

Senate Substitute for HOUSE BILL No. 2247

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) By a consumer against a mortgage company for any violation of sections 3 through 14, and amendments thereto, including for a civil penalty; or

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

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

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

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

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

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

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

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

(d) A consumer shall not be obligated to pay a charge on a covered transaction in excess of that allowed by sections 3 through 14, and amendments thereto. A consumer shall have a right of refund for twice the excess charges from the person who made the excess charge or from the consumer's mortgage servicer. A consumer may request a refund payment check or application to the outstanding obligation. Following a reasonable time after demand, if the request is refused, the consumer may recover twice the excess charge from the person liable or the mortgage company and, except for a class action, an amount determined by the court not less than \$750 but not more than \$7,500.

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

(f) If the mortgage company establishes, by a preponderance of

evidence, that a violation is unintentional or the result of a bona fide error of law or fact notwithstanding the maintenance of procedures reasonably adopted to avoid any such violation or error, no liability is imposed under this section.

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

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

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

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

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

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

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

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

(1) Loan secured by a first mortgage that constitutes a covered transaction by virtue of the loan-to-value ratio that exceeds 100% at the time the loan is made; or

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

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

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

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

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

(f) If, within 12 months after the date of the original covered transaction, a mortgage company or a person related to such company refinances a covered transaction, with respect to which a prepaid finance charge was payable to the same person then the aggregate amount of prepaid finance charges payable to the mortgage company or

any person related to such company with respect to the new covered transaction shall not exceed 5% of the additional amount financed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Fees on a monthly or annual basis;

(2) over-limit fees; and

(3) cash advance fees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) Free copy of the appraisal; and
- (2) written notice regarding high loan-to-value mortgages and the availability of consumer credit counseling.

(c) If within three days after receiving the notice, the consumer elects not to enter into the covered transaction, then the mortgage company shall promptly refund to the consumer any application fees or other amounts paid by the consumer to such mortgage company except for the following:

- (1) Bona fide out-of-pocket costs incurred before the consumer elected not to enter into the covered transaction, provided that such costs were paid or are payable to unrelated persons; and
- (2) a bona fide appraisal fee paid or payable to the mortgage company or a related person.

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

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

- (1) Consumer fails to make a payment as required by agreement; or
- (2) (A) prospect of payment, performance or realization of collateral is significantly impaired.

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

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

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

- (1) A mortgage company provides notice to the consumer under

this section when the mortgage company delivers the notice to the consumer or delivers or mails the notice to the consumer's residence.

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

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

(B) a brief description of the covered transaction;

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

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

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

(b) With respect to a covered transaction payable in installments, after a default consisting only of the consumer's failure to make a required payment, a mortgage company may neither accelerate maturity of the unpaid balance of the obligation or take possession of collateral as a result of such default until 20 days after a notice of the consumer's right to cure is given. Within 20 days after the notice is given, the consumer may cure all defaults resulting from a failure to make the required payment by tendering the amount of all unpaid sums due at the time of the tender, without acceleration, plus any unpaid late fees. Such cure restores the consumer to the consumer's rights under the agreement as though the defaults had not occurred.

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

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

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

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

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

(a) A supervised financial organization;

(b) the federal deposit insurance corporation acting in its corporate capacity or as receiver; or

(c) an attorney who is forwarded contracts for collection.

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

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

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

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

Sec. 17. K.S.A. 9-2201 is hereby amended to read as follows: 9-2201. As used in this act:

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

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

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

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

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

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

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

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

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

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

(h) "Closing costs" means:

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

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

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

(A) 12%; or

(B) the sum of:

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

(ii) 5%.

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

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

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

- (l) "Covered transaction" means a mortgage loan that:
- (1) Is a subordinate mortgage;
 - (2) has a loan-to-value ratio at the time when made that exceeds 100%, except for any loan guaranteed by a federal government agency of the United States; or
 - (3) in the case of section 11, and amendments thereto, the annual percentage rate of the loan exceeds the code mortgage rate.
- (m) "Finance charge" means all charges payable directly or indirectly by the consumer and imposed directly or indirectly by the mortgage company as an incident to or as a condition of the extension of credit. The finance charge shall be calculated as provided in rules and regulations adopted by the commissioner pursuant to K.S.A. 9-2209, and amendments thereto.
- ~~(n)~~(n) "Individual" means a human being.
- (o) "Insufficient payment method" means any instrument as defined in K.S.A. 84-3-104, and amendments thereto, drawn on any financial institution for the payment of money and delivered in payment, in whole or in part, of preexisting indebtedness of the drawer or maker, which is refused payment by the drawee because the drawer or maker does not have sufficient funds in or credits with the drawee to pay the amount of the instrument upon presentation.
- (p) "Installment" means a periodic payment required or permitted by agreement in connection with a covered transaction.
- ~~(q)~~(q) "License" means a license issued by the commissioner to engage in mortgage business as a mortgage company.
- (r) "Licensed mortgage company" means a mortgage company that has been licensed as required by this act.
- ~~(s)~~(s) "Licensee" means a person who is licensed by the commissioner as a mortgage company.
- ~~(t)~~(t) "Loan originator" means an individual:
- (1) Who engages in mortgage business on behalf of a single mortgage company;
 - (2) whose conduct of mortgage business is the responsibility of the licensee;
 - (3) who takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan for compensation or gain or in the expectation of compensation or gain; and
 - (4) whose job responsibilities include contact with borrowers during the loan origination process, which can include soliciting, negotiating, acquiring, arranging or making mortgage loans for others, obtaining personal or financial information, assisting with the preparation of mortgage loan applications or other documents, quoting loan rates or terms or providing required disclosures. It does not include any individual engaged solely as a loan processor or underwriter.
- ~~(u)~~(u) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction and subject to the supervision and instruction of a person registered or exempt from registration under this act.
- (1) For purposes of this subsection, the term "clerical or support duties" may include subsequent to the receipt of a mortgage loan application:
 - (A) The receipt, collection, distribution and analysis of information common for the processing or underwriting of a residential mortgage loan; and
 - (B) communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms.
 - (2) An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists or other

promotional items, that such individual can or will perform any of the activities of a loan originator.

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

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

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

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

(~~h~~)(x) "Mortgage company" means a person engaged in mortgage business.

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

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

(~~h~~)(aa) "Mortgage servicer" means any person engaged in mortgage servicing.

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

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

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

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

(1) *Reasonably contemplates repeated transactions;*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 19. K.S.A. 9-2203 is hereby amended to read as follows: 9-2203. (a) Mortgage business shall only be conducted in this state by *entities that are exempt from licensure pursuant to K.S.A. 9-2202, and amendments thereto, or a licensed mortgage company*. A licensee shall be responsible for all mortgage business conducted on such licensee's behalf by any person, including loan originators, employees or independent contractors.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 20. K.S.A. 9-2208 is hereby amended to read as follows: 9-2208. (a) Each licensee shall make available evidence of licensure in a way that reasonably assures recognition by consumers and members of the general public.

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

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

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

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

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

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

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

Sec. 21. K.S.A. 9-2209 is hereby amended to read as follows: 9-2209. (a) The commissioner may exercise the following powers:

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

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

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

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

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

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

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

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

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

(10) require that any applicant, licensee, registrant or other person complete a minimum number of preclicensing education hours and

complete continuing education hours on an annual basis. Prelicensing and continuing education courses shall be approved by the commissioner, or the commissioner's designee, and may be made a condition of application approval and renewal;

(11) require fingerprinting of any applicant, registrant, licensee, members thereof if a copartnership or association, or officers and directors thereof if a corporation, or any agent acting on their behalf, or other person as deemed appropriate by the commissioner. The commissioner or the commissioner's designee, may submit such fingerprints to the Kansas bureau of investigation, federal bureau of investigation or other law enforcement agency for the purposes of verifying the identity of such persons and obtaining records of their criminal arrests and convictions. For the purposes of this section and in order to reduce the points of contact that the federal bureau of investigation may have to maintain with the individual states, the commissioner may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the department of justice or any governmental agency;

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

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

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

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

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

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

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

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

admissible in evidence in any private civil action; and

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

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

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

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

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

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

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

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

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

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

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

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

(d) misrepresent the material facts or make false promises intended to influence, persuade or induce an applicant for a mortgage

loan or mortgagee to take a mortgage loan or cause or contribute to misrepresentation by any person acting on behalf of the person required to be licensed or registered;

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 23. K.S.A. 9-2216 is hereby amended to read as follows: 9-2216. (a) A licensee shall keep copies of all documents or correspondence received or prepared by the licensee or registrant in connection with a loan or loan application and those records and documents required by the commissioner by rules and regulations adopted pursuant to K.S.A. 9-2209, and amendments thereto, for such

time frames as are specified in the rules and regulations. If the loan is not serviced by a licensee, the retention period commences on the date the loan is closed or, if the loan is not closed, the date of the loan application. If the loan is serviced by a licensee, the retention period commences on the date the loan is paid in full or the date the licensee ceases to service the loan.

