

As Amended by Senate Committee

Session of 2009

SENATE BILL No. 241

By Committee on Financial Institutions and Insurance

2-6

10 AN ACT relating to distressed property consulting services; providing for
11 the regulation thereof; amending K.S.A. 50-1001, 50-1002, 50-1003,
12 50-1004, 50-1005, 50-1006, 50-1008, 50-1009, 50-1011, 50-1016, 50-
13 1117, 50-1118, 50-1119, 50-1121, 50-1122, 50-1124, 50-1125, 50-1126,
14 50-1128 and 50-1133 and repealing the existing sections.
15

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

17 New Section. 1. (a) No person shall engage in distressed property
18 consulting services with a resident of this state unless:

19 (1) The registrant provided the consumer with the disclosures re-
20 quired under K.S.A. 58-2342, and amendments thereto;

21 (2) the registrant and the consumer have entered into a written dis-
22 tressed property consulting services agreement and a copy of the signed
23 agreement has been provided to the consumer by the registrant. Such
24 agreement shall be in at least 12 point type, signed and dated by the
25 consumer and registrant, and shall include:

26 (A) The name, address and phone number of the consumer and the
27 registrant;

28 (B) a complete description of the distressed property consulting serv-
29 ice to be provided to the consumer and an itemization of any fees to be
30 charged to the consumer;

31 (C) a notice of the consumer's right to rescind the distressed property
32 consulting services agreement at any time by giving written notice to the
33 registrant;

34 (D) a notice that the registrant is licensed with the Kansas office of
35 the state bank commissioner under the Kansas credit services organiza-
36 tion act;

37 (E) a notice that the distressed property consultant service can not
38 receive from the consumer any fee, compensation or gain until the reg-
39 istrant has completed everything described in the agreement;

40 (F) a notice that the consumer should not be asked by the registrant
41 to sign any lien, mortgage, deed or real estate contract or to transfer all
42 or any portion of their property interest into a trust.

43 (3) The registrant provides the consumer a disclosure that the reg-

1 istrant may not, as a condition of entering into a distressed property con-
2 sulting services agreement, require a consumer to purchase any other
3 product or service, nor solicit or offer to sell any other product or service
4 to the consumer during the term of the distressed property consulting
5 services agreement.

6 (b) This section shall be part of and supplemental to the Kansas credit
7 service organization act.

8 Sec. 2. K.S.A. 50-1001 is hereby amended to read as follows: 50-
9 1001. As used in this act:

10 (a) “Commissioner” refers to the ~~securities~~ *state bank* commissioner
11 appointed under K.S.A. ~~75-6301~~ *75-1304*, and amendments thereto.

12 (b) “Loan” means any agreement to advance money or property in
13 return for the promise to make payments for the money or property.

14 (c) “Loan broker” means any person who, in return for a fee from
15 any person, promises to procure a loan for any person or assist any person
16 in procuring a loan from any third party, or who promises to consider
17 whether or not to make a loan to any person. Loan broker does not
18 include:

19 (1) Any bank, savings bank, trust company, savings and loan associa-
20 tion, credit union or any other financial institution regulated by any
21 agency of the United States or any state;

22 (2) any person ~~authorized to sell and service loans for the federal~~
23 ~~national mortgage association or the federal home loan mortgage corpo-~~
24 ~~ration, issue securities backed by the government national mortgage as-~~
25 ~~sociation, make loans insured by the department of housing and urban~~
26 ~~development, make loans guaranteed by the veterans administration, or~~
27 ~~act as a correspondent of loans insured by the department of housing and~~
28 ~~urban development or guaranteed by the veterans administration whose~~
29 ~~activities constitute mortgage business, as defined in the Kansas mortgage~~
30 ~~business act, K.S.A. 9-2201 et seq., and amendments thereto;~~

31 (3) any insurance company; or

32 (4) any person arranging financing for the sale of the person’s
33 product.

34 (d) “Creditor” means any person to whom a loan is initially payable
35 on the face of the note or contract evidencing the loan.

36 (e) “Person” means any individual, sole proprietorship, corporation,
37 partnership, trust, association, joint venture, pool syndicate, unincorpor-
38 ated organization or other form of entity, however organized.

39 Sec. 3. K.S.A. 50-1002 is hereby amended to read as follows: 50-
40 1002. It shall be unlawful for any person to engage in *or hold out to the*
41 *public as willing to engage in* the business of loan brokering *with a person*
42 *located in this state* unless registered under this act.

43 Sec. 4. K.S.A. 50-1003 is hereby amended to read as follows: 50-

- 1 1003. (a) In order to be registered under this act a loan broker shall file
2 an application for registration with the commissioner. The application for
3 registration shall contain:
- 4 (1) The disclosure document required under subsection (b) of K.S.A.
5 50-1006, and amendments thereto, and the form of the disclosure state-
6 ment proposed to be used under subsection (b)(1) of K.S.A. 50-1006, and
7 amendments thereto;
 - 8 (2) consent to service of process under subsection (e);
 - 9 (3) evidence of the bond required in subsection (b); ~~and~~
 - 10 (4) a *nonrefundable* fee of \$250, *which may be increased by rules and*
11 *regulations adopted by the commissioner; and*
 - 12 (5) *financial statements for the loan broker's last fiscal year presented*
13 *in accordance with generally accepted accounting principles and reviewed*
14 *by an independent accountant, in accordance with standards estab-*
15 *lished by the American institute of certified public accountants.*
- 16 ~~(b) A loan broker must maintain a bond satisfactory to the commis-~~
17 ~~sioner in the amount of \$25,000, which shall be in favor of the state.~~
- 18 ~~(c) Whenever the provisions of this act have been complied with, the~~
19 ~~commissioner shall issue a certificate of registration to the applicant, au-~~
20 ~~thorizing the applicant to engage in the business of loan brokering.~~
- 21 (b) *Each applicant or registrant shall file with the commissioner a*
22 *surety bond in a form acceptable to the commissioner. The surety bond*
23 *shall be issued by a surety or insurance company authorized to conduct*
24 *business in this state, securing the applicant's or registrant's faithful per-*
25 *formance of all duties and obligations of a registrant. The surety bond*
26 *shall:*
- 27 (1) *Be payable to the office of the state bank commissioner;*
 - 28 (2) *provide that the bond may not be terminated without 30 days*
29 *prior written notice to the commissioner;*
 - 30 (3) *provide that the bond shall not expire for two years after the date*
31 *of surrender, revocation or expiration of the applicant's or registrant's*
32 *registration, whichever shall first occur;*
 - 33 (4) *be available for:*
 - 34 (A) *The recovery of expenses, fines and fees levied by the commis-*
35 *sioner under this act; and*
 - 36 (B) *payment of losses or damages which are determined by the com-*
37 *missioner to have been incurred by any consumer as a result of the ap-*
38 *plicant's or registrant's failure to comply with the requirements of this*
39 *act; and*
 - 40 (5) *be in the amount of \$50,000. The amount of the bond may be*
41 *increased up to \$1,000,000, as further defined by rules and regulations*
42 *adopted by the commissioner.*
- 43 (c) *The application shall be approved and a nontransferable and non-*

