

As Amended by House Committee

Session of 2005

HOUSE BILL No. 2145

By Committee on Financial Institutions

1-25

10 AN ACT amending the uniform consumer credit code; amending K.S.A.
11 16a-3-205, 16a-5-103, 16a-5-111 and 16a-6-201 and K.S.A. 2004 Supp.
12 16a-2-103, 16a-2-302, 16a-2-303, 16a-2-304, 16a-3-304, 16a-3-308a,
13 ~~16a-5-301~~, 16a-6-104, 16a-6-108 and 16a-6-203 and repealing the ex-
14 isting sections.

15
16 *Be it enacted by the Legislature of the State of Kansas:*

17 Section 1. K.S.A. 2004 Supp. 16a-2-103 is hereby amended to read
18 as follows: 16a-2-103. (1) ~~This section applies~~ *The provisions of this sec-*
19 *tion shall apply* to all consumer loans and all consumer credit sales.

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

24 (a) The 365/365 method means a method of calculating the finance
25 charge whereby the ~~annual~~ *contract* rate is divided by 365 and the re-
26 sulting daily rate is multiplied by the outstanding principal amount and
27 the actual number of days in the computational period.

28 (b) The 360/360 method means a method of calculating the finance
29 charge whereby the ~~annual~~ *contract* rate is divided by 360 and the re-
30 sulting daily rate is multiplied by the outstanding principal amount and
31 the number of assumed days in the computational period. For the pur-
32 poses of this subsection, a creditor may assume that a month has 30 days,
33 regardless of the actual number of days in the month.

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

37 (3) *In addition to the methods listed under subsection 2, the compu-*
38 *tation of finance charges on a consumer loan secured by a first or second*
39 *lien real estate mortgage may be computed using the following amorti-*
40 *zation method: the contract rate is divided by 360 and the resulting rate*
41 *is multiplied by the outstanding principal amount and 30 assumed days*
42 *between scheduled due dates. For the purposes of this subsection, a cred-*
43 *itor shall assume there are 30 days in the computational period, regardless*

1 *of the actual number of days between due dates.*

2 ~~(3)~~ (4) The finance charge on a consumer loan or consumer credit
3 sale may not be computed in accordance with the 365/360 method,
4 whereby the ~~annual~~ *contract* rate is divided by 360 and the resulting daily
5 rate is multiplied by the outstanding principal amount and the actual
6 number of days in the computational period.

7 ~~(4)~~ (5) Creditors may ignore the effect of a leap year in computing
8 the finance charge.

9 ~~(5)~~ (6) (a) Except for any portion of a loan made pursuant to a lender
10 credit card which does not represent a cash advance, interest or other
11 periodic finance charges on a consumer loan may accrue only on that
12 portion of the principal which has been disbursed to or for the benefit of
13 the consumer.

14 (b) On a consumer credit sale, interest or other periodic finance
15 charges may accrue only on that portion of the principal which relates to
16 goods, services or an interest in land, as the case may be, which has been
17 shipped, delivered, furnished or otherwise made available to or for the
18 benefit of the consumer or has been disbursed to or for the benefit of
19 the consumer.

20 ~~(6)~~ (7) Subsection (2) does not apply to a consumer credit sale the
21 finance charge for which is computed in accordance with subsection (5)
22 of K.S.A. 16a-2-201, and amendments thereto.

23 ~~(7)~~ (8) Notwithstanding any other provisions of this act, the finance
24 charges on consumer loans or consumer credit sales originating prior to
25 January 1, 1994, which computed such finance charges on a precomputed
26 basis, shall be subject to the conditions, limitations and restrictions con-
27 tained in the uniform consumer credit code as in effect on December 31,
28 1993, as such code relates to precomputed finance charges.

29 ~~(8)~~ (9) This section shall be supplemental to and a part of the uniform
30 consumer credit code.

31 Sec. 2. K.S.A. 2004 Supp. 16a-2-302 is hereby amended to read as
32 follows: 16a-2-302. (1) (a) The administrator shall receive and act on all
33 applications for licenses to make supervised loans under this act. Appli-
34 cations shall be filed in the manner prescribed by the administrator and
35 shall contain the information the administrator may require by rule and
36 regulation to make an evaluation of the financial responsibility, character
37 and fitness of the applicant.

38 (b) Submitted with each application shall be a nonrefundable appli-
39 cation fee. Application and license fees shall be in such amounts as are
40 established pursuant to subsection (5) of K.S.A. 16a-6-104, and amend-
41 ments thereto. The license year shall be the calendar year. Each license
42 shall be nonrefundable and nonassignable, and shall remain in force until
43 surrendered, suspended or revoked.