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

(c) Each licensee shall maintain the following information:

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 24. K.S.A. 9-2216a is hereby amended to read as follows: 9-2216a. (a) Each licensee shall annually, on or before April 1, file a written report with the commissioner containing the information that the commissioner may reasonably require concerning the licensee's business and operations during the preceding calendar year. The report shall be made in the form prescribed by the commissioner, which may include reports filed with the nationwide mortgage licensing system and registry. Any licensee who fails to file the report required by this section with the commissioner by April 1 shall be subject to a late penalty of \$100 for each day after April 1 the report is delinquent, but in no event shall the aggregate of late penalties exceed \$5,000. The commissioner may relieve any licensee from the payment of any

penalty, in whole or in part, for good cause. *The commissioner may apply any funds received from late penalties under this section to a consumer education fund, to be expended for such purpose as directed by the commissioner.* The filing of the annual written report required under this section shall satisfy any other reports required of a licensee under this act.

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

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

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

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

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

(c) The lender may collect from the borrower:

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

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

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

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

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

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

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

(4) a note secured by a real estate mortgage or a contract for

deed to real estate when the note or contract for deed permits adjustment of the interest rate, the term of the loan or the amortization schedule; or

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

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

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

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

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

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

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

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

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

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

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

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

~~(1) A covered transaction under the Kansas mortgage business act, K.S.A. 9-2201 et seq., and amendments thereto; or~~

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

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

Sec. 28. K.S.A. 16a-1-101 is hereby amended to read as follows:

16a-1-101. K.S.A. 16a-1-101 ~~through 16a-9-102~~ *et seq.*, and amendments thereto, shall be known and may be cited as the ~~Kansas~~ *uniform consumer credit code*.

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

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

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

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

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

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

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

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

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

Sec. 30. K.S.A. 16a-1-103 is hereby amended to read as follows:
16a-1-103. ~~Unless displaced by the particular provisions of~~ *The uniform consumer credit code*, K.S.A. 16a-1-101 ~~through 16a-9-102~~ *et seq.*, and amendments thereto, *takes precedence in consumer credit transactions*, the uniform commercial code and the principles of law and equity, including the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy; or other validating or invalidating cause supplement its provisions.

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

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

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

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

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

Sec. 33. K.S.A. 16a-1-108 is hereby amended to read as follows:
16a-1-108. (1) K.S.A. 16a-1-101 ~~through 16a-9-102~~ *et seq.*, and

amendments thereto, prescribes maximum charges for all creditors, except lessors and those excluded—(by K.S.A. 16a-1-202, and amendments thereto),—~~extending extends~~ consumer credit including consumer credit sales—(subsection (14) of K.S.A. 16a-1-301, and amendments thereto) and consumer loans—(subsection (17) of K.S.A. 16a-1-301, and amendments thereto), and displaces existing limitations on the powers of those creditors based on maximum charges.

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

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

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

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

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

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

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

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

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

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

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

(4) With respect to consumer credit transactions entered into pursuant to ~~open-end~~ *open-end* credit (subsection (31) of K.S.A. 16a-1-301, and amendments thereto), this act ~~applies~~ *shall apply* if the

consumer's communication or indication of intention to establish the ~~arrangement agreement~~ is received by the creditor ~~in this state conducting business in Kansas~~. If no communication or indication of intention is given by the consumer before the first transaction, this act applies if the creditor's communication notifying the consumer of the privilege of using the arrangement is mailed or personally delivered in this state *open-end credit is provided to the consumer in Kansas*.

~~(3)(5)~~ The part ~~on addressing~~ limitations on creditors' remedies ~~(part 1)~~ of the article on remedies and penalties ~~(article 5)~~ applies to actions or other proceedings brought in this state to enforce rights arising from consumer credit sales, consumer leases, or consumer loans, transactions or extortionate extensions of credit, wherever made.

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

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

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

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

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

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

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

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

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

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

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

~~(c)~~ that fixes venue.

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

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

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

(article 6).

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance.

~~(4)~~(5) "Amount financed" means the net amount of credit

provided to the consumer or on the consumer's behalf. The amount financed shall be calculated as provided in rules and regulations adopted by the administrator pursuant to K.S.A. 16a-6-117, and amendments thereto.

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

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

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

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

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

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

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

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

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

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

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

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

(b) bona fide and reasonable expenses incurred by the lender in connection with the making, closing, disbursing, extending, readjusting

or renewing the debt which are payable to third parties not related to the lender, except that reasonable fees for an appraisal made by the lender or related party are permissible.

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

~~(a) 12%; or~~

~~(b) the sum of:~~

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

~~(ii) 5%.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(a) Which That a lessor regularly engaged in the business of~~

leasing makes to a person, other than an organization, who takes under the lease primarily for a personal, family or household purpose;

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

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

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

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

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

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

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

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

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

(b) Unless the loan is made subject to the ~~Kansas~~ *Uniform* consumer credit code by written agreement, a "consumer loan" does not include:

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

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

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

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

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

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

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

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

~~(21)~~(26) "Earnings" means compensation ~~paid or~~ payable to an individual ~~or for such individual's account~~ for personal services rendered or to be rendered by such individual, whether denominated as wages, salary, commission, bonus, or otherwise; and includes periodic payments pursuant to a pension, retirement, or disability program.

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

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

~~(24)~~(28) "Goods" includes goods not in existence at the time the

transaction is entered into and merchandise certificates, but excludes money, chattel paper, documents of title, and instruments.

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

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

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

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

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

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

~~(27)~~ "Loan":

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

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

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

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

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

(b) A "loan" does not include the payment or agreement to pay money to a third party for the account of a debtor if the debt of the debtor arises from a sale or lease and results from use of either a credit card issued by a person primarily in the business of selling or leasing goods or services or any other credit card which may be used for the purchase of goods or services and which is not a lender credit card.

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

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

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

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

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

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

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

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

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

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

(39) *"Officer" means a person who participates or has the authority to participate, other than in the capacity of a director, in major policymaking functions of the licensee or applicant, whether or not the person has an official title, including the chief executive officer,*

chief financial officer, chief operations officer, chief legal officer, chief credit officer, chief compliance officer and every vice president.

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

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

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

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

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

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

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

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

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

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

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

(i) The spouse of the individual;;

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

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

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

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

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

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

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

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

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

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

~~(37)~~(46) "Principal" means the total of the amount financed and the prepaid finance charges, except that prepaid finance charges are not added to the amount financed to the extent such prepaid finance charges are paid separately in cash or by check by the consumer. ~~The administrator may adopt rules and regulations regarding the determination or calculation of the principal or the principal balance~~

~~pursuant to K.S.A. 16a-6-117, and amendments thereto:~~

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

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

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

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

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

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

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

(a) Work, labor, and other personal services;

(b) privileges with respect to transportation, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations, and the like; and

(c) insurance.

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

(a) Organized, chartered, or holding an authorization certificate under the laws of any state or of the United States which authorize the person to make loans and to receive deposits, including a savings, share, certificate or deposit account; and

(b) subject to supervision by an official or agency of such state or of the United States.

