \$1,000 or less, the debtor is not personally liable to the lender for the

1 unpaid balance of the debt arising from the loan and the lender's duty to
 2 dispose of the collateral is governed by ~~the provisions on disposition of~~
 3 ~~collateral~~ (K.S.A. 84-9-610, and amendments thereto) ~~of the uniform~~
 4 ~~commercial code.~~

5 (5) For the purpose of determining the unpaid balance of consolidated
 6 debts or debts pursuant to ~~open-end~~ *open-end* credit, the allocation of
 7 payments to a debt shall be determined in the same manner as provided ~~for~~
 8 ~~determining the amount of debt secured by various security interests~~ (*by*
 9 K.S.A. 16a-3-303, and amendments thereto).

10 (6) The consumer may be liable in damages to the creditor if the
 11 consumer has wrongfully damaged the collateral or if, after default and
 12 demand, the consumer has wrongfully failed to make the collateral
 13 available to the creditor.

14 (7) If the creditor ~~elects to bring~~ *brings* an action against the
 15 consumer for a debt arising from a consumer credit sale of goods or
 16 services or from a consumer loan in which the lender is subject to defenses
 17 arising from sales ~~(K.S.A. 16a-3-405, and amendments thereto)~~, when
 18 under this section the creditor would not be entitled to a deficiency
 19 judgment if the creditor took possession of the collateral, and obtains
 20 judgment:

21 (a) The creditor may not take possession of the collateral, and

22 (b) the collateral is not subject to levy or sale on execution or similar
 23 proceedings pursuant to the judgment.

24 Sec. 98. K.S.A. 16a-5-107 is hereby amended to read as follows: 16a-
 25 5-107. (1) If it is the understanding of the creditor and the consumer ~~at the~~
 26 ~~time an extension of credit is made~~ that delay in making repayment or
 27 failure to make repayment could result in the use of violence or other
 28 criminal means to cause harm to the person, reputation; or property of any
 29 person, the repayment of the extension of credit is unenforceable through
 30 civil judicial processes against the consumer.

31 (2) ~~If it is shown that~~ an extension of credit was made at an annual
 32 rate exceeding ~~thirty-six percent (36%)~~ *36%* calculated according to the
 33 actuarial method and that the creditor then had a reputation for the use or
 34 threat of use of violence or other criminal means to cause harm to the
 35 person, reputation; or property of any person to collect extensions of credit
 36 or to punish the nonrepayment thereof, there is prima facie evidence that
 37 the extension of credit was unenforceable under subsection (1).

38 Sec. 99. K.S.A. 16a-5-108 is hereby amended to read as follows: 16a-
 39 5-108. (1) *The unconscionability of an act or practice is a question for the*
 40 *trier of fact.*

41 (2) With respect to a consumer credit transaction, if the trier of fact
 42 finds:

43 (a) The agreement ~~to have been~~ *was* unconscionable at the time it was

1 made, or ~~to have been~~ was induced by unconscionable conduct, the court
2 may refuse to enforce the agreement; or

3 (b) any clause of the agreement ~~to have been~~ was unconscionable at
4 the time it was made, the court may refuse to enforce the agreement, ~~or~~
5 may enforce the remainder of the agreement without the unconscionable
6 clause; or may so limit the application of any unconscionable clause as to
7 avoid any unconscionable result.

8 ~~(2)~~(3) If it is claimed or appears to the trier of fact that the agreement
9 or any clause thereof may be unconscionable the parties shall be afforded a
10 reasonable opportunity to present evidence as to its setting, purpose, and
11 effect to aid the court in making the determination.

12 ~~(3)~~(4) For the purpose of this section, A charge or practice expressly
13 permitted by this act ~~is not~~ shall not be unconscionable.

14 Sec. 100. K.S.A. 16a-5-111 is hereby amended to read as follows:
15 16a-5-111. (1) ~~This section applies to consumer credit transactions~~ *After a*
16 *consumer has been in default for 10 days for failure to make a required*
17 *payment in a consumer credit transaction payable in installments, a*
18 *creditor may give the consumer the notice described in this section. A*
19 *creditor gives notice to the consumer under this section when the creditor*
20 *delivers the notice to the consumer or delivers or mails the notice to the*
21 *address of the consumer's residence.*

22 (2) *The notice shall be in writing and shall conspicuously state the*
23 *following: The name, address and telephone number of the creditor to*
24 *which payment is to be made, a brief description of the credit transaction,*
25 *the consumer's right to cure the default, the amount of payment and date*
26 *by which payment must be made to cure the default, and the consumer's*
27 *possible liability for the reasonable costs of collection, including, but not*
28 *limited to, court costs, either attorney fees or collection agency fees and*
29 *any other information required by the administrator as set forth by rules*
30 *and regulations or by administrative interpretation.*

31 ~~(3) Except as provided in subsection (3)~~ *With respect to a consumer*
32 *credit transaction payable in installments, after a default consisting only of*
33 *the consumer's failure to make a required payment ~~in a consumer credit~~*
34 *transaction payable in installments, a creditor may neither accelerate*
35 *maturity of the unpaid balance of the obligation nor take possession of*
36 *collateral because of that default until 20 days after a notice of the*
37 *consumer's right to cure ~~(K.S.A. 16a-5-110, and amendments thereto)~~ is*
38 *given. Until 20 days after the notice is given, the consumer may cure all*
39 *defaults consisting of a failure to make the required payment by tendering*
40 *the amount of all unpaid sums due at the time of the tender, without*
41 *acceleration, plus any unpaid ~~delinquency charges~~ late fees. Cure ~~restores~~*
42 *shall restore the consumer to the consumer's rights under the agreement as*
43 *though the defaults had not occurred.*

1 (3)(4) With respect to defaults on the same obligation after a creditor
2 has once given a notice of consumer's right to cure (~~K.S.A. 16a-5-110, and~~
3 ~~amendments thereto~~), this section gives the consumer no right to cure and
4 imposes no limitation on the creditor's right to proceed against the
5 consumer or the collateral.