1 (c) The administrator shall remit all moneys received under K.S.A.
2 16a-1-101 to 16a-6-414, inclusive, and amendments thereto, to the state
3 treasurer in accordance with the provisions of K.S.A. 75-4215, and
4 amendments thereto. Upon receipt of each such remittance, the state
5 treasurer shall deposit the entire amount in the state treasury. Of each
6 deposit 20% shall be credited to the state general fund and the balance
7 shall be credited to the bank commissioner fee fund. All expenditures
8 from such fund shall be made in accordance with appropriation acts upon
9 warrants of the director of accounts and reports issued pursuant to vouch-
10 ers approved by the administrator or by a person or persons designated
11 by the administrator.

12 The 20% credit to the state general fund required by this subsection
13 (c) is to reimburse the state general fund for accounting, auditing, budg-
14 eting, legal, payroll, personnel and purchasing services, and any and all
15 other state governmental services, which are performed on behalf of the
16 administrator by other state agencies which receive appropriations from
17 the state general fund to provide such services.

18 (d) Every licensee shall, on or before the first day of January, pay to
19 the administrator the license fee prescribed under this subsection (1) for
20 each license held for the succeeding license year. Failure to pay the li-
21 cense fee within the time prescribed shall automatically revoke the
22 license.

23 (2) No license shall be issued unless the administrator, upon inves-
24 tigation, finds that the financial responsibility, character and fitness of the
25 applicant, and of the members thereof if the applicant is a copartnership
26 or association and of the officers and directors thereof, if the applicant is
27 a corporation, are such as to warrant belief that the business will be op-
28 erated honestly and fairly within the purposes of this act. An applicant
29 meets the minimum standard of financial responsibility for engaging in
30 the business of making supervised loans, under subsection (1) of K.S.A.
31 16a-2-301, and amendments thereto, only if:

32 (a) The applicant has filed with the administrator a proper surety
33 bond of at least \$100,000 which has been approved by the administrator.
34 The required surety bond may not be canceled by the licensee without
35 providing the administrator at least 30 days' prior written notice and must
36 provide within its terms that the bond shall not expire for two years after
37 the date of the surrender, revocation or expiration of the subject license,
38 whichever shall first occur; and

39 (b) *the applicant provides evidence in a form and manner prescribed*
40 *by the administrator that establishes the applicant will maintain a satis-*
41 *factory minimum net worth, as determined by the administrator, to en-*
42 *gage in credit transactions of the nature proposed by the applicant.*

43 (3) The administrator may deny any application or renewal for a su-

1 supervised loan license if the administrator finds:

2 (a) There is a refusal to furnish information required by the admin-
3 istrator within a reasonable time as fixed by the administrator; or

4 (b) any of the factors stated in K.S.A. 16a-2-303, and amendments
5 thereto, as grounds for denial, revocation or suspension of a license.

6 (4) Upon written request the applicant is entitled to a hearing on the
7 question of license qualifications if: (a) The administrator has notified the
8 applicant in writing that the application has been denied; or (b) the ad-
9 ministrator has not issued a license within 60 days after the application
10 for the license was filed. A request for a hearing may not be made more
11 than 15 days after the administrator has mailed a writing to the applicant
12 notifying the applicant that the application has been denied and stating
13 in substance the administrator's findings supporting denial of the
14 application.

15 (5) The administrator shall adopt rules and regulations regarding
16 whether a licensee shall be required to obtain a single license for each
17 place of business or whether a licensee may obtain a master license for
18 all of its places of business, and in so doing the administrator may differ-
19 entiate between licensees located in this state and licensees located else-
20 where. Each license shall remain in full force and effect until surrendered,
21 suspended or revoked.

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

24 (7) A licensee may conduct the business of making supervised loans
25 *for personal, family or household purposes* only at or from any place of
26 business for which the licensee holds a license and not under any other
27 name than that in the license. Loans made pursuant to a lender credit
28 card do not violate this subsection.