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

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

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

~~(47)~~(56) "Written agreement" means an agreement such as a promissory note, contract or lease that is evidence of or relates to the indebtedness. A letter that merely confirms an oral agreement does not constitute a written agreement for purposes of this subsection unless

signed by the person against whom enforcement is sought.

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

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

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

(a) The $^{365}/_{365}$ method means a method of calculating the finance charge whereby the contract rate is divided by 365 and the resulting daily rate is multiplied by the outstanding principal amount and the actual number of days in the computational period.

(b) The $^{360}/_{360}$ method means a method of calculating the finance charge whereby the contract rate is divided by 360 and the resulting daily rate is multiplied by the outstanding principal amount and the number of assumed days in the computational period. For the purposes of this subsection, a creditor may assume that a month has 30 days, regardless of the actual number of days in the month.

(c) If the documentation evidencing a consumer credit contract is silent regarding whether the $^{365}/_{365}$ method or the $^{360}/_{360}$ method applies, then the $^{365}/_{365}$ method shall apply.

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

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

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

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

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

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

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

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

Sec. 39. K.S.A. 16a-2-104 is hereby amended to read as follows: 16a-2-104. (1) A creditor shall credit a payment to the consumer's account on the date of receipt, except when a delay in crediting does not result in a finance charge or other charge.

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

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

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

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

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

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

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

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

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

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

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

~~(5) Rebate upon prepayment:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 43. K.S.A. 16a-2-302 is hereby amended to read as follows: 16a-2-302. (1) (a) The administrator shall receive and act on all applications for licenses to make supervised loans ~~and all applications for residential mortgage loan originator registrations under this act. Applications shall be filed. Any person required to be licensed pursuant to this act shall submit an application~~ in the manner prescribed by the administrator ~~and that~~ shall contain the information the administrator may require by rule and regulation to make an evaluation of the financial responsibility, character and fitness of the applicant.

~~(b) Submitted with each application shall be a nonrefundable application fee. Application, license and registration fees shall be in~~

~~such amounts as are established pursuant to subsection (5) of K.S.A. 16a-6-104(5), and amendments thereto. A license shall become effective as of the date specified in writing by the administrator. The license year shall be the calendar year and the license shall expire on December 31 of the year unless the license is renewed pursuant to subsection (1)(d). Each license shall be nonrefundable nontransferable and nonassignable, and shall remain in force until it has expired, is surrendered, suspended or revoked.~~

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

~~(d) Every licensee and registrant shall, on or before the first day of January, pay to the administrator the license or registration fee prescribed under this subsection (1) for each license or registration held for the succeeding license year. Failure to pay the fee within the time prescribed shall automatically revoke the license or registration. A license shall be renewed annually for the subsequent year by filing with the administrator, on or before December 1 of the current year, a renewal application accompanied with the fee prescribed under subsection (1) for each license. Such application shall be filed in the form and manner prescribed by the administrator and shall contain such information that the administrator requires to determine the existence of any material changes from the information contained in the applicant's original license application or prior renewal application. A late fee may be assessed if a renewal application is filed after December 1.~~

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

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

~~(2) No license or registration shall be issued unless the administrator, upon investigation, finds that the financial responsibility, character and fitness of the applicant, and of the members thereof if the applicant is a copartnership or association and of the officers and directors thereof, if the applicant is a corporation, are such as to warrant belief that the business will be operated applicant or licensee shall operate honestly and fairly within the purposes of this act. The administrator shall not base a registration denial solely on the applicant's credit score. An applicant meets the minimum standard of financial responsibility for engaging in the business of making supervised loans, under subsection (1) of K.S.A. 16a-2-301(1), and~~

amendments thereto, only if:

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

(b) the applicant provides evidence in a form and manner prescribed by the administrator that establishes the applicant will maintain a satisfactory minimum net worth, as determined by the administrator, to engage in credit transactions of the nature proposed by the applicant. Such net worth requirements shall be established by the administrator pursuant to rule and regulation and shall not exceed \$500,000 for each applicant or licensee.

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

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

- ~~(1) The closing or relocation of any place of business;~~
- ~~(2) a change in the licensee's name or legal entity status; or~~
- ~~(3) the addition or loss of any owner, officer, member or director.~~

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

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

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

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

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

~~(5) All solicitations and published advertisements concerning consumer credit transactions directed at Kansas residents, including those on the internet or by other electronic means, shall contain the name and license number or unique identifier of the licensee on record with the administrator. Each licensee shall maintain a record of all~~

solicitations or advertisements for a period of 36 months. As used in this subsection, "advertising" excludes business cards or promotional items, including, but not limited to, pens, pencils, hats and other such novelty items.

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) ~~facts or conditions exist which would clearly have justified the administrator in refusing to grant a license had these facts or conditions~~

~~been known to exist at the time the application for the license was made.~~

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

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

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

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

- (a) The imposition of an administrative penalty under this section;
 - (b) the lapse or suspension of any license issued under this act by operation of law;
 - (c) the licensee's failure to renew any license issued under this act;
- or
- (d) the licensee's voluntary surrender of any license issued under this act.

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

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

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

financial information.

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

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

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

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

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

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

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

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

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

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

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

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

~~(a) over a period of not more than thirty-seven (37) calendar~~

~~months if the amount financed is more than three hundred dollars (\$300), or~~

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

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

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

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

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

(c) misrepresent to or conceal from an applicant for a loan, a ~~mortgagor~~ *guarantor* or a lender, material facts, terms or conditions of a transaction to which the person required to be licensed or ~~registered~~ *required to be a consumer credit filer* is a party;

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

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

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

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

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

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

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

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

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

~~(m)(g)~~ fail to comply with the uniform consumer credit code, or rules and regulations promulgated thereunder; or fail to comply with any other state or federal law, including the rules and regulations promulgated thereunder, applicable to any business authorized or conducted under the uniform consumer credit code.

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

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

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

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

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

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

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

~~(a)~~ For a consumer loan secured by a first mortgage or a second mortgage, or a consumer loan secured by an interest in a manufactured home as defined by 42 U.S.C. § 5402(6), prepaid finance charges in an amount not to exceed 8% of the amount financed may be charged, provided that the aggregate amount of prepaid finance charges payable

~~to the lender or any person related to the lender do not exceed 5% of the amount financed; and~~

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

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

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

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

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

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

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

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

(i) The amount financed for the new loan, less the amount of all closing costs incurred in connection with the new loan which are not included in the prepaid finance charges for the new loan; and

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

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

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

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

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

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

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

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

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

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

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

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

(2) The minimum term of any loan under this section shall be 7 days and the maximum term of any loan made under this section shall be 30 days.

(3) A lender and related interest shall not have more than two loans made under this section outstanding to the same borrower at any one time and shall not make more than three loans to any one borrower within a 30 calendar day period. Each lender shall maintain a journal of loan transactions for each borrower which shall include at least the following information:

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

(4) Each loan agreement made under this section shall contain the following notice in at least 10 point bold face type: NOTICE TO BORROWER: KANSAS LAW PROHIBITS THIS LENDER AND THEIR RELATED INTEREST FROM HAVING MORE THAN TWO LOANS OUTSTANDING TO YOU AT ANY ONE TIME. A LENDER CANNOT DIVIDE THE AMOUNT YOU WANT TO BORROW INTO MULTIPLE LOANS IN ORDER TO INCREASE THE FEES YOU PAY.

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

(a) Provide the notice set forth in this subsection in both English and Spanish; and

(b) obtain the borrower's signature or initials next to the English version of the notice or, if the borrower advises the lender that the borrower is more proficient in Spanish than in English, then next to the Spanish version of the notice.

(5) The contract rate of any loan made under this section shall not be more than 3% per month of the loan proceeds after the maturity date. No insurance charges or any other charges of any nature whatsoever shall be permitted, except as stated in subsection (7), including any charges for cashing the loan proceeds if they are given in check form.

(6) Any loan made under this section shall not be repaid by proceeds of another loan made under this section by the same lender or related interest. The proceeds from any loan made under this section shall not be applied to any other loan from the same lender or related interest.