6 (5) *Unless the consumer voluntarily surrenders the collateral to the*
7 *creditor, the creditor may take possession of the collateral without judicial*
8 *process only if possession can be taken without entry into a dwelling and*
9 *without the use of force or other breach of the peace.*

10 (6) *Nothing in this section shall prohibit a consumer from voluntarily*
11 *surrendering the collateral of the consumer credit transaction and shall*
12 *not prohibit the creditor from thereafter enforcing the creditor's security*
13 *interest in the collateral at any time after surrender.*

14 Sec. 101. K.S.A. 16a-5-201 is hereby amended to read as follows:
15 16a-5-201. (1) If a creditor has violated the provisions of this act applying
16 to collection of excess charges or enforcement of rights (~~subsection (4) of~~
17 ~~section 16a-1-201~~), restrictions on interests in land as security (~~section~~
18 ~~16a-2-307~~), limitations on the schedule of payments or loan terms for
19 supervised loans (~~section 16a-2-308~~), attorney's fees (~~section 16a-2-507~~),
20 security in sales and leases (~~section 16a-3-301~~), assignments of earnings
21 (~~section 16a-3-305~~), authorizations to confess judgment (~~section 16a-3-~~
22 ~~306~~), certain negotiable instruments prohibited (~~section 16a-3-307~~),
23 assignees subject to defenses (~~section 16a-3-404~~), credit card issuer
24 subject to defenses (~~section 16a-3-403~~), or limitations on default charges
25 (~~section 16a-3-402~~), the consumer ~~has a cause of action to~~ may recover
26 actual damages and ~~in addition a right in an action other than~~ *except for a*
27 *class action to recover from the person violating such provisions of this act*
28 *a penalty in an amount determined by the court not less than \$100 nor*
29 *more than \$1,000. With respect to violations arising from sales or loans*
30 *made pursuant to ~~open-end~~ open-end credit, no action pursuant to this*
31 *subsection may be brought more than two years after the violations*
32 *occurred. With respect to violations arising from other consumer*
33 *transactions, no action pursuant to this subsection may be brought more*
34 *than one year after the due date of the last scheduled payment of the*
35 *agreement.*

36 (2) If a creditor has violated the provisions of this act applying to
37 authority to make supervised loans (~~section 16a-2-301~~), the loan is void
38 and the consumer is not obligated to pay either the amount financed or
39 finance charge. If the consumer has paid any part of the amount financed
40 or ~~of the~~ finance charge, the consumer has a right to recover the payment
41 from the person violating this act or from an assignee of that person's
42 rights who undertakes direct *or indirect* collection of payments or
43 enforcement of rights arising from the debt *including, but not limited to,*

1 *loans described in K.S.A. 16a-2-301(1), and amendments thereto.* With
2 respect to violations arising from loans made pursuant to ~~open-end~~ *open-*
3 *end* credit, no action pursuant to this subsection may be brought more than
4 two years after the violation occurred. With respect to violations arising
5 from other loans, no action pursuant to this subsection may be brought
6 more than one year after the due date of the last scheduled payment of the
7 agreement pursuant to which the charge was paid. Persons subject to the
8 penalties in this subsection shall not include attorneys or collection
9 agencies ~~who~~ *that* do not purchase a consumer obligation.

10 (3) A consumer is not obligated to pay a charge in excess of that
11 allowed by this act, and if the consumer has paid an excess charge the
12 consumer has a right to a refund of twice the excess charge. ~~A refund may~~
13 ~~be made by reducing the consumer's obligation by twice the amount of the~~
14 ~~excess charge.~~ If the consumer has paid an amount in excess of the lawful
15 obligation under the agreement, the consumer may recover twice the
16 excess amount from the person who made the excess charge or from an
17 assignee of that person's rights who undertakes direct *or indirect* collection
18 of payments from or enforcement of rights against debtors arising from the
19 debt *including, but not limited to, loans described in K.S.A. 16a-2-301(1),*
20 *and amendments thereto.* Persons subject to the penalties in this subsection
21 shall not include attorneys or collection agencies who do not purchase a
22 consumer obligation.

23 (4) If a creditor has contracted for or received a charge in excess of
24 that allowed by this act, or if a consumer is entitled to a refund and a
25 person liable to the consumer refuses to make a refund within a reasonable
26 time after demand, the consumer may recover from the creditor or the
27 person liable in an action ~~other than~~ *except for* a class action a penalty in
28 an amount determined by the court not less than \$100 or more than \$1,000.
29 With respect to excess charges arising from sales or loans made pursuant
30 to ~~open-end~~ *open-end* credit, no action pursuant to this subsection may be
31 brought more than two years after the time the excess charge was made.
32 With respect to excess charges arising from other consumer credit
33 transactions, no action pursuant to this subsection may be brought more
34 than one year after the due date of the last scheduled payment of the
35 agreement pursuant to which the charge was made. Persons subject to the
36 penalties in this subsection shall not include attorneys or collection
37 agencies who do not purchase a consumer obligation.

38 (5) Except as otherwise provided, no violation of the provisions of
39 K.S.A. 16a-1-101 ~~through 16a-9-102~~ *et seq.*, and amendments thereto,
40 impairs rights on a debt.

41 (6) A creditor has no liability for a penalty under subsection (1) or
42 subsection (4) if within 15 days after discovering an error, and prior to the
43 institution of an action under this section or the receipt of written notice of

1 the error, the creditor notifies the person concerned of the error and
2 corrects the error. If the violation consists of a prohibited agreement,
3 giving the consumer a corrected copy of the writing containing the error is
4 sufficient notification and correction. If the violation consists of an excess
5 charge, correction shall be made by an adjustment or refund.

6 (7) If the creditor establishes by a preponderance of evidence that a
7 violation is unintentional or the result of a bona fide error of law or fact
8 notwithstanding the maintenance of procedures reasonably adapted to
9 avoid any such violation or error, no liability is imposed under subsections
10 (1), (2), and (3), the validity of the transaction is not affected, and no
11 liability is imposed under subsection (4) except for refusal to make a
12 refund.

13 (8) In an action in which it is found that a creditor has violated any
14 provision of K.S.A. 16a-1-101 through ~~16a-9-102~~ *et seq.*, and amendments
15 thereto, the court shall award to the consumer the costs of the action and to
16 the consumer's attorneys their reasonable fees. Reasonable attorney's fees
17 shall be determined by the value of the time ~~reasonably~~ expended by the
18 attorney and not by the amount of the recovery on behalf of the consumer.

19 (9) A creditor who in good faith complies with a written
20 administrative interpretation shall not be subject to any penalties under this
21 section for any act done or omitted in conformity with such written
22 administrative interpretation.

23 Sec. 102. K.S.A. 16a-5-203 is hereby amended to read as follows:
24 16a-5-203. (1) Except as otherwise provided in this section, a creditor
25 who, ~~in violation of the provisions of the rules and regulations adopted by~~
26 ~~the administrator pursuant to K.S.A. 16a-6-117, and amendments thereto,~~
27 fails to disclose information to a person entitled to the information under
28 the provisions of K.S.A. 16a-1-101 through ~~16a-9-102~~ *et seq.*, and
29 amendments thereto, *or under rules and regulations adopted by the*
30 *administrator* is liable to that person in an amount equal to the sum of:

31 (a) Twice the amount of the finance charge in connection with the
32 transaction, but the liability pursuant to this paragraph shall be not less
33 than \$200 or more than \$2,000; and

34 (b) in the case of a successful action to enforce the liability under
35 paragraph (a), the costs of the action together with reasonable attorney's
36 fees as determined by the court.