1 *assignable registration shall be issued to the applicant provided:*

2 (1) *The commissioner has received the complete application and fee*
3 *required by this section; and*

4 (2) *the commissioner determines the financial responsibility and con-*
5 *dition, character, qualifications and fitness of the applicant warrants a*
6 *belief that the business of the applicant will be conducted competently,*
7 *honestly, fairly and in accordance with all applicable state and federal*
8 *laws.*

9 (d) *If the commissioner fails to issue a registration within 60 days*
10 *after a filed application is deemed complete by the commissioner, the*
11 *applicant may make written request for hearing. The commissioner shall*
12 *conduct a hearing in accordance with the Kansas administrative proce-*
13 *dure act.*

14 ~~(e)~~ (e) *An application for registration becomes effective as of the date*
15 *specified on the certificate of registration. Every registration is effective*
16 *until January 1 of the year after it goes into effect.*

17 ~~(f)~~ (f) *Every applicant for registration shall file with the commis-*
18 *sioner, in such form as the commissioner prescribes, an irrevocable con-*
19 *sent appointing the secretary of state to be the applicant's agent to receive*
20 *service of any lawful process in any noncriminal suit, action or proceeding*
21 *against the applicant arising from the violation of any provision of this act.*
22 *Service shall be made in accordance with article 3 of chapter 60 of the*
23 *Kansas Statutes Annotated.*

24 Sec. 5. K.S.A. 50-1004 is hereby amended to read as follows: 50-
25 1004. (a) *A loan broker may not continue engaging in the business of loan*
26 *brokering unless the broker's registration is renewed annually. A loan*
27 *broker shall renew the registration by filing with the commissioner, at*
28 *least 30 days before the expiration of the registration, an application con-*
29 *taining any information the commissioner may require to indicate any*
30 *material change from the information contained in the applicant's original*
31 *application or any previous application.*

32 (b) *An application for renewal must be accompanied by a fee of \$100*
33 *\$250, which may be increased by rules and regulations adopted by the*
34 *commissioner.*

35 Sec. 6. K.S.A. 50-1005 is hereby amended to read as follows: 50-
36 1005. ~~All fees and funds accruing from the administration of this act shall~~
37 ~~be accounted for by the commissioner and shall be remitted to the state~~
38 ~~treasurer in accordance with the provisions of K.S.A. 75-4215, and~~
39 ~~amendments thereto. Upon receipt of each such remittance, the state~~
40 ~~treasurer shall deposit the entire amount in the state treasury to the credit~~
41 ~~of the state general fund collected by the commissioner pursuant to this~~
42 ~~act shall be subject to the provisions of K.S.A. 75-1308, and amendments~~
43 ~~thereto.~~

1 Sec. 7. K.S.A. 50-1006 is hereby amended to read as follows: 50-
2 1006. (a) At least seven days before the time any person signs a contract
3 for the services of a loan broker, or seven days before the loan broker
4 receives any consideration upon the contract, whichever occurs first, the
5 loan broker must provide to the contracting person a written disclosure
6 document that meets the requirements set forth in subsection (b).

7 (b) A written disclosure document shall contain the following
8 information:

9 (1) A disclosure statement which shall be the cover sheet and shall
10 be entitled in at least 10 point boldface capital letters “DISCLOSURES
11 REQUIRED BY KANSAS LAW.” Under this title shall appear the state-
12 ment in at least 10 point type that “The Kansas ~~securities~~ *office of the*
13 *state bank* commissioner has not reviewed and does not approve, rec-
14 ommend, endorse or sponsor any loan brokerage contract. The infor-
15 mation contained in this disclosure has not been verified by the commis-
16 sioner. If you have any questions see an attorney before you sign a
17 contract or agreement. *As a consumer, you may submit a complaint or*
18 *inquiry about this loan broker by delivering a written statement to the*
19 *Office of the State Bank Commissioner, 700 Jackson, Suite 300, Topeka,*
20 *Kansas 66603.”* Nothing except the title and the required statement shall
21 appear on the cover sheet;

22 (2) the name *of the individual doing business with the consumer* and
23 form of organization of the broker, the names under which the broker
24 has done, is doing, or intends to do business, and the name of any parent
25 organization or affiliate of the broker *and the license number of the loan*
26 *broker;*

27 ~~(3) the names, addresses and titles of the broker’s officers, directors,~~
28 ~~trustees, general partners, general managers, principal executives and any~~
29 ~~other person performing similar duties;~~

30 ~~(4)~~ (3) the length of time the broker has conducted business as a loan
31 broker;

32 ~~(5)~~ (4) a full and detailed description of the actual services that the
33 loan broker undertakes to perform for the prospective borrower;

34 ~~(6)~~ (5) the number of loan brokerage contracts the broker has entered
35 into within the past 12 months;

36 ~~(7)~~ (6) the number of loan brokerage contracts in which the broker
37 has successfully obtained a loan for the prospective borrower within the
38 last 12 months and the dollar amount of the loans;

39 ~~(8) financial statements for the loan broker’s last fiscal year presented~~
40 ~~in accordance with generally accepted accounting principles, and re-~~
41 ~~viewed by an independent accountant in accordance with standards es-~~
42 ~~tablished by the American institute of certified public accountants, except~~
43 ~~that for initial applications for registration, the financial statements shall~~

1 ~~include a balance sheet dated within four months of filing for registration;~~
2 ~~(9) (7)~~ a specific statement of the circumstances under which the
3 broker will be entitled to obtain or retain consideration from the party
4 with whom the broker contracts; and
5 ~~(10) (8)~~ any other information the commissioner may require.