(7) *A consumer who is unable to repay a payday loan as contemplated under this section when due may elect once every 12 months to repay the payday loan by means of an extended payment plan. The 12-month period shall be measured from the date that the consumer pays in full an extended payment plan with the lender until the date that the consumer enters another extended payment plan with the lender.*

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

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

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

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

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

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

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

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

(b) the original request of the borrower for amount and term of the loan are within the limitations under this section.

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

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

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

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

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

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

- (i) Entering into a different type of transaction with the consumer;
 - (ii) entering into a sales/leaseback or rebate arrangement;
 - (iii) catalog sales; or
 - (iv) entering into any other transaction with the consumer or any other person that is designed to evade the applicability of this section;
- (b) use, or threaten to use the criminal process in any state to collect on the loan;
- (c) sell any other product of any kind in connection with the making or collecting of the loan;
- (d) include any of the following provisions in a loan document:
- (i) A hold harmless clause;
 - (ii) a confession of judgment clause;
 - (iii) a provision in which the consumer agrees not to assert a claim or defense arising out of the contract.

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

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

~~(13)~~(14) Notwithstanding that a person may be exempted by virtue of federal law from the interest rate, finance charge and licensure provisions of the ~~Kansas~~ uniform consumer credit code, all other provisions of the code shall apply to both the person and the loan transaction.

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

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

- (a) Official fees and taxes;
- (b) charges for insurance as described in subsection (2);
- (c) ~~delinquency charges~~late fees permitted under K.S.A. 16a-2-502, and amendments thereto, and service charges for insufficient ~~checks~~ payment methods permitted under paragraph (e);
- (d) charges for other benefits, including insurance, conferred on the consumer, if the benefits are of value to the consumer and if the charges are reasonable in relation to the benefits, are of a type which is not for credit, and are excluded as permissible additional charges from the finance charge by rules and regulations adopted by the administrator;
- (e) a service charge for an insufficient ~~check as defined and authorized by payment method, not to exceed \$30, subject to the limitations contained in~~ this subsection:

(i) For the purposes of this subsection, "insufficient ~~check~~ payment method" means any ~~check, order or draft instrument as defined in K.S.A. 84-3-104, and amendments thereto,~~ drawn on any bank, credit union, savings and loan association, or other financial institution for the payment of money ~~and delivered in payment, in whole or in part,~~ of preexisting indebtedness of the drawer or maker, which is refused payment by the drawee because the drawer or maker does not have sufficient funds in or credits with the drawee to pay the

amount of the ~~check, order or draft~~ *instrument* upon presentation, ~~provided that~~. Any ~~check, order or draft~~ *payment instrument* that is postdated or delivered to a payee who has knowledge at the time of delivery that the drawer or maker did not have sufficient funds in or credits with the drawee to pay the amount of the check, draft or order upon presentation shall not be deemed an insufficient ~~check~~ *payment instrument*.

~~(ii) "Written notice" shall be presumed to have been given a drawer or maker of an insufficient check when notice is sent by first class mail addressed to the person to be given notice of such person's address as it appears on the insufficient check or to such person's last known address or notice provided on a regular monthly statement provides clear notice of the insufficient check charge being assessed.~~ *Notice shall be given to a consumer providing an insufficient payment method by one of the following methods:*

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

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

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

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

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

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

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

(b) with respect to consumer credit insurance providing life, accident and health; or loss of employment coverage, if the insurance coverage is not a factor in the approval by the creditor of the extension of credit, and this fact is clearly disclosed in writing to the consumer, and if, in order to obtain the insurance in connection with the extension of credit, the consumer gives specific affirmative written indication of the consumer's desire to do so after written disclosure to the consumer of the cost thereof;

(c) a creditor need not make a separate charge for insurance

provided or required by such creditor. This act does not authorize the issuance of any insurance prohibited under any statute, or rule thereunder, governing the business of insurance; and

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

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

(a) Fees on a monthly or annual basis;

(b) over-limit fees; and

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

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

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

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

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

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

(3) A ~~delinquency charge~~ *late fee* may be collected only once on an installment however long it remains in default. A ~~delinquency charge~~ *late fee* may be collected at the time it ~~accrues~~ *is assessed* or at any time thereafter.

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

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

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

~~(7)~~ *(6)* Notwithstanding subsections (1), (2), ~~(4)~~, ~~(5)~~ and ~~(6)~~ *(4)*, no ~~delinquency charge~~ *late fee* may be collected on a lender credit card installment which is paid in full on the next business day following the

scheduled or deferred due date even though an earlier maturing installment or a ~~delinquency charge~~ *late fee* on an earlier installment may not have been paid in full.

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

Sec. 56. K.S.A. 16a-2-505 is hereby amended to read as follows: 16a-2-505. (1) If a consumer owes an unpaid balance to a creditor with respect to a consumer credit transaction and becomes obligated on another consumer credit transaction with the same creditor, the parties may agree to a consolidation resulting in a single schedule of payments. The parties may agree to add the unpaid amount of the amount financed and accrued charges on the date of consolidation to the amount financed with respect to the subsequent consumer credit transaction.

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

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

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

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

(2) A finance charge may be made for sums advanced pursuant to

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 62. K.S.A. 16a-3-202 is hereby amended to read as follows: 16a-3-202. (1) A written agreement ~~which that~~ requires or provides for the signature of the consumer and ~~which that~~ evidences a consumer ~~credit transaction~~ *loan or consumer credit sale* other than one pursuant

to ~~open-end~~ *open-end* credit shall contain a clear, conspicuous, and printed notice to the consumer that ~~he such consumer~~ should not sign the agreement before reading it, and that ~~he such consumer~~ is entitled to a copy of the agreement and ~~to~~ may prepay the unpaid balance at any time without penalty. The following notice if clearly and conspicuously printed complies with this ~~section~~ *subsection*:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) If the seller contracts for a security interest in other property pursuant to this section, ~~the rate of credit service finance~~ *charge*

thereafter on the aggregate unpaid balances so secured may not exceed that permitted if the balances so secured were consolidated pursuant to the provisions on consolidation involving a refinancing (~~subsection (1) of section 16a-2-505~~). The seller ~~has~~ *shall have* a reasonable time after so contracting to make any adjustments required by this section. "Seller" in this section does not include an assignee not related to the original seller.

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

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

(3) If the debts consolidated arose from two or more sales made on the same day, payments received by the seller are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of the smallest debt.

Sec. 72. K.S.A. 16a-3-304 is hereby amended to read as follows: 16a-3-304. (1) ~~A creditor may not~~ *No creditor may* engage in a pattern or practice of using multiple agreements to obtain a higher finance charge than would otherwise be permitted by the provisions of ~~the article on finance charges and related provisions (article 2) K.S.A. 16a-1-101 et seq., and amendments thereto.~~

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

Sec. 73. K.S.A. 16a-3-305 is hereby amended to read as follows: 16a-3-305. (1) ~~A creditor may not~~ *No creditor may* take an assignment of earnings of the consumer for payment or as security for payment of a debt arising out of a consumer credit transaction. An assignment of earnings in violation of this section is unenforceable by the assignee of the earnings and revocable by the consumer. This section does not prohibit an employee from authorizing deductions from ~~his~~ *such employee's* earnings if the authorization is revocable.

(2) A sale of unpaid earnings made in consideration of the payment of money to or for the account of the seller of the earnings is deemed to be a loan to ~~him~~ *the consumer* secured by an assignment of earnings.

Sec. 74. K.S.A. 16a-3-306 is hereby amended to read as follows: 16a-3-306. ~~A consumer may not~~ *No consumer or any other person acting on the consumer's behalf may* authorize any person to confess judgment on a claim arising out of a consumer credit transaction. An authorization in violation of this section ~~is~~ *shall be* void.

Sec. 75. K.S.A. 16a-3-307 is hereby amended to read as follows: 16a-3-307. With respect to a consumer credit sale or consumer lease, the creditor ~~may not take a negotiable instrument other than a currently dated check~~ *shall only accept currently dated negotiable instruments* as evidence of the obligation of the buyer or lessee. *For purposes of this*

section, a creditor shall not make the consumer credit sale contract or consumer lease contract a negotiable instrument.