29 Sec. 3. K.S.A. 2004 Supp. 16a-2-303 is hereby amended to read as
30 follows: 16a-2-303. (1) The administrator may deny, revoke or suspend
31 the license of a supervised lender if the administrator finds that:

32 (a) The applicant or licensee has repeatedly or willfully violated the
33 provisions of K.S.A. 16a-1-101 through 16a-9-102 and amendments
34 thereto or any rule and regulation, order or administrative interpretation
35 lawfully made pursuant to such sections of this act;

36 (b) the applicant or licensee has failed to file and maintain the surety
37 bond required in K.S.A. ~~16a-6-104~~ 16a-2-302, and amendments thereto;

38 (c) the applicant or licensee is insolvent;

39 (d) the applicant or licensee has filed with the administrator any doc-
40 ument or statement containing any false representation of a material fact
41 or omitting to state a material fact;

42 (e) the applicant, licensee, members thereof if a copartnership or
43 association, or officers and directors thereof if a corporation ~~have~~, or any

1 *person the applicant or licensee contracts with or employs ~~in any manner~~*
 2 **and who is directly engaged in lending activities**, *has been convicted*
 3 *of a felony crime or any crime involving fraud, dishonesty or deceit;*
 4 (f) the applicant or licensee fails to keep and maintain sufficient re-
 5 cords to permit an audit satisfactorily disclosing to the administrator the
 6 applicant or licensee's compliance with the provision of this act;
 7 (g) the applicant or licensee, *or any person the applicant or licensee*
 8 *contracts with or employs ~~in any manner~~ and who is directly engaged*
 9 **in lending activities**, has been the subject of any disciplinary ~~or other~~
 10 ~~administrative~~ action by this or any other state or federal agency;
 11 (h) a final judgment has been entered against the applicant or li-
 12 censee in a civil action and the administrator finds the conduct on which
 13 the judgment is based indicates that it would be contrary to the public
 14 interest to permit such person to be licensed;
 15 (i) the applicant or licensee has engaged in deceptive business prac-
 16 tices; or
 17 (j) facts or conditions exist which would clearly have justified the ad-
 18 ministrator in refusing to grant a license had these facts or conditions
 19 been known to exist at the time the application for the license was made.
 20 (2) Any person holding a license to make supervised loans may sur-
 21 render the license by notifying the administrator in writing of its surren-
 22 der, but this surrender shall not affect such person's liability for acts
 23 previously committed.
 24 (3) No revocation, suspension, or relinquishment of a license shall
 25 impair or affect the obligation of any preexisting lawful contract between
 26 the licensee and any debtor.
 27 (4) The administrator may reinstate a license, terminate a suspension,
 28 or grant a new license to a person whose license has been revoked or
 29 suspended if no fact or condition then exists which clearly would have
 30 justified the administrator in refusing to grant a license.
 31 Sec. 4. K.S.A. 2004 Supp. 16a-2-304 is hereby amended to read as
 32 follows: 16a-2-304. (1) Every licensee and any assignee or servicer of a
 33 consumer credit transaction shall maintain records in conformity with
 34 generally accepted accounting principles and practices in a manner that
 35 will enable the administrator and, in the case of a supervised financial
 36 organization its supervisory official or agency, to determine whether the
 37 licensee, assignee or servicer is complying with the provisions of K.S.A.
 38 16a-1-101 through 16a-9-102, and amendments thereto. ~~The record~~
 39 ~~keeping system of All records held by~~ **The record keeping system of** a
 40 licensee, assignee or servicer shall be ~~sufficient if the licensee, assignee~~
 41 ~~or servicer makes the required information reasonably available delivered~~
 42 ~~to the administrator within three business days of the date such records~~
 43 ~~are requested~~ **sufficient if the licensee, assignee or servicer makes**

1 **the required information reasonably available.** The records need not
2 be kept in the place of business where supervised loans are made, if the
3 administrator or supervisory official or agency is given free access to the
4 records wherever located. Every licensee and any assignee of a consumer
5 credit transaction shall provide the administrator with the name, address,
6 telephone number, contact person and any other reasonable information
7 regarding the location and availability of current records of a consumer
8 credit transaction. The records pertaining to any loan need not be pre-
9 served for more than two years after making the final entry relating to
10 the loan, but in the case of a revolving loan account the two years is
11 measured from the date of each entry.

12 (2) On or before April 15 of each year every licensee shall file with
13 the administrator and, in the case of a supervised financial organization
14 with its supervisory official or agency, a composite annual report in the
15 form prescribed by the administrator relating to all supervised loans made
16 by such licensee. The administrator shall consult with comparable officials
17 in other states for the purpose of making the kinds of information re-
18 quired in annual reports uniform among the states. Information contained
19 in annual reports shall be confidential and may be published only in com-
20 posite form.