6 (c) A loan broker shall amend the disclosure document required by
7 subsection (b) whenever necessary to prevent it from containing any false
8 or misleading statement of a material fact and shall deliver a copy of the
9 amended disclosure document to the commissioner on or before the date
10 of the amendment.

11 (d) A loan broker shall deliver to any person who proposes to become
12 obligated for a loan an estimated disclosure document if the creditor
13 would be required to deliver to the person a disclosure document under
14 the Truth-in-Lending Act (15 U.S.C. 1601-1667e) for the transaction. The
15 estimated disclosure document shall:

16 (1) Be delivered to the person before the person becomes contrac-
17 tually obligated on the loan; or

18 (2) be delivered or placed in the mail to the person not later than
19 three business days after the person enters into an agreement with the
20 loan broker whichever occurs first. The estimated disclosure document
21 must contain all of the information and be in the form required by the
22 Truth-in-Lending Act (15 U.S.C. 1601-1667e) and regulations under the
23 act. However, the annual percentage rate, finance charge, total of pay-
24 ments and other matters required under the Truth-in-Lending Act (15
25 U.S.C. 1601-1667e) shall be adjusted to reflect the amount of all fees and
26 charges of the loan broker that the creditor could exclude from an esti-
27 mated disclosure document. The estimated disclosure document must
28 state at the top in at least 10 point type: "The following is an estimated
29 disclosure document showing your loan transaction as if the fees and
30 charges you are scheduled to pay us were charged to you directly by the
31 creditor." After the estimated disclosure document is delivered to any
32 person, the loan broker shall deliver to the person an additional statement
33 redisclosing all items if the actual annual percentage rate will vary from
34 the annual percentage rate contained in the original estimated disclosure
35 by more than 0.125%. Any required additional disclosure document shall
36 be delivered or placed in the mail before consummation of the loan or
37 after three days from when the information that requires redisclosure
38 becomes available, whichever occurs first.

39 Sec. 8. K.S.A. 50-1008 is hereby amended to read as follows: 50-
40 1008. ~~(a)~~ The commissioner may deny, suspend ~~or~~, revoke *or refuse to*
41 *renew* the registration of a loan broker if the *commissioner finds, after*
42 *notice and opportunity for a hearing conducted in accordance with the*
43 *provisions of the Kansas administrative procedure act, that the loan*

1 broker:

- 2 ~~(1) Fails~~ (a) *Has failed* to maintain the bond required under K.S.A.
 3 50-1003, and amendments thereto;
 4 ~~(2)~~ (b) is insolvent;
 5 ~~(3)~~ (c) has violated any provision of this act, *any rule and regulation*
 6 *or order lawfully made pursuant to this act*;
 7 ~~(4)~~ (d) has filed with the commissioner any document or statement
 8 containing any false representation of a material fact or omitting to state
 9 a material fact; ~~or~~
 10 ~~(5)~~ (e) has been convicted, ~~within 10 years before the date of the~~
 11 ~~application, renewal or review~~, of any crime involving fraud or deceit;
 12 (f) *has been the subject of any disciplinary action by the commissioner*
 13 *or any other state or federal regulatory agency*;
 14 (g) *has had a final judgment entered against such person in a civil*
 15 *action and the commissioner finds, based upon the conduct on which the*
 16 *judgment is based, that granting a registration to such person would be*
 17 *contrary to the public interest*;
 18 (h) *has engaged in deceptive business practices*; or
 19 (i) *has refused to furnish information required by the commissioner*
 20 *within a reasonable time as established by the commissioner.*

21 ~~(b) The commissioner may not enter a final order denying, suspend-~~
 22 ~~ing or revoking the registration of a loan broker without prior notice to~~
 23 ~~all interested parties, opportunity for a hearing and written findings of~~
 24 ~~fact and conclusions of law. The commissioner may by summary order~~
 25 ~~deny, suspend or revoke a registration pending final determination of any~~
 26 ~~proceeding under this section. Upon the entry of a summary order, the~~
 27 ~~commissioner shall promptly notify all interested parties that it has been~~
 28 ~~entered, of the reasons for the summary order and, that upon receipt by~~
 29 ~~the commissioner of a written request from a party, the matter will be~~
 30 ~~set for hearing which shall be conducted in accordance with the provisions~~
 31 ~~of the Kansas administrative procedure act. If no hearing is requested~~
 32 ~~and none is ordered by the commissioner, the order remains in effect~~
 33 ~~until it is modified or vacated by the commissioner. If a hearing is re-~~
 34 ~~quested or ordered, the commissioner, after notice of the hearing has~~
 35 ~~been given to all interested persons and the hearing has been held, may~~
 36 ~~modify or vacate the order or extend it until final determination.~~

37 Sec. 9. K.S.A. 50-1009 is hereby amended to read as follows: 50-
 38 1009. (a) The commissioner may do the following:

- 39 (1) Adopt rules and regulations to implement this act;
 40 (2) make investigations and examinations:
 41 (A) In connection with any application for registration of any loan
 42 broker or any registration already granted; or
 43 (B) whenever it appears to the commissioner, upon the basis of a

1 complaint or information, that reasonable grounds exist for the belief that
2 an investigation or examination is necessary or advisable for the more
3 complete protection of the interests of the public;

4 ~~(3) appoint special investigators to aid in investigations conducted~~
5 ~~pursuant to this act. Such special investigators shall have the same au-~~
6 ~~thority with respect to enforcement of this act as specified for special~~
7 ~~investigators appointed under subsection (a) of K.S.A. 2005 Supp. 17-~~
8 ~~12a602, and amendments thereto, in enforcing the Kansas uniform se-~~
9 ~~curities act;~~

10 ~~(4) (3) charge as costs of investigation or examination all reasonable~~
11 ~~expenses, including a per diem prorated upon the salary of the commis-~~
12 ~~sioner or employee and actual traveling and hotel expenses. All reasonable~~
13 ~~expenses are to be paid by the party or parties under investigation or~~
14 ~~examination;~~