37 (2) A creditor has no liability under this section if within 15 days after
38 discovering an error, and prior to the institution of an action under this
39 section or the receipt of written notice of the error, the creditor notifies the
40 person concerned of the error and makes whatever adjustments in the
41 appropriate account are necessary to assure that the person will not be
42 required to pay a credit service charge or loan finance charge in excess of
43 the amount or percentage rate actually disclosed.

1 (3) A creditor may not be held liable in any action brought under this
2 section for a violation of the provisions of K.S.A. 16a-1-101 ~~through 16a-~~
3 ~~9-102~~ *et seq.*, and amendments thereto, if the creditor shows by a
4 preponderance of evidence that the violation was not intentional and
5 resulted from a bona fide error notwithstanding the maintenance of
6 procedures reasonably adapted to avoid the error.

7 (4) Any action which may be brought under this section against the
8 original creditor in any credit transaction involving a security interest in
9 land may be maintained against any subsequent assignee of the original
10 creditor where the assignee, its subsidiaries, or affiliates were in a
11 continuing business relationship with the original creditor either at the
12 time the credit was extended or at the time of the assignment, unless the
13 assignment was involuntary; or the assignee shows by a preponderance of
14 evidence that it did not have reasonable grounds to believe that the original
15 creditor was engaged in violations of this act and that it maintained
16 procedures reasonably adapted to apprise it of the existence of the
17 violations.

18 (5) No action pursuant to this section may be brought more than one
19 year after the date of the occurrence of the violation.

20 (6) The liability of the creditor under this section is in lieu of and not
21 in addition to the creditor's liability under the federal truth in lending act;
22 ~~no action with respect to the same violation may be maintained pursuant to~~
23 ~~both this section and the federal truth in lending act.~~

24 Sec. 103. K.S.A. 16a-5-301 is hereby amended to read as follows:
25 16a-5-301. (1) It is unlawful for any person to violate any of the provisions
26 of this act, any rule and regulation adopted or order issued under this act. A
27 conviction for an intentional violation is a class A nonperson misdemeanor.
28 A second or subsequent conviction of this subsection is severity level 7
29 nonperson felony. ~~No person may be imprisoned for the violation of this~~
30 ~~section if such person proves that such person had no knowledge of the~~
31 ~~rule and regulation or order.~~

32 (2) The criminal liability of a person under this section is in lieu of
33 and not in addition to the creditor's criminal liability under the federal truth
34 in lending act. ~~No prosecution of a person with respect to the same~~
35 ~~violation may be maintained pursuant to both this section and the federal~~
36 ~~truth in lending act.~~

37 (3) A person, other than a supervised financial organization or an
38 attorney or collection agency who does not purchase the credit obligation,
39 who willfully engages in the business of entering into consumer credit
40 transactions, or of taking assignments of rights against consumers arising
41 therefrom and undertakes direct *or indirect* collection of payments or
42 enforcement of these rights, without complying with the provisions of this
43 act concerning notification ~~(K.S.A. 16a-6-202, and amendments thereto)~~

1 or payment of fees (~~K.S.A. 16a-6-203, and amendments thereto~~); is guilty
 2 of a class A misdemeanor and upon conviction thereof shall be punished in
 3 the manner provided by law.

4 Sec. 104. K.S.A. 16a-6-104 is hereby amended to read as follows:
 5 16a-6-104. ~~This act shall be administered by the consumer credit~~
 6 ~~commissioner of Kansas* who is also referred to as the administrator.~~

7 (1) In addition to other powers granted by this act, the administrator
 8 ~~within the limitations provided by law~~ may:

9 (a) Receive and act on complaints, take action designed to obtain
 10 voluntary compliance with the provisions of K.S.A. 16a-1-101 ~~to 16a-9-~~
 11 ~~102, inclusive et seq.~~, and amendments thereto, or commence proceedings
 12 on the administrator's own initiative;

13 (b) ~~counsel~~ *provide guidance* to persons and groups on their rights and
 14 duties under K.S.A. 16a-1-101 ~~to 16a-9-102, inclusive et seq.~~, and
 15 amendments thereto;

16 (c) *establish or support* programs for the education of consumers with
 17 respect to credit practices ~~and problems and~~:

18 (A) As a condition in settlements of investigations or examinations,
 19 the administrator ~~may receive~~ *require* a payment designated for consumer
 20 education to be expended as directed by the administrator for such
 21 purpose; *and*

22 (B) *the administrator may fund consumer education programs from*
 23 *operating funds in an amount up to 1% of operating funds.*

24 (d) make studies appropriate to effectuate the purposes and policies of
 25 K.S.A. 16a-1-101 ~~to 16a-9-102, inclusive et seq.~~, and amendments thereto;

26 (e) adopt, amend and revoke rules and regulations to carry out the
 27 specific provisions of K.S.A. 16a-1-101 ~~to 16a-9-102, inclusive et seq.~~,
 28 and amendments thereto, ~~and to implement the requirements of the secure~~
 29 ~~and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289);~~

30 (f) issue, amend and revoke written administrative interpretations.
 31 ~~Such written administrative interpretations shall be approved by the~~
 32 ~~attorney general and published in the Kansas register within 15 days of~~
 33 ~~issuance. The administrator shall annually publish all written~~
 34 ~~administrative interpretations in effect;~~

35 (g) maintain offices within this state; ~~and~~

36 (h) ~~appoint any necessary attorneys, hearing examiners, clerks, and~~
 37 ~~other employees and agents and fix their~~ *set such employees'*
 38 *compensation*, and authorize attorneys appointed under this section to
 39 appear for and represent the administrator in court;

40 (i) examine periodically at intervals the administrator deems
 41 appropriate the loans, business and records of every licensee, ~~registrant or~~
 42 ~~person filing notification pursuant to K.S.A. 16a-6-201 through 16a-6-203,~~
 43 ~~and amendments thereto or consumer credit filer, except licensees which~~