21 (3) *No person required to be licensed or file notification under this*
22 *act shall:*

23 (a) *Alter, destroy, shred, mutilate, conceal, cover up or falsify any*
24 *record with the intent to impede, obstruct or influence any investigation*
25 *by the administrator or the administrator's designee; or*

26 (b) *alter, destroy, shred, mutilate or conceal a record with the intent*
27 *to impair the object's integrity or availability for use in a proceeding*
28 *before the administrator or a proceeding brought by the administrator.*

29 Sec. 5. K.S.A. 16a-3-205 is hereby amended to read as follows: 16a-
30 3-205. (1) The creditor shall deliver or mail to the consumer, without
31 request, a written receipt for each payment by coin or currency on an
32 obligation pursuant to a consumer credit transaction. A periodic state-
33 ment showing a payment received by mail complies with this subsection.

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

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

1 ing payment in full of all obligations with respect to the transaction.

2 Sec. 6. K.S.A. 2004 Supp. 16a-3-304 is hereby amended to read as
3 follows: 16a-3-304. (1) A creditor may not ~~use~~ *engage in a pattern or*
4 *practice of using* multiple agreements ~~with intent~~ to obtain a higher fi-
5 nance charge than would otherwise be permitted by the provisions of the
6 article on finance charges and related provisions (article 2).

7 (2) The excess amount of finance charge provided for in this section
8 is an excess charge for the purposes of the provisions on rights of parties
9 (K.S.A. 16a-5-201, and amendments thereto) and the provisions on civil
10 actions by administrator (K.S.A. 16a-6-113, and amendments thereto).

11 Sec. 7. K.S.A. 2004 Supp. 16a-3-308a is hereby amended to read as
12 follows: 16a-3-308a. (1) A loan subject to this section may not provide for
13 the negative amortization of principal or a balloon payment. A loan pay-
14 ment is not a balloon payment if the amount of the payment is less than
15 twice the amount of any other payment.

16 (2) Subsection (1) applies to a consumer loan which is secured by a
17 first mortgage or a second mortgage on the consumer's principal resi-
18 dence and with respect to which (a) the loan-to-value ratio exceeds 100%
19 at the time the loan is made or (b) the annual percentage rate exceeds
20 the code mortgage rate. Notwithstanding the foregoing, subsection (1)
21 does not apply to a loan pursuant to open end credit; a purchase-money
22 loan incurred to acquire or construct the consumer's principal residence;
23 or a reverse mortgage transaction.

24 (3) The creditor must disburse the proceeds of a consumer loan se-
25 cured by a first mortgage or a second mortgage upon the satisfaction of
26 all conditions to the disbursement and the expiration of all applicable
27 rescission, cooling-off or other waiting periods required by law, unless
28 the parties otherwise agree in writing.

29 (4) *No person shall record a mortgage if moneys are not available for*
30 *disbursal to the mortgagor upon the expiration of all applicable recession,*
31 *cooling-off or other waiting periods required by law unless, before that*
32 *recording, the person informs the mortgagor in writing of a definite date*
33 *by which payment shall be made and obtains the mortgagor's written*
34 *permission for the delay.*

35 ~~(4)~~ (5) This section shall be supplemental to and a part of the uniform
36 consumer credit code.

37 Sec. 8. K.S.A. 16a-5-103 is hereby amended to read as follows: 16a-
38 5-103. (1) This section applies to a deficiency on a consumer credit sale
39 of goods or services and on a consumer loan in which the lender is subject
40 to defenses arising from sales (~~section~~ K.S.A. 16a-3-405, *and amendments*
41 *thereto*); a consumer is not liable for a deficiency unless the creditor has
42 disposed of the goods in good faith and in a commercially reasonable
43 manner.