15 ~~(5) (4) issue notices and orders, including cease and desist notices~~
16 ~~and orders, after making an investigation or examination under paragraph~~
17 ~~(2). The commissioner may also bring an action on behalf of the state to~~
18 ~~enjoin a person from violating this act. The commissioner shall notify the~~
19 ~~person that an order or notice has been issued, the reasons for it and that~~
20 ~~a hearing will be set in accordance with the provisions of the Kansas~~
21 ~~administrative procedures act after the commissioner receives a written~~
22 ~~request from the person requesting a hearing;~~

23 ~~(6) (5) sign all orders, official certifications, documents or papers is-~~
24 ~~sued under this act or delegate the authority to sign any of those items~~
25 ~~to a deputy;~~

26 ~~(7) (6) hold and conduct hearings;~~

27 ~~(8) (7) hear evidence;~~

28 ~~(9) (8) conduct inquiries with or without hearings;~~

29 ~~(10) (9) receive reports of investigators or other officers or employees~~
30 ~~of the state of Kansas or of any municipal corporation or governmental~~
31 ~~subdivision within the state;~~

32 ~~(11) (10) administer oaths or cause them to be administered;~~

33 ~~(12) (11) subpoena witnesses and compel them to attend and testify;~~

34 ~~(13) (12) compel the production of books, records and other docu-~~
35 ~~ments; and~~

36 ~~(14) (13) order depositions to be taken of any witness residing within~~
37 ~~or without the state. The depositions shall be taken in the manner pre-~~
38 ~~scribed by law for depositions in civil actions and made returnable to the~~
39 ~~commissioner.~~

40 (b) If any person refuses to obey a subpoena issued under this act,
41 the commissioner may make application to any court of competent juris-
42 diction to order the person to appear before the commissioner and pro-
43 duce documentary evidence or give evidence as directed in the subpoena.

1 The failure to obey the order of the court shall be subject to punishment
2 by the court as contempt of court.

3 ~~(c) No person shall be excused from complying with a subpoena on~~
4 ~~the ground that the testimony or evidence required may tend to incrim-~~
5 ~~inate the person or subject the person to a penalty or forfeiture. No~~
6 ~~individual may be prosecuted or subject to any penalty or forfeiture for~~
7 ~~or on account of any transaction, matter or thing which the individual is~~
8 ~~compelled to testify or produce evidence, after claiming the privilege~~
9 ~~against self-incrimination. However, the individual so testifying shall not~~
10 ~~be exempt from prosecution and punishment for perjury committed in~~
11 ~~so testifying. An individual is not excused from attending, testifying, filing~~
12 ~~a statement, producing a document or other evidence or obeying a sub-~~
13 ~~poena of the commissioner under this act or in an action or proceeding~~
14 ~~instituted by the commissioner under this act on the ground that the~~
15 ~~required testimony, statement, document or other evidence, directly or~~
16 ~~indirectly, may tend to incriminate the individual or subject the individual~~
17 ~~to a criminal fine, penalty or forfeiture. If the individual refuses to testify,~~
18 ~~file a statement or produce a document or other evidence on the basis of~~
19 ~~the individual's privilege against self-incrimination, the commissioner~~
20 ~~may compel the testimony, the filing of the statement, the production of~~
21 ~~the document or the giving of other evidence. The testimony, document~~
22 ~~or other evidence compelled under such an order may not be used, directly~~
23 ~~or indirectly, against the individual in a criminal case, except in a pros-~~
24 ~~ecution for perjury or contempt or otherwise failing to comply with the~~
25 ~~order.~~

26 (d) In any prosecution, action, suit or proceeding based upon or aris-
27 ing out of this act, the commissioner may sign a certificate showing com-
28 pliance or noncompliance with this act by any loan broker. This shall
29 constitute prima facie evidence of compliance or noncompliance with this
30 act and shall be admissible in evidence in any action at law or in equity
31 to enforce this act.

32 (e) *The state bank commissioner has authority to investigate conduct*
33 *that occurred before the state bank commissioner became administrator*
34 *of this act, and to bring actions or proceedings involving such conduct.*

35 Sec. 10. K.S.A. 50-1011 is hereby amended to read as follows: 50-
36 1011. (a) If the commissioner determines, after notice and opportunity
37 for a hearing, that a person has violated this act, the commissioner may,
38 in addition to all other remedies, impose a civil penalty upon the person
39 in an amount not to exceed ~~\$5,000~~ \$10,000 for each violation.

40 (b) The commissioner may bring an action in the district court of
41 Shawnee county to enforce payment of any penalty imposed under this
42 section.

43 Sec. 11. K.S.A. 50-1016 is hereby amended to read as follows: 50-

- 1 1016. (a) The following persons are exempt from the requirements of
2 K.S.A. 50-1002, 50-1003, 50-1004, 50-1006, 50-1007, 50-1008, 50-1014
3 and 50-1015, and amendments thereto:
- 4 (1) Any attorney while engaging in the practice of law;
 - 5 (2) any certified public accountant with a permit to practice under
6 K.S.A. 1-310, and amendments thereto, while engaged in practice as a
7 certified public accountant or any independent public accountant en-
8 gaged in the practice of public accounting whose service in relation to
9 procurement of a loan is incidental to their practice;
 - 10 (3) any person licensed as a real estate broker or salesperson under
11 K.S.A. 58-3039, and amendments thereto, while rendering services in the
12 ordinary course of a transaction in which a license as a real estate broker
13 or salesperson is required;
 - 14 (4) any broker-dealer, agent, investment adviser or investment advi-
15 ser representative registered under K.S.A. ~~2005 Supp.~~ 17-12a401, 17-
16 12a402, 17-12a403 or 17-12a404, and amendments thereto;
 - 17 (5) any person whose fee is wholly contingent on the successful pro-
18 curement of a loan from a third party and to whom no fee, other than a
19 bona fide third party fee, is paid before the procurement;
 - 20 (6) any person who is a creditor, or proposed to be a creditor, for any
21 loan; and
 - 22 (7) any feedlot operator licensed under K.S.A. 47-1503, and amend-
23 ments thereto.
- 24 (b) As used in this section, “bona fide third party fee” includes fees
25 for:
- 26 (1) Credit reports, appraisals and investigations; and
 - 27 (2) if the loan is to be secured by real property, title examinations,
28 an abstract of title, title insurance, a property survey and similar purposes.
- 29 (c) As used in this section, “successful procurement of a loan” means
30 that a binding commitment from a creditor to advance money has been
31 received and accepted by the borrower.
- 32 (d) The burden of proof of any exemption or classification provided
33 in this act shall be on the party claiming the exemption or classification.
- 34 Sec. 12. K.S.A. 50-1117 is hereby amended to read as follows: 50-
35 1117. Definitions as used in this act: (a) “Commissioner” means the state
36 bank commissioner.
- 37 (b) “Consumer” means an individual who is a resident of this state.
 - 38 (c) “Credit services organization” means a person who engages in, or
39 holds out to the public as willing to engage in, the business of debt man-
40 agement services for a fee, compensation or gain, or in the expectation
41 of a fee, compensation or gain.
 - 42 (d) “Debt management service” means:
 - 43 (1) Receiving or offering to receive funds from a consumer for the