Sec. 76. K.S.A. 16a-3-308 is hereby amended to read as follows:
16a-3-308. ~~With respect to~~*In a consumer credit transaction with a balloon payment, other than one pursuant to open-end credit if any scheduled payment is more than twice as large as the average of earlier scheduled payments open-end credit, the consumer has shall have the right to refinance the amount of that payment at the time it is due without penalty. The terms of the refinancing shall be no less favorable to the consumer than the terms of the original transaction. These provisions do* *The provisions of this section shall not apply to the extent that the payment schedule is adjusted to the seasonal or irregular income of the consumer or to a note secured by a real estate mortgage.*

Sec. 77. K.S.A. 16a-3-309 is hereby amended to read as follows:
16a-3-309. ~~With respect to a consumer credit sale or consumer lease the seller or lessor may not give or offer to give a rebate or discount or otherwise pay or offer to pay value to the buyer or lessee as an inducement for a sale or lease in consideration of his giving to the seller or lessor the names of prospective purchasers or lessees, or otherwise aiding the seller or lessor in making a sale or lease to another person, if the earning of the rebate, discount or other value is contingent upon the occurrence of an event subsequent to the time the buyer or lessee agrees to buy or lease. If a buyer or lessee is induced by a violation of this section to enter into a consumer credit sale or consumer lease, the agreement is unenforceable by the seller or lessor and the buyer or lessee, at his option, may rescind the agreement or retain the goods delivered and the benefit of any services performed, without any obligation to pay for them~~ *(1) (a) In a consumer credit sale, no seller shall offer or give a rebate, discount or otherwise pay value to the buyer in consideration of the buyer giving the seller the names of third parties, or otherwise assist the seller in making a sale to a third party when the earning of the rebate, discount or other value is contingent upon an event subsequent to the time of the sale.*

(b) In a consumer lease, no lessor shall offer or give a rebate, discount or otherwise pay value to the lessee in consideration of the lessee giving to the lessor the names of third parties, or otherwise aiding the lessor in leasing to a third party when the earning of the rebate, discount or other value is contingent upon an event subsequent to the time of the lease.

(2) If a buyer or lessee is induced by a violation of this section to enter into a consumer credit sale or consumer lease, the agreement shall be unenforceable by the seller or lessor and the buyer or lessee, at the buyer's or lessee's option, may rescind the agreement or retain the goods delivered and the benefit of any services performed, without any obligation to pay for them.

Sec. 78. K.S.A. 16a-3-402 is hereby amended to read as follows:
16a-3-402. Except for reasonable expenses incurred in realizing on a security interest, the agreement with respect to a consumer credit transaction may not provide for any charges as a result of default by the consumer other than those authorized by K.S.A. 16a-1-101 ~~through 16a-9-102 et seq., and amendments thereto.~~ A provision in violation of this section ~~is~~ *shall be* unenforceable.

Sec. 79. K.S.A. 16a-3-403 is hereby amended to read as follows:
16a-3-403. (1) If the issuer of a credit card, other than a lender credit card, is the seller or lessor or a person related to the seller or lessor, or if the seller or lessor is licensed, franchised; or permitted by the issuer to do business under the business name or trade name or designation of the issuer, the issuer is subject to all claims and defenses of a buyer or lessee against the seller or lessor arising out of a sale or lease of goods or services pursuant to the credit card.

(2) The issuer of a lender credit card is not subject to the claims and defenses of a buyer or lessee arising out of a sale or lease of goods or services pursuant to a lender credit card except where a home solicitation sale is involved. For purposes of this section, a "home

solicitation sale" means a sale to a consumer of goods (other than equipment used in a business) or services, in which the seller or a person acting for the seller engages in a personal solicitation (other than by telephone or mail) of the sale at a residence of the buyer. It does not include a sale made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale.

(3) Claims or defenses of a buyer or lessee against a seller or lessor in connection with a home solicitation sale may be asserted against the issuer of the lender credit card only:

(a) If the buyer or lessee has attempted in good faith to obtain reasonable satisfaction from the seller or lessor with respect to claims or defenses, and

(b) to the extent of the amount owing to the issuer with respect to the sale or lease at the time the issuer has notice of the claims or defenses. Notice of the claims or defenses may be given prior to the attempt specified in paragraph (a). The notice, which may generally state the claims or defenses, ~~must~~ *shall* be in writing ~~but may be~~ *and* sent to ~~either the seller (or lessor), the lessor~~ or to the issuer.

(4) For the purpose of determining the amount owing to the issuer with respect to a sale or lease under a credit card, payments received upon the account are deemed to have been first applied to the payment of finance charges in the order of their entry to the account and then to the payment of debts in the order in which the entries of the debts are made to the account.

(5) An agreement may not provide for greater rights for an issuer of a credit card than this section permits.

Sec. 80. K.S.A. 16a-3-404 is hereby amended to read as follows: 16a-3-404. (1) An assignee of the rights of the seller or lessor under a consumer credit sale or consumer lease is subject to all claims and defenses of the buyer or lessee against the seller or lessor arising out of the sale or lease, notwithstanding that:

(a) There is an agreement to the contrary; or

(b) the assignee is a holder in due course of a negotiable instrument issued in violation of the provisions prohibiting certain negotiable instruments ~~(section 16a-3-307)~~.

(2) Claims or defenses of a buyer or lessee specified in subsection (1) may be asserted against the assignee only:

(a) If the buyer or lessee has attempted in good faith to obtain reasonable satisfaction from the seller or lessor with respect to claims or defenses;

(b) if the buyer or lessee, when requested in writing to do so by the seller, lessor or the assignee, has given notice in writing to the seller or lessee and the assignee stating the claims or defenses;

(c) to the extent of the amount owing to the assignee with respect to the sale or lease at the time the assignee has notice of such claims or defenses. Such notice, generally stating the claims or defenses, ~~must~~ *shall* be in writing and shall be sent to the seller ~~(or lessor)~~; and to the assignee if the buyer or lessee has received written notice of the name and address of the assignee; and

(d) as a matter of defense to or setoff against claims by the assignee except that the buyer or lessee shall not be prohibited from bringing an action to rescind an obligation against which it has a defense or setoff.

(3) For the purpose of determining the amount owing to the assignee with respect to the sale or lease:

(a) Payments received by the assignee after the consolidation of two or more consumer credit sales, other than pursuant to ~~open-end~~ *open-end* credit, are deemed to have been first applied to the payment of the sales first made; if the sales consolidated arose from sales made on the same day, payments are deemed to have been first applied to the smaller or smallest sale or sales;

(b) payments received upon an ~~open-end~~ *open-end* credit account are deemed to have been first applied to the payment of finance charges

in the order of their entry to the account and then to the payment of debts in the order in which the entries of the debts are made to the account.

(4) Any action by an assignee or the original seller or lessor who has repurchased an obligation under subsection (5) to enforce an obligation, or any action by a buyer or lessee to rescind; or any request to repurchase the obligation, shall be brought within one year from the date of receipt of the notice of the claim or defense, or default in payment, whichever is later.

(5) If a claim or defense of a buyer or lessee against a seller or lessor is asserted against an assignee, the assignee may, regardless of any existing agreement to the contrary, require the seller or lessor to repurchase the obligation for an amount equal to the price for which the obligation was assigned, plus that portion of the finance charge earned by the assignee, minus payments previously made to the assignee by the buyer or lessee. In any action by the buyer or lessee to rescind an obligation held by the assignee, the seller or lessor shall have the right to intervene and any party may join as a defendant any manufacturer or other person who is or may be liable to another party. If the action to rescind is brought against the seller or lessor, such seller or lessor shall have the right to join as a defendant any manufacturer or other person who is or may be liable to such seller or lessor.

(6) An agreement may not provide greater rights for an assignee than this section permits.