- 1 (2) If the seller repossesses or voluntarily accepts surrender of goods
2 which were the subject of the sale and in which he has a security interest,
3 the buyer is not personally liable to the seller for the unpaid balance of
4 the debt arising from the sale of a commercial unit of goods of which the
5 cash sale price was ~~one thousand dollars (\$1,000)~~ \$1,000 or less, and the
6 seller is not obligated to resell the collateral unless the buyer has paid
7 ~~sixty percent (60%)~~ 60% or more of the cash price and has not signed
8 after default a statement renouncing his rights in the collateral.
- 9 (3) If the seller repossesses or voluntarily accepts surrender of goods
10 which were not the subject of the sale but in which ~~he~~ *the seller* has a
11 security interest to secure a debt arising from a sale of goods or services
12 or a combined sale of goods and services and the cash price of the sale
13 was ~~one thousand dollars (\$1,000)~~ \$1,000 or less, the buyer is not per-
14 sonally liable to the seller for the unpaid balance of the debt arising from
15 the sale, and the seller's duty to dispose of the collateral is governed by
16 the provisions on disposition of collateral (~~section 84-9-504~~ K.S.A. 84-9-
17 610, *and amendments thereto*) of the uniform commercial code.
- 18 (4) If the lender takes possession or voluntarily accepts surrender of
19 goods in which he has a security interest to secure a debt arising from a
20 consumer loan in which the lender is subject to defenses arising from
21 sales (~~section~~ K.S.A. 16a-3-405, *and amendments thereto*) and the net
22 proceeds of the loan paid to or for the benefit of the debtor were ~~one~~
23 ~~thousand dollars (\$1,000)~~ \$1,000 or less, the debtor is not personally liable
24 to the lender for the unpaid balance of the debt arising from the loan and
25 the lender's duty to dispose of the collateral is governed by the provisions
26 on disposition of collateral (~~section 84-9-504~~ K.S.A. 84-9-610, *and amend-*
27 *ments thereto*) of the uniform commercial code.
- 28 (5) For the purpose of determining the unpaid balance of consoli-
29 dated debts or debts pursuant to open end credit, the allocation of pay-
30 ments to a debt shall be determined in the same manner as provided for
31 determining the amount of debt secured by various security interests
32 (~~section~~ K.S.A. 16a-3-303, *and amendments thereto*).
- 33 (6) The consumer may be liable in damages to the creditor if the
34 consumer has wrongfully damaged the collateral or if, after default and
35 demand, the consumer has wrongfully failed to make the collateral avail-
36 able to the creditor.
- 37 (7) If the creditor elects to bring an action against the consumer for
38 a debt arising from a consumer credit sale of goods or services or from a
39 consumer loan in which the lender is subject to defenses arising from
40 sales (~~section~~ K.S.A. 16a-3-405, *and amendments thereto*), when under
41 this section ~~he~~ *the creditor* would not be entitled to a deficiency judgment
42 if ~~he~~ *the creditor* took possession of the collateral, and obtains judgment:
43 (a) ~~he~~ *The creditor* may not take possession of the collateral, and

1 (b) the collateral is not subject to levy or sale on execution or similar
2 proceedings pursuant to the judgment.

3 Sec. 9. K.S.A. 16a-5-111 is hereby amended to read as follows: 16a-
4 5-111. (1) This section applies to consumer credit transactions.

5 (2) Except as provided in subsection (3), after a default consisting
6 only of the consumer's failure to make a required payment in a consumer
7 credit transaction payable in installments, a creditor may neither accel-
8 erate maturity of the unpaid balance of the obligation nor take possession
9 of collateral because of that default until ~~twenty (20)~~ 20 days after a notice
10 of the consumer's right to cure (~~section K.S.A. 16a-5-110, and amend-~~
11 ~~ments thereto~~) is given. Until ~~twenty (20)~~ 20 days after the notice is given,
12 the consumer may cure all defaults consisting of a failure to make the
13 required payment by tendering the amount of all unpaid sums due at the
14 time of the tender, without acceleration, plus any unpaid delinquency ~~or~~
15 ~~deferral~~ charges. Cure restores the consumer to ~~his~~ *the consumer's* rights
16 under the agreement as though the defaults had not occurred.

17 (3) With respect to defaults on the same obligation after a creditor
18 has once given a notice of consumer's right to cure (~~section K.S.A. 16a-~~
19 ~~5-110, and amendments thereto~~), this section gives the consumer no right
20 to cure and imposes no limitation on the creditor's right to proceed
21 against the consumer or the collateral.

22 ~~Sec. 10. K.S.A. 2004 Supp. 16a-5-301 is hereby amended to read as~~
23 ~~follows: 16a-5-301. (1) It is unlawful for any person to violate Any person~~
24 ~~who willfully or knowingly violates any of the provisions of this act, any~~
25 ~~rule and regulation adopted or order issued under this act commits a~~
26 ~~severity level 7 non person felony. A conviction for an intentional violation~~
27 ~~is a class A nonperson misdemeanor. A second or subsequent conviction~~
28 ~~of this subsection is severity level 7 nonperson felony regardless of its~~
29 ~~location on the sentencing grid block, shall have a presumptive sentence~~
30 ~~of imprisonment. No person may be imprisoned for the violation of this~~
31 ~~section if such person proves that such person had no knowledge of the~~
32 ~~rule and regulation or order.~~

33 ~~—(2) The criminal liability of a person under this section is in lieu of~~
34 ~~and not in addition to the creditor's criminal liability under the federal~~
35 ~~truth in lending act. No prosecution of a person with respect to the same~~
36 ~~violation may be maintained pursuant to both this section and the federal~~
37 ~~truth in lending act.~~

38 ~~—(3) A person, other than a supervised financial organization or an~~
39 ~~attorney or collection agency who does not purchase the credit obligation,~~
40 ~~who willfully engages in the business of entering into consumer credit~~
41 ~~transactions, or of taking assignments of rights against consumers arising~~
42 ~~therefrom and undertakes direct collection of payments or enforcement~~
43 ~~of these rights, without complying with the provisions of this act con-~~

1 eering notification (K.S.A. 16a-6-202, and amendments thereto) or pay-
 2 ment of fees (K.S.A. 16a-6-203, and amendments thereto), is guilty of a
 3 class A misdemeanor and upon conviction thereof shall be punished in
 4 the manner provided by law.