- 1 purpose of distributing the funds among such consumer’s creditors in full
 2 or partial payment of such consumer’s debts;
- 3 (2) improving or offering to improve a consumer’s credit record, his-
 4 tory or rating; or
- 5 (3) negotiating or offering to negotiate to defer or reduce a con-
 6 sumer’s obligations with respect to credit extended by others.
- 7 (e) *“Distressed property” means a residential real property consisting*
 8 *of one to four family dwelling units that is in foreclosure or at a risk of*
 9 *loss or whose owner is more than 60 days delinquent on any loan that is*
 10 *secured by the property.*
- 11 (f) *“Distressed property consultant” means a person who engages in*
 12 *or holds out to the public as willing to engage in the business of distressed*
 13 *property consulting for a fee, compensation or gain, or in the expectation*
 14 *of a fee, compensation or gain.*
- 15 (g) (1) *“Distressed property consulting” includes soliciting, repre-*
 16 *senting or offering to any owner to perform any service which the person*
 17 *represents will do the following:*
- 18 (A) *Avoid or ameliorate the impairment of the owner’s credit resulting*
 19 *from the recording of a notice of default or a foreclosure sale;*
- 20 (B) *stop or postpone the foreclosure sale of a residence in foreclosure;*
- 21 (C) *obtain any forbearance from any beneficiary or mortgagee;*
- 22 (D) *assist the owner to exercise any right of redemption;*
- 23 (E) *obtain any extension of the period within which the owner may*
 24 *reinstate such owner’s obligation;*
- 25 (F) *obtain any waiver of an acceleration clause contained in any*
 26 *promissory note or contract secured by a deed of trust or mortgage on a*
 27 *distressed property or contained in any such deed of trust or mortgage;*
- 28 (G) *assist the owner in obtaining a loan or advance of funds; or*
- 29 (H) *save the owner’s residence from foreclosure.*
- 30 (2) *“Distressed property consulting” does not include any of the*
 31 *following:*
- 32 (A) *Services performed by a person who held a lien prior to the prop-*
 33 *erty becoming a distressed property when the person performs the serv-*
 34 *ices in connection with the obligation or lien; ~~or~~*
- 35 (B) *any service performed by a bank, trust company, savings and loan*
 36 *association or credit union authorized or chartered under the laws of this*
 37 *state or the United States; ~~or~~*
- 38 (C) ***services performed by an individual licensed as a real estate***
 39 ***broker or salesperson pursuant to K.S.A. 58-3034 et seq., and***
 40 ***amendments thereto, while providing any real estate brokerage***
 41 ***services as defined under subsection (f) of K.S.A. 58-3035, and***
 42 ***amendments thereto.***
- 43 (h) *“Insolvent” means a person whose debts exceed their assets.*

- 1 (i) “Owner” means the record owner of any distressed property.
- 2 ~~(j)~~ (j) “Person” means any individual, corporation, partnership, as-
- 3 sociation, unincorporated organization or other form of entity, however
- 4 organized, including a nonprofit entity.
- 5 ~~(k)~~ (k) “Related interest” means a person:
- 6 (1) With respect to an individual who is:
- 7 (A) The spouse of the individual;
- 8 (B) a brother, brother-in-law, sister, sister-in-law of the individual;
- 9 (C) an ancestor or lineal descendant of the individual or the individ-
- 10 ual’s spouse; and
- 11 (D) any other relative, by blood, adoption or marriage, of the indi-
- 12 vidual or such individual’s spouse who shares the same residence with the
- 13 individual.
- 14 (2) With respect to a corporation, partnership, association, unincor-
- 15 porated organization or other form of entity, however organized, includ-
- 16 ing a nonprofit entity, which is:
- 17 (A) Directly or indirectly controlling, controlled by or under common
- 18 control by a person; or
- 19 (B) an officer or director of a person or a person performing similar
- 20 functions.
- 21 ~~(l)~~ (l) “Registrant” means a person who is registered by the com-
- 22 missioner as a credit services organization or *distressed property*
- 23 *consultant*.
- 24 ~~(m)~~ (m) “Trust account” means an account established by the applicant
- 25 or registrant in a federally insured financial institution used to hold funds
- 26 paid by consumers to a credit services organization for disbursement to
- 27 creditors of consumers that is designated as a trust account or other ap-
- 28 propriate designation indicating the funds in the account are:
- 29 (1) Not funds of the applicant or registrant or its owners, officers or
- 30 employees; and
- 31 (2) unavailable to creditors of the applicant or registrant.
- 32 Sec. 13. K.S.A. 50-1118 is hereby amended to read as follows: 50-
- 33 1118. (a) No person shall engage in, or hold such person out as willing to
- 34 engage in any credit services organization business or *distressed property*
- 35 *consulting* with a resident of this state without first obtaining registration
- 36 from the commissioner. Any person required to be registered as a credit
- 37 services organization or *distressed property consultant* shall submit to the
- 38 commissioner an application for registration on forms prescribed and pro-
- 39 vided by the commissioner. The application for registration shall include:
- 40 (1) The applicant’s name, business address, telephone number and
- 41 website address, if any;
- 42 (2) the name and address of each owner, officer, director, member
- 43 or partner of the applicant;