1 *that* are supervised financial organizations. The official or agency
2 responsible for the supervision of each supervised financial organization
3 shall examine the loans, business and records of each such organization in
4 the manner and periodically at intervals prescribed by the administrator. In
5 addition, for the purpose of discovering violations of K.S.A. 16a-1-101
6 ~~through 16a-9-102 et seq.~~, and amendments thereto, or securing
7 information lawfully required, the administrator or the official or agency to
8 whose supervision the organization is subject to K.S.A. 16a-6-105, and
9 amendments thereto, may at any time investigate the loans, business and
10 records of any supervised lender. For examination purposes the
11 administrator shall have free and reasonable access to the offices, places of
12 business and records of the ~~lender, registrant or person filing notification~~
13 ~~licensee or consumer credit filer~~ and the administrator may control access
14 to any documents and records of a licensee, ~~registrant or person filing~~
15 ~~notification under examination or consumer credit filer~~;

16 (j) refer such evidence as may be available concerning violations of
17 this act or of any rule and regulation or order to the attorney general or *in*
18 *consultation with the attorney general* to the proper county or district
19 attorney, who may in the prosecutor's discretion, with or without such a
20 ~~referencee referral~~, institute the appropriate criminal proceedings under ~~this~~
21 ~~act~~. Upon receipt of such reference, the attorney general or the county
22 attorney or district attorney may request that a duly employed attorney of
23 the administrator prosecute or assist in the prosecution of such violation on
24 behalf of the state. Upon approval of the administrator, such employee
25 shall be appointed special prosecutor for the attorney general or the county
26 attorney or district attorney to serve without compensation from the
27 attorney general or the county attorney or district attorney. Such special
28 prosecutor shall have all the powers and duties prescribed by law for
29 assistant attorneys general or assistant county or district attorneys, and
30 such other powers and duties as are lawfully delegated to such special
31 prosecutors by the attorney general or the county attorney or district
32 attorney *the laws of this state*;

33 (k) if deemed necessary by the administrator, require fingerprinting of
34 any applicant, licensee, *owners or* members thereof if a copartnership or
35 association, or officers and directors thereof if a corporation, or any agent
36 or other person acting on their behalf. The administrator, or the
37 administrator's designee, ~~may shall~~ submit such fingerprints to the Kansas
38 bureau of investigation, federal bureau of investigation, or other law
39 enforcement agency for the purposes of verifying the identity of such
40 persons and obtaining records of their criminal arrests and convictions. For
41 purposes of this section and in order to reduce the points of contact which
42 the federal bureau of investigation may have to maintain with the
43 individual states, the administrator may use the nationwide mortgage

1 licensing system and registry as a channeling agent for requesting
2 information from and distributing information to the department of justice
3 or any governmental agency;

4 (l) exchange information regarding the administration of this act with
5 any agency of the United States or any state which regulates the licensee,
6 ~~registrant or person required to file notification, or consumer credit filer~~
7 who administers statutes, rules and regulations or other programs related to
8 consumer credit and to enter into information sharing arrangements with
9 other governmental agencies or associations representing governmental
10 agencies which are deemed necessary or beneficial to the administration of
11 this act;

12 (m) ~~require that any applicant, licensee, registrant or other person~~
13 ~~complete a minimum number of prelicensing education hours and~~
14 ~~complete continuing education hours on an annual basis. Prelicensing and~~
15 ~~continuing education courses shall be approved by the administrator or the~~
16 ~~administrator's designee and may be made a condition of the application~~
17 ~~approval and renewal;~~

18 (n) ~~require that any applicant, licensee, registrant or other person~~
19 ~~successfully pass a standardized examination designed to establish such~~
20 ~~person's knowledge of residential mortgage loan origination transactions~~
21 ~~and all applicable state and federal law. Such examinations shall be created~~
22 ~~and administered by the administrator or the administrator's designee and~~
23 ~~may be made a condition of application approval;~~

24 (o) use the nationwide mortgage licensing system and registry as a
25 channeling agent for requesting and distributing any information regarding
26 residential mortgage loan originator registration or supervised lender
27 licensing to and from any source so directed by the administrator;

28 (p)(n) establish relationships or contracts with the nationwide
29 mortgage licensing system and registry or other entities to collect and
30 maintain records and process transaction fees or other fees related to
31 applicants, licensees, ~~registrants~~ or other persons subject to the act and to
32 take such other actions as may be reasonably necessary to participate in
33 the nationwide mortgage licensing system and registry. The administrator
34 shall regularly report violations of law, as well as enforcement actions and
35 other relevant information, to the nationwide mortgage licensing system
36 and registry, and make publicly available the proposed budget, fees, and
37 audited financial statements of the nationwide mortgage licensing system
38 and registry as may be prepared by the nationwide mortgage licensing
39 system and registry and provided to the administrator;

40 (q) ~~require that any residential mortgage loan originator applicant,~~
41 ~~registrant or other person successfully pass a standardized examination~~
42 ~~designed to establish such person's knowledge of mortgage transactions~~
43 ~~and all applicable state and federal law. Such examinations shall be created~~

1 and administered by the administrator or the administrator's designee, and
2 may be made a condition of application approval or application renewal;

3 ~~(f) require that any mortgage loan originator applicant, registrant or~~
4 ~~other person complete a minimum number of prelicensing education hours~~
5 ~~and complete continuing education hours on an annual or biannual basis.~~
6 ~~Prelicensing and continuing education courses shall be approved by the~~
7 ~~administrator or the administrator's designee and may be made a condition~~
8 ~~of application approval and renewal; and~~

9 ~~(s)(o) require any licensee or registrant to file reports with the~~
10 ~~nationwide mortgage licensing system and registry in the form prescribed~~
11 ~~by the administrator or the administrator's designee.~~

12 (2) The administrator shall enforce the provisions of this act and the
13 rules and regulations and interpretations adopted thereunder with respect
14 to a creditor, unless the creditor's compliance is regulated exclusively or
15 primarily by another state or federal agency.

16 (3) To keep the administrator's rules and regulations in harmony with
17 the rules of administrators in other jurisdictions ~~which enact the revised~~
18 ~~uniform consumer credit code~~, the administrator, so far as is consistent
19 with the purposes, policies and provisions of K.S.A. 16a-1-101 to 16a-9-
20 102, inclusive *et seq.*, and amendments thereto, may:

21 (a) Before adopting, amending and revoking rules and regulations,
22 advise and consult with administrators in other jurisdictions ~~which enact~~
23 ~~the uniform consumer credit code~~; and

24 (b) in adopting, amending and revoking rules and regulations, take
25 into consideration the rules of administrators in other jurisdictions ~~which~~
26 ~~enact the revised uniform consumer credit code~~.

27 (4) Except for refund of an excess charge, no liability is imposed
28 under K.S.A. 16a-1-101 to 16a-9-102, inclusive *et seq.*, and amendments
29 thereto, for an act done or omitted in conformity with a rule and regulation
30 or written administrative interpretation of the administrator in effect at the
31 time of the act or omission notwithstanding that after the act or omission
32 the rule and regulation or written administrative interpretation may be
33 determined by judicial or other authority to be invalid for any reason.