5 ~~—(4) No prosecution for any crime under this act may be commenced~~
 6 ~~more than five years after the alleged violation. A prosecution is com-~~
 7 ~~menced when a complaint or information is filed, or an indictment re-~~
 8 ~~turned, and a warrant thereon is delivered to the sheriff or other officer~~
 9 ~~for execution, except that no prosecution shall be deemed to have been~~
 10 ~~commenced if the warrant so issued is not executed without unreasonable~~
 11 ~~delay.~~

12 ~~—(5) Nothing in this act limits the power of the state to punish any~~
 13 ~~person for any conduct which constitutes a crime by statute or at common~~
 14 ~~law.~~

15 Sec. ~~10~~ **10**. K.S.A. 2004 Supp. 16a-6-104 is hereby amended to read
 16 as follows: 16a-6-104. This act shall be administered by the consumer
 17 credit commissioner of Kansas who is also referred to as the administrator.
 18 (1) In addition to other powers granted by this act, the administrator
 19 within the limitations provided by law may:

20 (a) Receive and act on complaints, take action designed to obtain
 21 voluntary compliance with the provisions of K.S.A. 16a-1-101 to 16a-9-
 22 102, inclusive, and amendments thereto, or commence proceedings on
 23 the administrator's own initiative;

24 (b) counsel persons and groups on their rights and duties under
 25 K.S.A. 16a-1-101 to 16a-9-102, inclusive, and amendments thereto;

26 (c) establish programs for the education of consumers with respect
 27 to credit practices and problems and as a condition in settlements of
 28 investigations or examinations, the administrator may receive a payment
 29 designated for consumer education to be expended as directed by the
 30 administrator for such purpose;

31 (d) make studies appropriate to effectuate the purposes and policies
 32 of K.S.A. 16a-1-101 to 16a-9-102, inclusive, and amendments thereto;

33 (e) adopt, amend and revoke rules and regulations to carry out the
 34 specific provisions of K.S.A. 16a-1-101 to 16a-9-102, inclusive, and
 35 amendments thereto;

36 (f) issue, amend and revoke written administrative interpretations.
 37 Such written administrative interpretations shall be approved by the at-
 38 torney general and published in the Kansas register within 15 days of
 39 issuance. The administrator shall annually publish all written administra-
 40 tive interpretations in effect;

41 (g) maintain offices within this state; and

42 (h) appoint any necessary attorneys, hearing examiners, clerks, and
 43 other employees and agents and fix their compensation, and authorize

1 attorneys appointed under this section to appear for and represent the
2 administrator in court;

3 (i) examine periodically at intervals the administrator deems approp-
4 priate the loans, business and records of every licensee *or person filing*
5 *notification pursuant to K.S.A. 16a-6-201 through 16a-6-203, and amend-*
6 *ments thereto*, except licensees which are supervised financial organiza-
7 tions. The official or agency responsible for the supervision of each su-
8 pervised financial organization shall examine the loans, business and
9 records of each such organization in the manner and periodically at in-
10 tervals prescribed by the administrator. In addition, for the purpose of
11 discovering violations of K.S.A. 16a-1-101 through 16a-9-102, and amend-
12 ments thereto, or securing information lawfully required, the administra-
13 tor or the official or agency to whose supervision the organization is sub-
14 ject to K.S.A. 16a-6-105, and amendments thereto, may at any time
15 investigate the loans, business and records of any supervised lender. For
16 examination purposes the administrator shall have free and reasonable
17 access to the offices, places of business and records of the lender *or*
18 *person filing notification*; ~~and~~

19 (j) refer such evidence as may be available concerning violations of
20 this act or of any rule and regulation or order to the attorney general or
21 the proper county or district attorney, who may in the prosecutor's dis-
22 cretion, with or without such a reference, institute the appropriate crim-
23 inal proceedings under this act. Upon receipt of such reference, the at-
24 torney general or the county attorney or district attorney may request that
25 a duly employed attorney of the administrator prosecute or assist in the
26 prosecution of such violation on behalf of the state. Upon approval of the
27 administrator, such employee shall be appointed special prosecutor for
28 the attorney general or the county attorney or district attorney to serve
29 without compensation from the attorney general or the county attorney
30 or district attorney. Such special prosecutor shall have all the powers and
31 duties prescribed by law for assistant attorneys general or assistant county
32 or district attorneys, and such other powers and duties as are lawfully
33 delegated to such special prosecutors by the attorney general or the
34 county attorney or district attorney; *and*