- 1 (3) a description of the ownership interest of any officer, director,
2 member, partner, agent or employee of the applicant in any affiliate or
3 subsidiary of the applicant or in any other entity that provides any service
4 to the applicant or any consumer relating to the applicant's ~~credit services~~
5 ~~organization~~ business;
- 6 (4) a description of the applicant's consumer education program; and
- 7 (5) any other information the commissioner may deem necessary to
8 evaluate the financial responsibility and condition, character, qualifica-
9 tions and fitness of the applicant.
- 10 (b) Each application for registration shall be accompanied by a non-
11 refundable fee of \$100. The amount of the registration fee may be in-
12 creased by rules and regulations adopted by the commissioner.
- 13 (c) The application shall be approved and a nontransferable and non-
14 assignable registration shall be issued to the applicant provided:
- 15 (1) The commissioner has received the complete application and fee
16 required by this section; and
- 17 (2) the commissioner determines the financial responsibility and con-
18 dition, character, qualifications and fitness of the applicant warrants a
19 belief that the business of the applicant will be conducted competently,
20 honestly, fairly and in accordance with all applicable state and federal
21 laws.
- 22 (d) Each ~~credit services organization~~ registration issued under this
23 section shall expire on June 30 of each year. A registration shall be re-
24 newed by filing with the commissioner, at least 30 days prior to the ex-
25 piration of the registration, a complete renewal application, containing
26 information the commissioner requires to determine the existence and
27 effect of any material changes from the information contained in the
28 applicant's original application, annual reports or prior renewal applica-
29 tions. Each renewal shall be accompanied by a nonrefundable renewal
30 fee which shall be established by rules and regulations of the
31 commissioner.
- 32 (e) If the commissioner fails to issue a registration within 60 days
33 after a filed application is deemed complete by the commissioner, the
34 applicant may make written request for hearing. The commissioner shall
35 conduct a hearing in accordance with the Kansas administrative proce-
36 dure act.
- 37 Sec. 14. K.S.A. 50-1119 is hereby amended to read as follows: 50-
38 1119. Each applicant or registrant shall file with the commissioner a sur-
39 ety bond in a form acceptable to the commissioner. The surety bond shall
40 be issued by a surety or insurance company authorized to conduct busi-
41 ness in this state, securing the applicant's or registrant's faithful perform-
42 ance of all duties and obligations of a registrant. The surety bond shall:
- 43 (a) Be payable to the office of the state bank commissioner;

- 1 (b) provide that the bond may not be terminated without 30 days
2 prior written notice to the commissioner;
- 3 (c) provide that the bond shall not expire for two years after the date
4 of surrender, revocation or expiration of the applicant's or registrant's
5 registration, whichever shall first occur;
- 6 (d) be available for:
- 7 (1) The recovery of expenses, fines and fees levied by the commis-
8 sioner under this act; and
- 9 (2) payment of losses or damages which are determined by the com-
10 missioner to have been incurred by any consumer as a result of the ap-
11 plicant's or registrant's failure to comply with the requirements of this
12 act; and
- 13 (e) the amount of the bond shall be *not less than* \$25,000. The
14 amount of the bond may be increased up to \$1,000,000, as further defined
15 by rules and regulations adopted by the commissioner.
- 16 Sec. 15. K.S.A. 50-1121 is hereby amended to read as follows: 50-
17 1121. No person required to be registered under this act shall: (a) Delay
18 payment of a consumer's debt for the purpose of increasing interest, costs,
19 fees or charges payable by the consumer.
- 20 (b) Make any misrepresentation of any material fact or false promise
21 intended to:
- 22 (1) Influence, persuade or induce a consumer to enter into a debt
23 management services agreement *or distressed property consulting agree-*
24 *ment*; or
- 25 (2) cause or contribute to any misrepresentation by any other person
26 acting on such person's behalf.
- 27 (c) Make or use any false or misleading representation in the offer or
28 sale of the services of a debt management services agreement ~~or~~, credit
29 services organization business *or distressed property consultant*, includ-
30 ing, but not limited to, guaranteeing to "erase bad credit" or words to
31 that effect unless the representation clearly discloses that guaranteed ac-
32 tion can be done only if the consumer's credit history is inaccurate or
33 obsolete.
- 34 (d) Engage, directly or indirectly, in any fraudulent or deceptive act,
35 practice or course of business in connection with the offer or sale of the
36 services of a credit services organization *or distressed property consulting*.
- 37 (e) Make, or advise a consumer to make, any statement with respect
38 to a consumer's credit worthiness, credit standing or credit capacity that
39 is false or misleading, or that should be known by the exercise of reason-
40 able care to be false or misleading, to a consumer reporting agency or to
41 a person who has extended credit to a consumer or to whom a consumer
42 is applying for an extension of credit.
- 43 (f) Advertise or cause to be advertised, in any manner whatsoever,

- 1 the services of a credit services organization *or distressed property con-*
2 *sultant* to Kansas consumers without first obtaining proper registration
3 from the commissioner.
- 4 (g) Receive compensation for rendering debt management services
5 *or distressed property consulting* where the person has otherwise acted
6 as a creditor for the consumer.
- 7 (h) Transfer, assign or attempt to transfer or assign, a registration to
8 any other person.
- 9 (i) Conduct credit services organization activities *or distressed prop-*
10 *erty consulting* using any name other than the name or names approved
11 by the commissioner.
- 12 (j) Operate as a collection agency.
- 13 (k) Receive or charge any fee in the form of a promissory note or
14 other promise to pay.
- 15 (l) Accept or receive any reward, bonus, premium, commission or any
16 other consideration for referring a consumer to any person or related
17 interest.
- 18 (m) Give a reward, bonus, premium, commission or any other con-
19 sideration for the referral of a consumer to the registrant's credit services
20 organization business *or distressed property consultant*.
- 21 (n) Lend money or provide credit to a consumer.
- 22 (o) Obtain a mortgage or other security interest in real or personal
23 property owned by a consumer.
- 24 (p) Structure a debt management services agreement in any manner
25 that would result in a negative amortization of any of the consumer's
26 debts.
- 27 (q) Charge for or provide credit insurance.
- 28 (r) Purchase any debt or obligation of a consumer.
- 29 (s) Use any communication which simulates in any manner a legal or
30 judicial process, or which gives the false appearance of being authorized,
31 issued or approved by a government, governmental agency or attorney-
32 at-law.
- 33 (t) While operating as a registrant, or a director, manager or officer
34 of such registrant or any related interest of such registrant, be a director,
35 manager, officer, owner or related interest of any creditor or a subsidiary
36 of any such creditor, that is receiving or will receive payments from the
37 registrant on behalf of a consumer with whom the registrant has entered
38 into a debt management services agreement *or distressed property con-*
39 *sulting agreement*.
- 40 (u) Attempt to cause a consumer to waive or agree to forego rights
41 or benefits under this act.
- 42 (v) ***Request that a consumer transfer any portion of such con-***
43 ***sumer's ownership interest in a distressed property to a trust.***