34 (5) The administrator prior to December 1 of each year shall establish
35 such fees as are authorized under the provisions of K.S.A. 16a-1-101 to
36 16a-9-102, inclusive *et seq.*, and amendments thereto, for the ensuing
37 calendar year in such amounts as the administrator may determine to be
38 sufficient to meet the budget requirements of the administrator for each
39 fiscal year.

40 Sec. 105. K.S.A. 16a-6-105 is hereby amended to read as follows:
41 16a-6-105. (1) With respect to supervised financial organizations, the
42 powers of examination and investigation ~~(K.S.A. 16a-2-305 and K.S.A.~~
43 ~~16a-6-106, and amendments thereto) and administrative enforcement~~

1 (~~K.S.A. 16a-6-108, and amendments thereto~~) shall be exercised by the
2 official or agency to whose supervision the organization is subject. Should
3 a supervised financial organization become licensed hereunder, a report of
4 that portion of each examination made by the supervisory official or
5 agency of such organization relating to compliance with the provisions of
6 chapter 16a of the Kansas Statutes Annotated, *and amendments thereto*,
7 shall be filed with the administrator. All other powers of the administrator
8 under this act may be exercised by the administrator with respect to a
9 supervised financial organization except that compliance with truth in
10 lending shall be governed as set forth in ~~subsection (2) of~~ K.S.A. 16a-6-
11 104(2), and amendments thereto.

12 (2) If the administrator receives a complaint or other information
13 concerning noncompliance with this act by a supervised financial
14 organization, the administrator shall inform the official or agency having
15 supervisory authority over the organization concerned. The administrator
16 may request information about supervised financial organizations from the
17 officials or agencies supervising them. If such officials or agencies have
18 cause to believe the ~~licensee~~ *license* of any supervised financial
19 organization subject to their supervision is subject to suspension or
20 revocation for any reason stated in K.S.A. 16a-2-303, and amendments
21 thereto, such official or agency shall notify the administrator and assist the
22 administrator in the enforcement of this act.

23 (3) The administrator and any official or agency of this state having
24 supervisory authority over a supervised financial organization are
25 authorized and directed to consult and assist one another in maintaining
26 compliance with the provisions of K.S.A. 16a-1-101 ~~through 16a-9-102~~ *et*
27 *seq.*, and amendments thereto. They may jointly pursue investigations,
28 prosecute suits, and take other official action, as they deem appropriate, if
29 either of them otherwise is empowered to take the action.

30 Sec. 106. K.S.A. 16a-6-106 is hereby amended to read as follows:
31 16a-6-106. (1) The administrator may:

32 (a) Conduct ~~public or private~~ examinations or investigations within or
33 outside of this state as necessary to determine whether any license should
34 be granted, denied or revoked or whether any person has violated or is
35 about to violate any provision of this act or any rule and regulation,
36 administrative interpretation, or order hereunder; or to aid in the
37 enforcement of this act or in the prescribing of forms or adoption of rules
38 and regulations; *and*

39 (b) require or permit any person to file a statement in writing, under
40 oath or otherwise as the administrator determines, of all the facts and
41 circumstances concerning any violation of this act or any rule and
42 regulation, administrative interpretation or order hereunder.

43 (2) *All examination material shall be confidential by law and*

1 *privileged and shall not be subject to the open records act, subpoena and*
2 *discovery or admissible in evidence in any private civil action. The*
3 *provisions of this subsection providing for the confidentiality of public*
4 *records shall expire on July 1, 2030, unless the legislature reviews and*
5 *reenacts such provisions in accordance with K.S.A. 45-229, and*
6 *amendments thereto, prior to July 1, 2030.*

7 (3) For the purpose of any examination, investigation or proceeding
8 under this act, the administrator or any officer designated by the
9 administrator may administer oaths and affirmations, subpoena witnesses,
10 compel such witnesses' attendance, adduce evidence and require the
11 production of any matter which is relevant to the examination or
12 investigation, including the existence, description, nature, custody,
13 condition and location of any books, documents or other tangible things
14 and the identity and location of persons having knowledge of relevant
15 facts, or any other matter reasonably calculated to lead to the discovery of
16 relevant information or items.

17 ~~(3)~~(4) In case of contumacy by, or refusal to obey a subpoena issued
18 to any person, any court of competent jurisdiction, upon application by the
19 administrator, may issue to that person an order requiring the person to
20 appear before the administrator, or the officer designated by the
21 administrator, there, to produce documentary evidence if so ordered or to
22 give evidence touching the matter under investigation or in question. Any
23 failure to obey the order of the court may be punished by the court as a
24 contempt of court.

25 ~~(4)~~(5) No person is excused from attending and testifying or from
26 producing any document or record before the administrator or in
27 obedience to the subpoena of the administrator or any officer designated
28 by the the administrator or in any proceeding instituted by the
29 administrator, ~~on the ground that the testimony or evidence (documentary~~
30 ~~or otherwise) required of the person may tend to incriminate the person or~~
31 ~~subject the person to a penalty or forfeiture. No individual may be~~
32 ~~prosecuted or subjected to any penalty or forfeiture for or on account of~~
33 ~~any transaction, matter or thing concerning which such person is~~
34 ~~compelled, after claiming privilege against self-incrimination, to testify or~~
35 ~~produce evidence (documentary or otherwise), except that the individual~~
36 ~~so testifying shall not be exempt from prosecution and punishment for~~
37 ~~perjury committed in so testifying.~~

38 (5)(6) The administrator may issue and apply to enforce subpoenas in
39 this state at the request of a ~~consumer code administrator~~ of another state if
40 the activities constituting an alleged violation for which the information is
41 sought would be a violation of the Kansas consumer credit code if the
42 activities had occurred in this state.

43 (6)(7) If the person's records are located outside this state, the person

1 shall either make them available to the administrator at a convenient
2 location within this state or, at the administrator's discretion, pay the
3 reasonable and necessary expenses for the administrator or such
4 administrator's representative to examine them at the place where they are
5 maintained. The administrator may designate representatives, including
6 comparable officials of the state in which the records are located, to
7 inspect the records on the administrator's behalf.

8 ~~(7)~~(8) The administrator may charge as costs of investigation or
9 examination all reasonable expenses, including a per diem and actual
10 travel and lodging expenses to be paid by the party or parties under
11 investigation or examination. The administrator may maintain an action in
12 any court to recover such costs.