Sec. 81. K.S.A. 16a-3-405 is hereby amended to read as follows: 16a-3-405. (1) A lender, other than the issuer of a lender credit card, who, with respect to a particular transaction, makes a consumer loan for the purpose of enabling a consumer to buy or lease from a particular seller or lessee goods or services is subject to all claims and defenses of the consumer against the seller or lessor arising from that sale or lease of the goods and services if:

(a) The lender knows that the seller or lessor arranged, for a commission, brokerage; or referral fee, for the extension of credit by the lender;

(b) the lender is a person related to the seller or lessor unless the relationship is remote or is not a factor in the transaction;

(c) the seller or lessor guarantees the loan or otherwise assumes the risk or loss by the lender upon the loan;

(d) the lender directly supplies the seller or lessor with the contract document used by the consumer to evidence the loan, and the seller or lessor significantly participates in the preparation of the document; or

(e) the loan is conditioned upon the consumer's purchase or lease of the goods or services from the particular seller or lessor, but the lender's payment of proceeds of the loan to the seller or lessor does not in itself establish that the loan was so conditioned.

(2) Claims or defenses of a buyer or lessee specified in subsection (1) may be asserted against the lender only:

(a) If the buyer or lessee has attempted in good faith to obtain reasonable satisfaction from the seller or lessor with respect to the claims or defenses;

(b) if the buyer or lessee, when requested in writing to do so by the seller, lessor or the lender, has given notice in writing to the seller or lessee and the lender stating the claims or defenses;

(c) to the extent of the amount owing to the lender with respect to the sale or lease at the time the lender has notice of the claims or defenses. Such notice, generally stating the claims or defenses, ~~must~~ shall be in writing and shall be sent to the seller (or lessor), and to the lender if the buyer or lessee has received written notice of the name and address of the lender; and

(d) as a matter of defense to or setoff against claims by the lender except that the buyer or lessee shall not be prohibited from bringing an action to rescind an obligation against which it has a defense or setoff.

(3) For the purpose of determining the amount owing to the lender with respect to the sale or lease:

(a) Payments received by the lender after the consolidation of two or more consumer loans, other than pursuant to ~~open-end~~ *open-end* credit, are deemed to have been first applied to the payment of the loans first made; if the loans consolidated arose from loans made on the same day, payments are deemed to have been first applied to the smaller or smallest loan or loans; and

(b) payments received upon an ~~open-end~~ *open-end* credit account are deemed to have been first applied to the payment of finance charges in the order of their entry to the account and then to the payment of debts in the order in which the entries of the debts are made to the account.

(4) An agreement may not provide greater rights for a lender than this section permits.

(5) Notwithstanding any of the foregoing, the participation of the lender or lessor in any of the arrangements between seller and buyer to insure the perfection of the lender or lessor's security interest shall not in itself establish a relationship described and controlled by subsection (1).

Sec. 82. K.S.A. 16a-4-102 is hereby amended to read as follows: 16a-4-102. (1) Except as provided in subsection (2), this article applies to insurance provided or to be provided in relation to a consumer credit transaction.

(2) The provision on cancellation by a creditor (~~section 16a-4-304~~) applies to loans the primary purpose of which is the financing of insurance. No other provision of this article applies to insurance so financed.

Sec. 83. K.S.A. 16a-4-104 is hereby amended to read as follows: 16a-4-104. (1) Except as otherwise provided in this article and subject to the provisions on additional charges (~~section 16a-2-501~~) and maximum finance charges (~~parts 2 and 4 of article 2~~), a creditor may agree to provide insurance, and may contract for and receive a charge for insurance separate from and in addition to other charges. A creditor need not make a separate charge for insurance provided or required by him. This act does not authorize the issuance of any insurance prohibited under any statute, or rule thereunder, governing the business of insurance.

(2) The excess amount of a charge for insurance provided for in agreements in violation of this article is an excess charge for the purposes of the provisions of the article on remedies and penalties (~~article 5~~) as to effect of violations on rights of parties (~~section 16a-5-201~~) and of the provisions of the article on administration (~~article 6~~) as to civil actions by the administrator (~~section 16a-6-113~~).

Sec. 84. K.S.A. 16a-4-105 is hereby amended to read as follows: 16a-4-105. If a creditor agrees with a consumer to provide insurance:

(1) The insurance shall be evidenced by an individual policy or certificate of insurance delivered to the consumer, or sent to ~~him at his address as stated by him, within thirty~~ *(30) such consumer at such consumer's address, as provided, within 30* days after the term of the insurance commences under the agreement between the creditor and consumer; or

(2) the creditor shall promptly notify the consumer of any failure or delay in providing the insurance.

Sec. 85. K.S.A. 16a-4-106 is hereby amended to read as follows: 16a-4-106. (1) In applying the provisions of this act on unconscionability (~~sections 16a-5-108 and 16a-6-111~~) to a separate charge for insurance, consideration shall be given, among other factors, to:

(a) Potential benefits to the consumer including the satisfaction of his obligations;

(b) the creditor's need for the protection provided by the insurance; and

(c) the relation between the amount and terms of credit granted and the insurance benefits provided.

(2) If consumer credit insurance otherwise complies with this

article and other applicable law, *then* neither the amount ~~nor~~, the term of the insurance nor the amount of a charge ~~therefor~~ *of the insurance* is unconscionable.

Sec. 86. K.S.A. 16a-4-107 is hereby amended to read as follows: 16a-4-107. (1) Except as provided in subsection (2), if a creditor contracts for or receives a separate charge for insurance, the amount charged to the consumer for the insurance may not exceed the premium to be charged by the insurer, as computed at the time the charge to the consumer is determined, conforming to any rate filings required by law and made by the insurer with the commissioner of insurance.

(2) A creditor who provides consumer credit insurance in relation to ~~open-end~~ *open-end* credit may calculate the charge to the consumer in each billing cycle by applying the current premium rate to the unpaid balance of debt in the same manner as is permitted with respect to finance charges ~~by the provisions on finance charges~~ for consumer credit sales pursuant to ~~open-end~~ *open-end* credit ~~(section 16a-2-202)~~.

Sec. 87. K.S.A. 16a-4-108 is hereby amended to read as follows: 16a-4-108. (1) Upon prepayment in full of a consumer credit sale or consumer loan by the proceeds of consumer credit insurance, the consumer or ~~his~~ *such consumer's* estate is entitled to a refund of any portion of a separate charge for insurance which by reason or prepayment is retained by the creditor or returned ~~to him~~ by the insurer unless the charge was computed from time to time on the basis of the balances of the consumer's account.

(2) This article does not require a creditor to grant a refund or credit to the consumer if all refunds and credits due ~~to him~~ under this article amount to less than ~~one dollar (\$1)~~ \$5, and except as provided in subsection (1) does not require the creditor to account to the consumer for any portion of a separate charge for insurance because:

(a) The insurance is terminated by performance of the insurer's obligation;

(b) the creditor pays or accounts for premiums to the insurer in amounts and at times determined by the agreement between them; or

(c) the creditor receives directly or indirectly under any policy of insurance a gain or advantage not prohibited by law.

(3) Except as provided in subsection (2), the creditor shall promptly make or cause to be made an appropriate refund or credit to the consumer ~~with respect to~~ *for* any separate charge made ~~to him~~ *such consumer* for insurance if:

(a) The insurance is not provided or is provided for a shorter term than that for which the charge to the consumer for insurance was computed; or

(b) the insurance terminates prior to the end of the term for which it was written because of prepayment in full or otherwise.

(4) A refund or credit required by subsection (3) is appropriate as to amount if it is computed according to a method prescribed or approved by the commissioner of insurance or a formula filed by the insurer with the commissioner of insurance at least ~~thirty (30)~~ 30 days before the consumer's right to a refund or credit becomes determinable, unless the method or formula is employed after the commissioner of insurance notifies the insurer that ~~he disapproves it~~ *it was not approved*.

Sec. 88. K.S.A. 16a-4-109 is hereby amended to read as follows: 16a-4-109. If a creditor requires insurance, the consumer shall have the option of providing the required insurance through an existing policy of insurance owned or controlled by the consumer, or through a policy ~~to be~~ obtained and paid for by the consumer, but the creditor may for reasonable cause decline the insurance provided by the consumer. The creditor shall provide the consumer with a written notice on the loan agreement or other instrument fully informing the consumer of the option authorized by this section.