1 (w) *Take any form of ownership interest in a distressed property*
2 *pursuant to a distressed property consulting agreement or request*
3 *or require that any form of ownership interest be transferred to a*
4 *related interest of the registrant.*

5 (x) *Make any inference to a consumer that entering into a dis-*
6 *tressed property consulting services agreement will result in the*
7 *consumer being allowed to remain in such consumer's home.*

8 (y) *Make any inference to a consumer that entering into a dis-*
9 *tressed property consulting agreement will result in an improved*
10 *credit rating.*

11 (z) *Receive any compensation prior to the completion of all ac-*
12 *tivities described in a distressed property consulting agreement.*

13 Sec. 16. K.S.A. 50-1122 is hereby amended to read as follows: 50-
14 1122. (a) Within four calendar days after receipt of any funds paid to the
15 registrant by or on behalf of a consumer for disbursement to such con-
16 sumer's creditors, a registrant shall deposit such funds in a trust account
17 established for the benefit of consumers.

18 (b) A registrant shall:

19 (1) Maintain separate records of account for each consumer to whom
20 the registrant provides debt management services *or distressed property*
21 *consulting services*;

22 (2) disburse any funds paid by or on behalf of a consumer to such
23 consumer's creditors within 10 calendar days after receipt of such funds;

24 (3) correct any misdirected payments resulting from an error by the
25 registrant;

26 (4) reimburse the consumer for any actual fees or other charges im-
27 posed by a creditor as a result of the misdirection; and

28 (5) disburse a consumer's funds from the trust account only to such
29 consumer's creditors or back to the consumer.

30 (c) If a consumer rescinds the debt management services agreement,
31 all funds held in the trust account on behalf of such consumer shall be
32 refunded to the consumer within 10 calendar days from receipt of re-
33 scission by the registrant.

34 (d) A registrant shall not commingle any trust account established for
35 the benefit of consumers with any operating accounts of the registrant or
36 its related interests.

37 Sec. 17. K.S.A. 50-1124 is hereby amended to read as follows: 50-
38 1124. (a) On or before March 1, of each year, each registrant shall file
39 with the commissioner an annual report relating to credit services organ-
40 ization business *or distressed property consulting* conducted by the reg-
41 istrant during the preceding calendar year. The annual report shall be on
42 a form prescribed by the commissioner.

43 (b) Within 15 calendar days after the occurrence of any of the follow-

1 ing events, a registrant shall file a written report with the commissioner
2 describing the event and its expected impact on the registrant's business:

- 3 (1) The filing for bankruptcy or reorganization by the registrant;
- 4 (2) the institution of a revocation, suspension or other proceeding
5 against the registrant by a governmental authority that is related to the
6 registrant's credit services organization business *or distressed property*
7 *consulting business* in any state; and
- 8 (3) a felony conviction of the registrant or any of its owners, officers,
9 principals, directors, partners, members or debt management counselors.

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

13 Sec. 18. K.S.A. 50-1125 is hereby amended to read as follows: 50-
14 1125. (a) Each registrant shall maintain and preserve complete and ade-
15 quate business records including a general ledger containing all assets,
16 liabilities, capital, income and expense accounts for a period of five years.

17 (b) Each registrant shall maintain and preserve complete and ade-
18 quate records of each debt management services agreement *or distressed*
19 *property consulting agreement* during the term of the agreement and for
20 a period of five years from the date of cancellation or completion of the
21 agreement with each consumer. Such records shall contain all consumer
22 information including, but not limited to, the debt management services
23 agreement *or distressed property consulting agreement* and any exten-
24 sions thereto, payments, disbursements, charges and correspondence.

25 (c) If the registrant's records are located outside this state, the reg-
26 istrant shall provide the records to the commissioner within three cal-
27 endar days or, at the commissioner's discretion, pay reasonable and nec-
28 essary expenses for the commissioner or commissioner's designee to
29 examine them at the place where they are maintained.

30 Sec. 19. K.S.A. 50-1126 is hereby amended to read as follows: 50-
31 1126. (a) No registrant shall impose any fees or other charges on a con-
32 sumer, or receive any funds or other payments from a consumer or an-
33 other person on behalf of a consumer:

34 (1) Except as provided in paragraph (5) of subsection (b), until after
35 the registrant and consumer have executed a debt management services
36 agreement; and

37 (2) except as allowed under this section, or as permitted by rule and
38 regulation adopted by the commissioner.

39 (b) A registrant may:

40 (1) Charge a one-time consultation fee not exceeding \$50. The cost
41 of a credit report on a consumer shall be paid from the consultation fee
42 paid by the consumer;

43 (2) charge and collect monthly the lesser of a total maintenance fee

- 1 of ~~\$20~~ \$35 per month, or \$5 per month for each creditor of a consumer
2 that is listed in the debt management services agreement between the
3 registrant and the consumer;
- 4 (3) collect from or on behalf of a consumer the funds for disburse-
5 ment to creditors that the consumer has agreed to pay to the registrant
6 under the debt management services agreement;
- 7 (4) accept a voluntary contribution from a consumer for a debt man-
8 agement service provided by the registrant to the consumer if the aggre-
9 gate amount of the voluntary contribution and any other fees received by
10 the registrant from the consumer does not exceed the total amount the
11 registrant is authorized to charge the consumer under paragraphs (1) and
12 (2) of this subsection;
- 13 (5) charge the consumer, if provided to the consumer, a fee, not to
14 exceed \$50, for a counseling session, an educational program, or materials
15 and supplies if the consumer does not enter into a debt management
16 services agreement with the registrant; and
- 17 (6) accept fee payments from a consumer's creditors for debt man-
18 agement services rendered to a consumer, provided the consumer's cred-
19 itor does not assess the fee to the consumer.
- 20 (c) No registrant shall:
- 21 (1) Charge a fee to a consumer, if the consumer enters into a debt
22 management services agreement with the registrant, to:
- 23 (A) Prepare a financial analysis or an initial budget plan for the
24 consumer;
- 25 (B) counsel a consumer about debt management;
- 26 (C) provide a consumer with the consumer education program de-
27 scribed in the registrant's application to engage in business as a credit
28 services organization; or
- 29 (D) rescind a debt management services agreement.
- 30 (2) Require a voluntary contribution from a consumer for any service
31 provided by the registrant to the consumer.
- 32 (3) As a condition of entering into a debt management services agree-
33 ment, require a consumer to purchase for a fee a counseling session, an
34 educational program or materials and supplies.
- 35 (d) If a registrant imposes any fee or other charge or receives any
36 funds or other payments not authorized under this section, except as a
37 result of an accidental and bona fide error:
- 38 (1) The debt management services agreement shall be void; and
39 (2) the registrant shall return the amount of the unauthorized fees,
40 charges, funds or payments to the consumer.
- 41 Sec. 20. K.S.A. 50-1128 is hereby amended to read as follows: 50-
42 1128. This act shall be administered by the commissioner. In addition to
43 other powers granted by this act, the commissioner, within the limitations