13 *(9) The administrator may enter into an informal agreement at any*
14 *time with a person to resolve a matter arising under this act, rules and*
15 *regulations adopted pursuant thereto or an order issued pursuant to this*
16 *act. The adoption of an informal agreement authorized by this subsection*
17 *shall not be subject to the provisions of K.S.A. 77-501 et seq. or 77-601 et*
18 *seq., and amendments thereto. Any informal agreement authorized by this*
19 *subsection shall not be considered an order or other agency action and*
20 *shall be considered confidential examination material.*

21 Sec. 107. K.S.A. 16a-6-108 is hereby amended to read as follows:
22 16a-6-108. (1) If the administrator determines after notice and opportunity
23 for a hearing that any person has engaged, is engaging or is about to
24 engage in any act or practice constituting a violation of any provision of
25 this act or any rule and regulation, order or administrative interpretation
26 hereunder, *including, but not limited to, refusal or failure to provide*
27 *information requested by the administrator*, the administrator by order may
28 require that such person cease and desist from the unlawful act or practice
29 and take such affirmative action as in the judgment of the administrator
30 will carry out the purposes of this act.

31 (2) If the administrator makes written findings of fact that the public
32 interest will be irreparably harmed by delay in issuing an order under
33 subsection (1), the administrator may issue an emergency cease and desist
34 order. Such order shall be subject to the same procedures as an emergency
35 order issued under K.S.A. 77-536, and amendments thereto. Upon the
36 entry of such an order the administrator shall promptly notify the person
37 subject to the order that it has been entered, of the reasons and that upon
38 written request the matter will be set for a hearing which shall be
39 conducted in accordance with the provisions of the Kansas administrative
40 procedure act. If no hearing is requested and none is ordered by the
41 administrator, the order will remain in effect until it is modified or vacated
42 by the administrator. If a hearing is requested or ordered, the administrator,
43 after notice of and opportunity for hearing to the person subject to the

1 order, shall by written findings of fact and conclusion of law vacate,
2 modify or make permanent the order.

3 (3) If the administrator reasonably believes that a person has violated
4 this act or a rule and regulation, order or administrative interpretation of
5 the administrator under this act, the administrator, in addition to any
6 specific power granted under this act, after notice and hearing in an
7 administrative proceeding, unless the right to notice and hearing is waived
8 by the person against whom the sanction is imposed, may require any or
9 all of the following:

10 (a) Censure the person if the person is licensed under this act;

11 (b) issue an order against an applicant, ~~licensed person, residential~~
12 ~~mortgage loan originator registrant~~ *supervised loan licensee, consumer*
13 *credit filer* or other person who knowingly violates this act or a rule and
14 regulation, order or administrative interpretation of the administrator under
15 this act, *including, but not limited to, refusal or failure to provide*
16 *information requested by the administrator*, imposing a civil penalty up to
17 a maximum of \$5,000 for each violation. If any person is found to have
18 knowingly or willfully violated any provision of this act, and such
19 violation is committed against elder or disabled persons, as defined in
20 K.S.A. 50-676, and amendments thereto, in addition to any civil penalty
21 otherwise provided by law, the administrator may impose an additional
22 penalty not to exceed \$5,000 for each such violation;

23 (c) revoke or suspend the person's license or registration or bar the
24 person from subsequently applying for a license or registration under this
25 act; or

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

30 (4) Any person aggrieved by a final order of the administrator may
31 obtain a review of the order in accordance with the provisions of the
32 Kansas judicial review act.

33 Sec. 108. K.S.A. 16a-6-109 is hereby amended to read as follows:
34 16a-6-109. If it is claimed that a person has engaged in conduct subject to
35 an order by the administrator (~~section 16a-6-108~~) or by a court (~~sections~~
36 ~~16a-6-110 through 16a-6-112~~), the administrator may accept an assurance
37 in writing that the person will not engage in the conduct in the future. ~~If a~~
38 ~~person giving an assurance of discontinuance fails to comply with its~~
39 ~~terms, the assurance is evidence that prior to the assurance he engaged in~~
40 ~~the conduct described in the assurance~~ *Failure to abide by the assurance*
41 *of discontinuance shall be evidence that the person engaged in the prior*
42 *conduct described in the assurance.*

43 Sec. 109. K.S.A. 16a-6-110 is hereby amended to read as follows:

1 16a-6-110. The administrator may bring a civil action to restrain a person
2 from violating the provisions of K.S.A. 16a-1-101 through 16a-9-102 *et*
3 *seq.*, and amendments thereto, or any rules or regulations adopted
4 *thereunder* and for other appropriate relief.

5 Sec. 110. K.S.A. 16a-6-111 is hereby amended to read as follows:
6 16a-6-111. (1) The administrator may bring a civil action to restrain a
7 creditor or a person acting ~~in his~~ *on such creditor's or person's* behalf from
8 engaging in a course of:

9 (a) Making or enforcing unconscionable terms or provisions of
10 consumer credit transactions; *or*

11 (b) fraudulent or unconscionable conduct in inducing consumers to
12 enter into consumer credit transactions.

13 (2) In an action brought pursuant to this section the court may grant
14 relief only if the trier of the fact finds *that the*:

15 (a) ~~That the~~ Respondent has made unconscionable agreements or has
16 engaged or is likely to engage in a course of fraudulent or unconscionable
17 conduct;

18 (b) ~~that the~~ agreements or conduct of the respondent has caused or is
19 likely to cause injury to consumers; and

20 (c) ~~that the~~ respondent has been able to cause or will be able to cause
21 the injury primarily because the transactions involved are credit
22 transactions.

23 (3) In applying this section, consideration shall be given to each of
24 the following factors, among others:

25 (a) Belief by the creditor at the time consumer credit transactions are
26 entered into that there was no reasonable probability of payment in full of
27 the obligation by the consumer;

28 (b) in the case of consumer credit sales or consumer leases,
29 knowledge by the seller or lessor at the time of the sale or lease of the
30 inability of the buyer or lessee to receive substantial benefits from the
31 property or services sold or leased;

32 (c) in the case of consumer credit sales or consumer leases, gross
33 disparity between the price of the property or services sold or leased and
34 the value of the property or services measured by the price at which
35 similar property or services are readily obtainable in credit transactions by
36 like buyers or lessees;

37 (d) the fact that the creditor contracted for or received separate
38 charges for insurance with respect to consumer credit sales or consumer
39 loans with the effect of making the sales or loans, considered as a whole,
40 unconscionable; and

41 (e) the fact that the respondent has knowingly taken advantage of the
42 inability of the consumer reasonably to protect ~~his~~ *such consumer's*
43 interests by reason of physical or mental infirmities, ignorance, illiteracy

1 or, inability to understand the language of the agreement; or similar
2 factors.