Sec. 89. K.S.A. 16a-4-110 is hereby amended to read as follows: 16a-4-110. (1) A creditor may not contract for or receive a separate charge for insurance in connection with a refinancing ~~(section 16a-2-504)~~ or a consolidation ~~(section 16a-2-505)~~, unless:

(a) The consumer agrees at or before the time of refinancing or consolidation that the charge may be made;

(b) the consumer is or is to be provided with insurance for an amount or a term, or insurance of a kind, in addition to that to which ~~he~~ *said consumer* would have been entitled had there been no refinancing or consolidation;

(c) the consumer receives a refund or credit on account of any unexpired term of existing insurance in the amount that would be required if the insurance were terminated (~~section 16a-4-108~~); and

(d) the charge does not exceed the amount permitted by this article (~~section 16a-4-107~~).

(2) A creditor may not contract for or receive a separate charge for insurance which duplicates insurance with respect to which the creditor has previously contracted for or received a separate charge.

Sec. 90. K.S.A. 16a-4-111 is hereby amended to read as follows: 16a-4-111. The administrator and the commissioner of insurance are authorized and directed to consult and assist one another in maintaining compliance with this article. They may jointly pursue investigations, prosecute suits, and take other official action, as may seem to them appropriate, if either of them is otherwise empowered to take the action. If the administrator is informed of a violation or suspected violation by an insurer of this article, or of the insurance laws, rules, and regulations of this state, ~~he~~ *the administrator* shall advise the commissioner of insurance of the circumstances.

Sec. 91. K.S.A. 16a-4-112 is hereby amended to read as follows: 16a-4-112. (1) To the extent that the commissioner's responsibility under this article requires, the commissioner of insurance shall ~~issue rules with respect to~~ *adopt rules and regulations pursuant to this act regarding* insurers, ~~and with respect to~~ refunds (~~K.S.A. 16a-4-108, and amendments thereto~~), forms, schedules of premium rates and charges (~~K.S.A. 16a-4-203, and amendments thereto~~), and the commissioner's approval or disapproval ~~thereof~~ *of such rules and regulations adopted* and, in case of violation, may make an order for compliance.

(2) Each provision on administrative procedures and judicial review of the article on administration (~~article 6~~) ~~which~~ *that* applies to and governs administrative action taken by the administrator also applies to and governs all administrative action taken by the commissioner of insurance pursuant to this section.

Sec. 92. K.S.A. 16a-4-201 is hereby amended to read as follows: 16a-4-201. (1) Consumer credit insurance provided by a creditor may be subject to the furnishing of evidence of insurability satisfactory to the insurer. Whether or not such evidence is required, the term of the insurance shall commence no later than when the consumer becomes obligated to the creditor or when the consumer applies for the insurance, whichever is later, except as follows:

(a) If any required evidence of insurability is not furnished until more than ~~thirty (30)~~ 30 days after the term would otherwise commence, the term may commence on the date when the insurer determines the evidence to be satisfactory; or

(b) if the creditor provides insurance not previously provided covering debts previously created, the term may commence on the effective date of the policy.

(2) The originally scheduled term of the insurance shall extend at least until the due date of the last scheduled payment of the debt except as follows:

(a) If the insurance relates to an ~~open-end~~ *open-end* credit account, the term need extend only until the payment of the debt under the account and may be sooner terminated after at least ~~thirty (30)~~ 30 days' notice to the consumer; or

(b) if the consumer is advised in writing that the insurance will be written for a specified shorter time, the term need extend only until the end of the specified time.

(3) The term of the insurance shall not extend more than ~~fifteen (15)~~ 15 days after the originally scheduled due date of the last

scheduled payment of the debt unless it is extended without additional cost to the consumer or as an incident to a deferral, refinancing, or consolidation.

Sec. 93. K.S.A. 16a-4-202 is hereby amended to read as follows: 16a-4-202. (1) Except as provided in subsection (2):

(a) In the case of consumer credit insurance providing life coverage, the amount of insurance may not initially exceed the debt and, if the debt is payable in installments, may not at any time exceed the greater of the scheduled or actual amount of the debt; or

(b) in the case of any other consumer credit insurance, the total amount of periodic benefits payable may not exceed the total of scheduled unpaid installments of the debt, and the amount of any periodic benefit may not exceed the original amount of debt divided by the number of periodic installments in which it is payable.

(2) If consumer credit insurance is provided in connection with an ~~open-end~~ *open-end* credit account, the amounts payable as insurance benefits may be reasonably commensurate with the amount of debt as it exists from time to time. If consumer credit insurance is provided in connection with a commitment to grant credit in the future, the amounts payable as insurance benefits may be reasonably commensurate with the total from time to time of the amount of debt and the amount of the commitment.

Sec. 94. K.S.A. 16a-4-203 is hereby amended to read as follows: 16a-4-203. (1) A creditor may not use a form or a schedule of premium rates or charges, the filing of which is required by this section, if the commissioner of insurance has disapproved the form or schedule and has notified the insurer of ~~his~~ *such* disapproval. A creditor may not use a form or schedule unless:

(a) The form or schedule has been on file with the commissioner of insurance for ~~thirty (30)~~ 30 days, or ~~has earlier been approved by him~~ *was approved by the commissioner prior to such creditor's use*; and

(b) the insurer has complied with this section with respect to the insurance.

(2) Except as provided in subsection (3), all policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements and riders relating to consumer credit insurance delivered or issued for delivery in this state, and the schedules of premium rates or charges pertaining thereto, shall be filed by the insurer with the commissioner of insurance. Within ~~thirty (30)~~ 30 days after the filing of any form or schedule, ~~he~~ *the commissioner* shall disapprove it if the premium rates or charges are unreasonable in relation to the benefits provided under the form, or if the form contains provisions ~~which~~ *that* are unjust, unfair, inequitable, or deceptive, or encourage misrepresentation of the coverage, or are contrary to any provision of the insurance code or of any rule or regulation promulgated thereunder.

(3) If a group policy has been delivered in another state, the forms to be filed by the insurer with the commissioner of insurance are the group certificates and notices of proposed insurance. ~~He~~ *The commissioner* shall approve them if:

(a) ~~They~~ *Such group certificates and notices of proposed insurance* provide the information that would be required if the group policy were delivered in this state; and

(b) the applicable premium rates or charges do not exceed those established by his rules or regulations.

Sec. 95. K.S.A. 16a-4-301 is hereby amended to read as follows: 16a-4-301. (1) A creditor may not contract for or receive a separate charge for insurance against loss of or damage to property unless:

(a) The insurance covers a substantial risk of loss of or damage to property related to the credit transaction;

(b) the amount, terms, and conditions of the insurance are reasonable in relation to the character and value of the property insured or to be insured; and

(c) the term of the insurance is reasonable in relation to the terms

of credit.

(2) The term of the insurance is reasonable if it is customary and does not extend substantially beyond a scheduled maturity.

(3) A creditor may not contract for or receive a separate charge for insurance against loss of or damage to property unless property is purchased pursuant to a credit card or in a transaction pursuant to ~~open end~~ *open-end* credit, or unless the amount financed exclusive of charges for the insurance is \$900 or more, and the value of the property is \$900 or more.

Sec. 96. K.S.A. 16a-4-304 is hereby amended to read as follows: 16a-4-304. A creditor shall not request cancellation of a policy of property or liability insurance except after the consumer's default or in accordance with a written authorization by the consumer, and in either case the cancellation ~~does~~ *shall* not take effect until written notice is delivered to the consumer or mailed to ~~him at his address as stated by him~~ *such consumer at the address provided*. The notice shall state that the policy may be cancelled on a date not less than ~~ten (10)~~ 10 days after the notice is delivered, or, if the notice is mailed, not less than ~~thirteen (13)~~ 13 days after it is mailed.