35 (k) *require fingerprinting of any applicant, licensee, members thereof*
36 *if a copartnership or association, or officers and directors thereof if a*
37 *corporation, or any agent acting on their behalf, or other person ~~as~~*
38 ~~*deemed appropriate by the administrator*~~ **directly engaged in lending**
39 **activities.** *The administrator, or the administrator's designee, may submit*
40 *such fingerprints to the Kansas bureau of investigation, federal bureau of*
41 *investigation, or other law enforcement agency for the purposes of veri-*
42 *fying the identity of such persons and obtaining records of their criminal*
43 *arrests and convictions.*

- 1 (2) The administrator shall enforce the provisions of this act and the
2 rules and regulations and interpretations adopted thereunder with respect
3 to a creditor, unless the creditor's compliance is regulated exclusively or
4 primarily by another state or federal agency.
- 5 (3) To keep the administrator's rules and regulations in harmony with
6 the rules of administrators in other jurisdictions which enact the revised
7 uniform consumer credit code, the administrator, so far as is consistent
8 with the purposes, policies and provisions of K.S.A. 16a-1-101 to 16a-9-
9 102, inclusive, and amendments thereto, may:
- 10 (a) Before adopting, amending and revoking rules and regulations,
11 advise and consult with administrators in other jurisdictions which enact
12 the uniform consumer credit code; and
- 13 (b) in adopting, amending and revoking rules and regulations, take
14 into consideration the rules of administrators in other jurisdictions which
15 enact the revised uniform consumer credit code.
- 16 (4) Except for refund of an excess charge, no liability is imposed un-
17 der K.S.A. 16a-1-101 to 16a-9-102, inclusive, and amendments thereto,
18 for an act done or omitted in conformity with a rule and regulation or
19 written administrative interpretation of the administrator in effect at the
20 time of the act or omission notwithstanding that after the act or omission
21 the rule and regulation or written administrative interpretation may be
22 determined by judicial or other authority to be invalid for any reason.
- 23 (5) The administrator prior to December 1 of each year shall establish
24 such fees as are authorized under the provisions of K.S.A. 16a-1-101 to
25 16a-9-102, inclusive, and amendments thereto, for the ensuing calendar
26 year in such amounts as the administrator may determine to be sufficient
27 to meet the budget requirements of the administrator for each fiscal year.
- 28 ~~Sec. 12~~ **11.** K.S.A. 2004 Supp. 16a-6-108 is hereby amended to read
29 as follows: 16a-6-108. (1) If the administrator determines after notice and
30 opportunity for a hearing that any person has engaged, is engaging or is
31 about to engage in any act or practice constituting a violation of any pro-
32 vision of this act or any rule and regulation, order or administrative in-
33 terpretation hereunder, the administrator by order may require that such
34 person cease and desist from the unlawful act or practice and take such
35 affirmative action as in the judgment of the administrator will carry out
36 the purposes of this act.
- 37 (2) If the administrator makes written findings of fact that the public
38 interest will be irreparably harmed by delay in issuing an order under
39 subsection (1), the administrator may issue an emergency cease and desist
40 order. Such order shall be subject to the same procedures as an emer-
41 gency order issued under K.S.A. 77-536, and amendments thereto. Upon
42 the entry of such an order the administrator shall promptly notify the
43 person subject to the order that it has been entered, of the reasons and

1 that upon written request the matter will be set for a hearing which shall
 2 be conducted in accordance with the provisions of the Kansas adminis-
 3 trative procedure act. If no hearing is requested and none is ordered by
 4 the administrator, the order will remain in effect until it is modified or
 5 vacated by the administrator. If a hearing is requested or ordered, the
 6 administrator, after notice of and opportunity for hearing to the person
 7 subject to the order, shall by written findings of fact and conclusion of
 8 law vacate, modify or make permanent the order.