3 (4) In an action brought pursuant to this section, a charge or practice
4 expressly permitted by this act is not in itself unconscionable.

5 Sec. 111. K.S.A. 16a-6-112 is hereby amended to read as follows:
6 16a-6-112. With respect to an action brought to enjoin violations of K.S.A.
7 16a-1-101 through 16a-9-102 (section 16a-6-110) *et seq.*, and amendments
8 *thereto*, or unconscionable agreements or fraudulent or unconscionable
9 conduct (section 16a-6-111), the administrator may apply to *petition* the
10 court for appropriate temporary relief against a respondent, pending final
11 determination of proceedings. If the court finds after a hearing held upon
12 notice to the respondent that there is reasonable cause to believe that the
13 respondent is engaging in or is likely to engage in conduct sought to be
14 restrained, it may grant any temporary relief or restraining order it deems
15 appropriate.

16 Sec. 112. K.S.A. 16a-6-113 is hereby amended to read as follows:
17 16a-6-113. (1) After demand, the administrator may bring a civil action
18 against a creditor for all amounts of money, other than penalties, which a
19 consumer or class of consumers has a right to *recover* explicitly granted by
20 the provisions of K.S.A. 16a-1-101 through 16a-9-102 to *recover et seq.*,
21 and amendments *thereto*. The court shall order amounts recovered or
22 recoverable under this subsection paid to each consumer or set off against
23 ~~his~~ *such consumer's* obligation. A consumer's action, other than a class
24 action, takes precedence over a prior or subsequent action by the
25 administrator with respect to the claim of that consumer. A consumer's
26 class action takes precedence over a subsequent action by the
27 administrator with respect to claims common to both actions but
28 intervention by the administrator is authorized. An administrator's action
29 on behalf of a class of consumers takes precedence over a consumer's
30 subsequent class action with respect to claims common to both actions.
31 When an action takes precedence over another action under this
32 subsection, ~~to the extent appropriate~~ the other action may be stayed while
33 the ~~precedent~~ *preceding* action is pending and dismissed if the ~~precedent~~
34 *preceding* action is dismissed with prejudice or results in a final judgment
35 granting or denying the claim asserted in the ~~precedent~~ *preceding* action.

36 (2) The administrator may bring a civil action against a creditor or a
37 person acting ~~in his~~ *on such creditor's or person's* behalf to recover a civil
38 penalty for willfully violating this act, and if the court finds that the
39 defendant has engaged in a course of repeated and willful violations of this
40 act, it may assess a civil penalty of no more than ~~five thousand dollars~~
41 ~~(\$5,000)~~ *\$5,000 per violation*. Any civil action under this subsection shall
42 be brought within two ~~(2)~~ years following the violation.

43 Sec. 113. K.S.A. 16a-6-115 is hereby amended to read as follows:

1 16a-6-115. The grant of powers to the administrator in this article does not
 2 affect remedies available to consumers under K.S.A. 16a-1-101 through
 3 ~~16a-9-102 et seq., and amendments thereto~~, or under other principles of
 4 law or equity.

5 Sec. 114. K.S.A. 16a-6-201 is hereby amended to read as follows:
 6 16a-6-201. (1) This part applies to ~~a~~ any creditor engaged in this state in
 7 entering into consumer credit transactions and to any person who ~~takes~~
 8 *accepts* assignments of and undertakes collection of payments from or
 9 ~~takes~~ assignments of and enforces rights against debtors arising from these
 10 transactions.

11 (2) This ~~part~~ *subsection* shall not apply to:

12 (a) Supervised financial organizations ~~(K.S.A. 16a-1-301, and~~
 13 ~~amendments thereto); or~~

14 (b) *supervised loan licensees or those required to be licensed unless*
 15 *the entity:*

16 (i) *Enters into consumer credit sales or consumer leases;*

17 (ii) *assigns or accepts assignments of consumer credit sales or*
 18 *consumer leases; or*

19 (iii) ~~Nothing in this section shall be construed to require the~~
 20 ~~payment of any fees required by this article by attorneys or collection~~
 21 ~~agencies who that receive the same payment for collection purposes.~~

22 Sec. 115. K.S.A. 16a-6-202 is hereby amended to read as follows:
 23 16a-6-202. (1) ~~Persons subject to this part~~ *Any person subject to K.S.A.*
 24 *16a-6-201, and amendments thereto*, shall file ~~notification~~ *notice* with the
 25 administrator within 30 days after commencing business in this state, and,
 26 thereafter, in accordance with rules and regulations adopted by the
 27 administrator.

28 (2) If information in a ~~notification~~ *filing* becomes inaccurate ~~after~~
 29 ~~filing~~, the ~~person filing the notification~~ *consumer credit filer* shall file ~~a~~
 30 ~~corrected or an amended notification in such form and at such time~~ *filing*
 31 as prescribed by rules and regulations adopted by the administrator.

32 Sec. 116. K.S.A. 16a-6-203 is hereby amended to read as follows:
 33 16a-6-203. (1) A ~~person required to file notification~~ *consumer credit filer*
 34 shall on or before ~~April 30~~ *August 31* of each year pay to the administrator
 35 an annual fee in an amount established pursuant to ~~subsection (5) of~~
 36 K.S.A. 16a-6-104(5), and amendments thereto, for each business location
 37 for that year.

38 (2) ~~Persons required to file notification~~ *Consumer credit filers* who are
 39 sellers, lessors or lenders shall pay an additional fee at the time and in the
 40 manner stated in subsection (1), in an amount established pursuant to
 41 ~~subsection (5) of K.S.A. 16a-6-104(5), and amendments thereto, for each~~
 42 ~~\$100,000, or part thereof, of the average unpaid balances, including unpaid~~
 43 ~~scheduled periodic payments under consumer leases, arising from~~

1 consumer credit transactions entered into in this state and held on the last
 2 day of each calendar month during the preceding calendar year and held
 3 either by the seller, lessor or lender, or by the immediate or a remote
 4 assignee who has not filed notification. The unpaid balances of assigned
 5 obligations held by an assignee who has not filed notification are
 6 presumed to be the unpaid balances of the assigned obligations at the time
 7 of their assignment by the seller, lessor or lender.

8 (3) ~~Persons required to file notification~~ *Consumer credit filers* who are
 9 assignees shall pay an additional fee at the time and in the manner stated in
 10 subsection (1), in an amount established pursuant to ~~subsection (5) of~~
 11 K.S.A. 16a-6-104(5), and amendments thereto, for each \$100,000, or part
 12 thereof, of the average unpaid balances, including unpaid scheduled
 13 periodic payments payable by lessees, arising from consumer credit
 14 transactions entered into in this state taken by assignment and held on the
 15 last day of each calendar month during the preceding calendar year.