1 provided by law, may exercise the following powers:

2 (a) Adopt, amend and revoke rules and regulations as necessary to
3 carry out the intent and purpose of this act.

4 (b) Make any investigation and examination of the registrant's oper-
5 ations, books and records as the commissioner deems necessary:

6 (1) For the protection of the public;

7 (2) to determine whether any registration should be granted, denied
8 or revoked;

9 (3) to determine whether any person has violated or is about to violate
10 any provision of this act, any rule and regulation promulgated thereunder
11 or any order issued thereunder; or

12 (4) to aid in the enforcement of this act.

13 (c) For examination purposes the commissioner, or the commis-
14 sioner's designee, shall have free and reasonable access to the offices,
15 places of business and all records of the registrant and the registrant's
16 related interests that relate to the debt management or credit services
17 organization business. The commissioner may designate persons, includ-
18 ing comparable officials of the state in which the records are located, to
19 inspect the records on the commissioner's behalf.

20 ~~(d) Charge reasonable costs, including a per diem and actual travel~~
21 ~~and lodging expenses, of investigation, administration or examination to~~
22 ~~be paid by the applicant or registrant under investigation, examination or~~
23 ~~requiring administrative action, and maintain an action in any court to~~
24 ~~recover such costs~~ *Charge reasonable costs of investigation, examination*
25 *and administration of this act, to be paid by the applicant or registrant.*
26 *The commissioner shall establish such fees in such amounts as the com-*
27 *missioner may determine to be sufficient to meet the budget requirements*
28 *of the commissioner for each fiscal year. Charges for administration of*
29 *this act shall be based on the volume of consumer accounts.*

30 (e) To order any registrant or person to cease any activity or practice
31 which the commissioner deems to be deceptive, dishonest, or a violation
32 of this act, or of other state or federal law, or unduly harmful to the
33 interests of the public.

34 (f) Exchange any information regarding the administration of this act
35 with any agency of the United States or any state which regulates the
36 applicant or registrant or administers statutes, rules and regulations or
37 programs related to debt management or credit services organization
38 laws. The commissioner may release examination reports and correspon-
39 dence regarding the reports in connection with a disciplinary proceeding
40 conducted by the commissioner, a liquidation proceeding or a criminal
41 investigation or proceeding. Additionally, the commissioner may furnish
42 to federal or other state regulatory agencies or any officer or examiner
43 thereof, a copy of any or all examination reports and correspondence

- 1 regarding the reports made by the commissioner or the commissioner's
2 designees.
- 3 (g) Disclose to any person or entity that an applicant's or registrant's
4 application or registration has been denied, suspended, revoked or re-
5 fused renewal.
- 6 (h) Require or permit any person to file a written statement, under
7 oath or otherwise as the commissioner may direct, setting forth all the
8 facts and circumstances concerning any apparent violation of this act, any
9 rule and regulation promulgated hereunder, or any order issued pursuant
10 to this act.
- 11 (i) Receive, as a condition in settlement of any investigation or ex-
12 amination, a payment designated for consumer education to be expended
13 for such purpose as directed by the commissioner.
- 14 (j) Delegate the authority to sign any orders, official documents or
15 papers issued under or related to this act to the deputy of consumer and
16 mortgage lending in the office of the state bank commissioner.
- 17 (k) Require fingerprinting of any registrant, agent acting on behalf of
18 a registrant or other person as deemed appropriate by the commissioner,
19 or the commissioner's designee. The commissioner, or commissioner's
20 designee, may submit such fingerprints to the Kansas bureau of investi-
21 gation, federal bureau of investigation or other law enforcement agency
22 for the purposes of verifying the identity of such persons and obtaining
23 records of their criminal arrests and convictions.
- 24 (l) Charge, establish and collect from registrants such fees as are nec-
25 essary and in such amounts as the commissioner may determine to be
26 sufficient to meet the expense requirements of the commissioner in ad-
27 ministering this act.
- 28 (m) Seize and distribute a registrant's trust account funds to protect
29 consumers and the public interest.
- 30 (n) For the purpose of any examination, investigation or proceeding
31 under this act, the commissioner or the commissioner's designee may
32 administer oaths and affirmations, subpoena witnesses, compel such wit-
33 nesses' attendance, adduce evidence and require the production of any
34 matter which is relevant to the examination or investigation, including the
35 existence, description, nature, custody, condition and location of any
36 books, documents or other tangible things and the identity and location
37 of persons having knowledge of relevant facts, or any other matter rea-
38 sonably calculated to lead to the discovery of relevant information or
39 items.
- 40 Sec. 21. K.S.A. 50-1133 is hereby amended to read as follows: 50-
41 1133. (a) Any consumer injured by a violation of this act or any rule and
42 regulation promulgated thereunder may bring an action for recovery of
43 damages. The damages awarded may not be less than the amount paid

1 by the consumer to the credit services organization *or distressed property*
2 *consultant* plus reasonable attorney fees and court costs.

3 (b) The consumer may also be awarded punitive damages.

4 Sec. 22. K.S.A. 50-1001, 50-1002, 50-1003, 50-1004, 50-1005, 50-
5 1006, 50-1008, 50-1009, 50-1011, 50-1016, 50-1117, 50-1118, 50-1119,
6 50-1121, 50-1122, 50-1124, 50-1125, 50-1126, 50-1128 and 50-1133 are
7 hereby repealed.

8 Sec. 23. This act shall take effect and be in force from and after its
9 publication in the Kansas register.