9 (3) If the administrator reasonably believes that a person has violated
 10 this act or a rule and regulation, order or administrative interpretation of
 11 the administrator under this act, the administrator, in addition to any
 12 specific power granted under this act, after notice and hearing in an ad-
 13 ministrative proceeding, unless the right to notice and hearing is waived
 14 by the person against whom the sanction is imposed, may *require any or*
 15 *all of the following*:

- 16 (a) Censure the person if the person is licensed under this act;
- 17 (b) issue an order against an applicant, licensed person or other per-
 18 son who knowingly violates this act or a rule and regulation, order or
 19 administrative interpretation of the administrator under this act, imposing
 20 a civil penalty up to a maximum of ~~\$5,000~~ ~~\$10,000~~ **\$5,000** for each vio-
 21 lation, ~~or. If any person is found to have~~ **knowingly or willfully** violated
 22 *any provision of this act, and such violation is committed against elderly*
 23 *or disabled persons, as defined in K.S.A. 50-676, and amendments thereto,*
 24 *in addition to any civil penalty otherwise provided by law, the adminis-*
 25 *trator may impose an additional penalty not to exceed* ~~\$10,000~~ **\$5,000**
 26 *for each such violation;*
- 27 (c) revoke or suspend the person's license or bar the person from
 28 subsequently applying for a license under this act; *or*
- 29 (d) *issue an order requiring the person to pay restitution for any loss*
 30 *arising from the violation or requiring the person to disgorge any profits*
 31 *arising from the violation. Such order may include the assessment of in-*
 32 *terest not to exceed 8% per annum from the date of the violation.*

33 (4) Any person aggrieved by a final order of the administrator may
 34 obtain a review of the order in accordance with the provisions of the act
 35 for judicial review and civil enforcement of agency actions.

36 Sec. ~~12~~ **12**. K.S.A. 16a-6-201 is hereby amended to read as follows:
 37 16a-6-201. This part applies to a creditor engaged in this state in entering
 38 into consumer credit transactions and to ~~a creditor having an office or~~
 39 ~~place of business in this state~~ *any person* who takes assignments of and
 40 undertakes direct collection of payments from or enforcement of rights
 41 against debtors arising from these transactions. This part shall not apply
 42 to supervised financial organizations (K.S.A. 16a-1-301 ~~(38)~~, and amend-
 43 *ments thereto*). Nothing in this section shall be construed to require the

1 payment of any fees required by this article by attorneys or collection
2 agencies who receive the same for collection purposes.

3 Sec. ~~14~~ **13.** K.S.A. 2004 Supp. 16a-6-203 is hereby amended to read
4 as follows: 16a-6-203. (1) A person required to file notification shall on
5 or before April 30 of each year pay to the administrator an annual fee in
6 an amount established pursuant to subsection ~~(6)~~ (5) of K.S.A. 16a-6-104,
7 and amendments thereto, for each business location for that year.

8 (2) Persons required to file notification who are sellers, lessors or
9 lenders shall pay an additional fee at the time and in the manner stated
10 in subsection (1), in an amount established pursuant to subsection ~~(6)~~ (5)
11 of K.S.A. 16a-6-104, and amendments thereto, for each business location
12 for each \$100,000, or part thereof which exceeds \$10,000 and which is
13 above the first \$100,000, of the average unpaid balances, including unpaid
14 scheduled periodic payments under consumer leases, arising from con-
15 sumer credit transactions entered into in this state and held on the last
16 day of each calendar month during the preceding calendar year and held
17 either by the seller, lessor or lender, or by the immediate or a remote
18 assignee other than a supervised financial organization who has not filed
19 notification. The unpaid balances of assigned obligations held by an as-
20 signee other than a supervised financial organization who has not filed
21 notification are presumed to be the unpaid balances of the assigned ob-
22 ligations at the time of their assignment by the seller, lessor or lender.

23 (3) Persons required to file notification who are assignees shall pay
24 an additional fee at the time and in the manner stated in subsection (1),
25 in an amount established pursuant to subsection ~~(6)~~ (5) of K.S.A. 16a-6-
26 104, and amendments thereto, for each \$100,000, or part thereof which
27 exceeds \$10,000, of the average unpaid balances, including unpaid sched-
28 uled periodic payments payable by lessees, arising from consumer credit
29 transactions entered into in this state taken by assignment and held on
30 the last day of each calendar month during the preceding calendar year.

31 Sec. ~~15~~ **14.** K.S.A. 16a-3-205, 16a-5-103, 16a-5-111 and 16a-6-201
32 and K.S.A. 2004 Supp. 16a-2-103, 16a-2-302, 16a-2-303, 16a-2-304, 16a-
33 3-304, 16a-3-308a, ~~16a-5-301~~, 16a-6-104, 16a-6-108 and 16a-6-203 are
34 hereby repealed.

35 Sec. ~~16~~ **15.** This act shall take effect and be in force from and after
36 its publication in the statute book.