16 Sec. 117. K.S.A. 16a-6-401 is hereby amended to read as follows:
 17 16a-6-401. This part applies to the administrator, prescribes the procedures
 18 to be observed by ~~him~~ *the administrator* in exercising ~~his such~~ powers
 19 under K.S.A. 16a-1-101 ~~through 16a-9-102 et seq., and amendments~~
 20 *thereto*, and supplements the provisions of the part on powers and
 21 functions of the administrator ~~(part 1) of this article and of the part on~~
 22 *supervised lenders (part 3) of the article on finance charges and related*
 23 *provisions (article 2) under K.S.A. 16a-1-101 et seq., and amendments*
 24 *thereto. Subject to specific provisions found in K.S.A. 16a-1-101 et seq.,*
 25 *and amendments thereto, the exercise of powers by the administrator shall*
 26 *be subject to the adoption of rules and regulations pursuant to K.S.A. 77-*
 27 *415 et seq., and amendments thereto, the Kansas administrative procedure*
 28 *act, K.S.A. 77-501 et seq., and amendments thereto, and the Kansas*
 29 *judicial review act, K.S.A. 77-601 et seq., and amendments thereto.*

30 Sec. 118. K.S.A. 16a-6-403 is hereby amended to read as follows:
 31 16a-6-403. (1) In addition to other rule-making requirements ~~imposed by~~
 32 ~~law~~, the administrator may:

33 (a) Adopt as a rule a description of the organization of the
 34 administrator's office, stating the general course and method of the
 35 operations of the office and the methods whereby the public may obtain
 36 information or make submissions or requests;

37 (b) adopt rules of practice setting forth the nature and requirements of
 38 all formal and informal procedures available, including a description of all
 39 forms and instructions used by the administrator or by the office;

40 (c) make available for public inspection all rules and all other written
 41 statements of policy or interpretations formulated, adopted or used by the
 42 administrator; *and*

43 (d) make available for public inspection all final orders, decisions and

1 opinions.

2 (2) No rule, order or decision of the administrator is valid or effective
3 against any person or party, nor may it be invoked by the administrator for
4 any purpose, until it has been made available for public inspection as
5 herein required. This provision is not applicable in favor of any person or
6 party who has actual knowledge thereof.

7 Sec. 119. K.S.A. 40-1209 is hereby amended to read as follows: 40-
8 1209. Any director, officer or member of any such company, or any other
9 person, may advance to such company any sum or sums of money
10 necessary for the purposes of its business or to enable it to comply with
11 any of the requirements of the laws of this state, and such moneys and
12 such interest thereon as may have been agreed upon, not exceeding an
13 amount equal to 1 1/2 percentage points below the maximum rate of interest
14 prescribed by ~~subsection (b) of K.S.A. 16-207(a)~~, and amendments
15 thereto, for real estate transactions. The rate of interest to be applied to any
16 specific certificate of indebtedness shall be calculated using the most
17 immediate prior month's usury rate published by the secretary of state in
18 the Kansas register. The sum or sums of money advanced pursuant to this
19 authorization and any interest thereon shall be payable only out of the
20 surplus remaining after providing for all reserves and other liabilities, and
21 shall not otherwise be a liability or claim against the company or any of its
22 assets. No commission or promotion expenses shall be paid in connection
23 with the advance of any such money to the company, and the amount of
24 such advance shall be reported in each annual statement. ~~Provided,~~
25 ~~however,~~ Such certificates of indebtedness shall not be issued nor retired
26 and no interest thereon shall be paid without the approval of the
27 commissioner of insurance who must be satisfied that all requirements of
28 the law have been met.

29 Sec. 120. K.S.A. 9-2201, 9-2202, 9-2203, 9-2208, 9-2209, 9-2212, 9-
30 2216, 9-2216a, 9-2220, 16-207, 16-207d, 16a-1-101, 16a-1-102, 16a-1-
31 103, 16a-1-104, 16a-1-107, 16a-1-108, 16a-1-109, 16a-1-201, 16a-1-202,
32 16a-1-301, 16a-1-303, 16a-2-101, 16a-2-102, 16a-2-103, 16a-2-104, 16a-
33 2-201, 16a-2-202, 16a-2-301, 16a-2-302, 16a-2-303, 16a-2-303a, 16a-2-
34 304, 16a-2-307, 16a-2-308, 16a-2-309, 16a-2-310, 16a-2-401, 16a-2-402,
35 16a-2-403, 16a-2-404, 16a-2-501, 16a-2-502, 16a-2-504, 16a-2-505, 16a-
36 2-506, 16a-2-507, 16a-2-508, 16a-2-510, 16a-3-101, 16a-3-102, 16a-3-
37 201, 16a-3-202, 16a-3-203, 16a-3-203a, 16a-3-204, 16a-3-205, 16a-3-206,
38 16a-3-207, 16a-3-208, 16a-3-209, 16a-3-301, 16a-3-302, 16a-3-303, 16a-
39 3-304, 16a-3-305, 16a-3-306, 16a-3-307, 16a-3-308, 16a-3-308a, 16a-3-
40 309, 16a-3-402, 16a-3-403, 16a-3-404, 16a-3-405, 16a-4-101, 16a-4-102,
41 16a-4-103, 16a-4-104, 16a-4-105, 16a-4-106, 16a-4-107, 16a-4-108, 16a-
42 4-109, 16a-4-110, 16a-4-111, 16a-4-112, 16a-4-201, 16a-4-202, 16a-4-
43 203, 16a-4-301, 16a-4-304, 16a-5-101, 16a-5-102, 16a-5-103, 16a-5-107,

1 16a-5-108, 16a-5-110, 16a-5-111, 16a-5-112, 16a-5-201, 16a-5-203, 16a-
2 5-301, 16a-6-101, 16a-6-102, 16a-6-104, 16a-6-105, 16a-6-106, 16a-6-
3 108, 16a-6-109, 16a-6-110, 16a-6-111, 16a-6-112, 16a-6-113, 16a-6-115,
4 16a-6-117, 16a-6-201, 16a-6-202, 16a-6-203, 16a-6-401, 16a-6-402, 16a-
5 6-403, 16a-6-404, 16a-6-405, 16a-6-406, 16a-6-407, 16a-6-408, 16a-6-
6 409, 16a-6-410, 16a-6-414, 16a-9-101, 16a-9-102 and 40-1209 are hereby
7 repealed.

8 Sec. 121. This act shall take effect and be in force from and after
9 January 1, 2025, and its publication in the statute book.