Sec. 97. K.S.A. 16a-5-103 is hereby amended to read as follows: 16a-5-103. (1) This section applies to a deficiency on a consumer credit sale of goods or services and on a consumer loan in which the lender is subject to defenses arising from sales ~~(K.S.A. 16a-3-405, and amendments thereto)~~; a consumer is not liable for a deficiency unless the creditor has disposed of the goods in good faith and in a commercially reasonable manner.

(2) If the seller repossesses or voluntarily accepts surrender of goods which were the subject of the sale and in which ~~he~~ *the seller* has a security interest, the buyer is not personally liable to the seller for the unpaid balance of the debt arising from the sale of a commercial unit of goods of which the cash sale price was \$1,000 or less, and the seller is not obligated to resell the collateral unless the buyer has paid 60% or more of the cash price and has not signed after default a statement renouncing ~~his~~ *such buyer's* rights in the collateral.

(3) If the seller repossesses or voluntarily accepts surrender of goods which were not the subject of the sale but in which the seller has a security interest to secure a debt arising from a sale of goods or services or a combined sale of goods and services and the cash price of the sale was \$1,000 or less, the buyer is not personally liable to the seller for the unpaid balance of the debt arising from the sale, and the seller's duty to dispose of the collateral is governed by ~~the provisions on disposition of collateral (K.S.A. 84-9-610, and amendments thereto)~~ *of the uniform commercial code*.

(4) If the lender takes possession or voluntarily accepts surrender of goods in which ~~he~~ *such lender* has a security interest to secure a debt arising from a consumer loan in which the lender is subject to defenses arising from sales (K.S.A. 16a-3-405, and amendments thereto), and the net proceeds of the loan paid to or for the benefit of the debtor were \$1,000 or less, the debtor is not personally liable to the lender for the unpaid balance of the debt arising from the loan and the lender's duty to dispose of the collateral is governed by ~~the provisions on disposition of collateral (K.S.A. 84-9-610, and amendments thereto)~~ *of the uniform commercial code*.

(5) For the purpose of determining the unpaid balance of consolidated debts or debts pursuant to ~~open end~~ *open-end* credit, the allocation of payments to a debt shall be determined in the same manner as provided ~~for determining the amount of debt secured by various security interests (~~ *by* K.S.A. 16a-3-303, and amendments thereto).

(6) The consumer may be liable in damages to the creditor if the consumer has wrongfully damaged the collateral or if, after default and demand, the consumer has wrongfully failed to make the collateral available to the creditor.

(7) If the creditor ~~elects to bring~~ *brings* an action against the

consumer for a debt arising from a consumer credit sale of goods or services or from a consumer loan in which the lender is subject to defenses arising from sales ~~(K.S.A. 16a-3-405, and amendments thereto)~~, when under this section the creditor would not be entitled to a deficiency judgment if the creditor took possession of the collateral, and obtains judgment:

(a) The creditor may not take possession of the collateral, and

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

Sec. 98. K.S.A. 16a-5-107 is hereby amended to read as follows: 16a-5-107. (1) If it is the understanding of the creditor and the consumer ~~at the time an extension of credit is made~~ that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation; or property of any person, the repayment of the extension of credit is unenforceable through civil judicial processes against the consumer.

(2) ~~If it is shown that~~ an extension of credit was made at an annual rate exceeding ~~thirty-six percent (36%)~~ 36% calculated according to the actuarial method and that the creditor then had a reputation for the use or threat of use of violence or other criminal means to cause harm to the person, reputation; or property of any person to collect extensions of credit or to punish the nonrepayment thereof, there is prima facie evidence that the extension of credit was unenforceable under subsection (1).

Sec. 99. K.S.A. 16a-5-108 is hereby amended to read as follows: 16a-5-108. (1) *The unconscionability of an act or practice is a question for the trier of fact.*

(2) With respect to a consumer credit transaction, if the trier of fact finds:

(a) The agreement ~~to have been~~ *was* unconscionable at the time it was made, or ~~to have been~~ *was* induced by unconscionable conduct, the court may refuse to enforce the agreement; or

(b) any clause of the agreement ~~to have been~~ *was* unconscionable at the time it was made, the court may refuse to enforce the agreement, ~~or~~ may enforce the remainder of the agreement without the unconscionable clause; or may so limit the application of any unconscionable clause as to avoid any unconscionable result.

~~(2)(3)~~ (3) If it is claimed or appears to the trier of fact that the agreement or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its setting, purpose, and effect to aid the court in making the determination.

~~(3)(4)~~ (4) ~~For the purpose of this section,~~ A charge or practice expressly permitted by this act ~~is not~~ *shall not be* unconscionable.

Sec. 100. K.S.A. 16a-5-111 is hereby amended to read as follows: 16a-5-111. (1) ~~This section applies to consumer credit transactions~~ *After a consumer has been in default for 10 days for failure to make a required payment in a consumer credit transaction payable in installments, a creditor may give the consumer the notice described in this section. A creditor gives notice to the consumer under this section when the creditor delivers the notice to the consumer or delivers or mails the notice to the address of the consumer's residence.*

(2) *The notice shall be in writing and shall conspicuously state the following: The name, address and telephone number of the creditor to which payment is to be made, a brief description of the credit transaction, the consumer's right to cure the default, the amount of payment and date by which payment must be made to cure the default, and the consumer's possible liability for the reasonable costs of collection, including, but not limited to, court costs, either attorney fees or collection agency fees and any other information required by the administrator as set forth by rules and regulations or by administrative interpretation.*

~~(3)~~ ~~Except as provided in subsection (3)~~ *With respect to a*

consumer credit transaction payable in installments, after a default consisting only of the consumer's failure to make a required payment ~~in a consumer credit transaction payable in installments~~, a creditor may neither accelerate maturity of the unpaid balance of the obligation nor take possession of collateral because of that default until 20 days after a notice of the consumer's right to cure ~~(K.S.A. 16a-5-110, and amendments thereto)~~ is given. Until 20 days after the notice is given, the consumer may cure all defaults consisting of a failure to make the required payment by tendering the amount of all unpaid sums due at the time of the tender, without acceleration, plus any unpaid ~~delinquency charges late fees~~. Cure ~~restores shall restore~~ the consumer to the consumer's rights under the agreement as though the defaults had not occurred.

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

(5) *Unless the consumer voluntarily surrenders the collateral to the creditor, the creditor may take possession of the collateral without judicial process only if possession can be taken without entry into a dwelling and without the use of force or other breach of the peace.*

(6) *Nothing in this section shall prohibit a consumer from voluntarily surrendering the collateral of the consumer credit transaction and shall not prohibit the creditor from thereafter enforcing the creditor's security interest in the collateral at any time after surrender.*

Sec. 101. K.S.A. 16a-5-201 is hereby amended to read as follows: 16a-5-201. (1) If a creditor has violated the provisions of this act applying to collection of excess charges or enforcement of rights ~~(subsection (4) of section 16a-1-201)~~, restrictions on interests in land as security ~~(section 16a-2-307)~~, limitations on the schedule of payments or loan terms for supervised loans ~~(section 16a-2-308)~~, attorney's fees ~~(section 16a-2-507)~~, security in sales and leases ~~(section 16a-3-301)~~, assignments of earnings ~~(section 16a-3-305)~~, authorizations to confess judgment ~~(section 16a-3-306)~~, certain negotiable instruments prohibited ~~(section 16a-3-307)~~, assignees subject to defenses ~~(section 16a-3-404)~~, credit card issuer subject to defenses ~~(section 16a-3-403)~~, or limitations on default charges ~~(section 16a-3-402)~~, the consumer ~~has a cause of action to~~ may recover actual damages and ~~in addition a right in an action other than~~ *except for* a class action to recover from the person violating such provisions of this act a penalty in an amount determined by the court not less than \$100 nor more than \$1,000. With respect to violations arising from sales or loans made pursuant to ~~open end~~ *open-end* credit, no action pursuant to this subsection may be brought more than two years after the violations occurred. With respect to violations arising from other consumer transactions, no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement.

(2) If a creditor has violated the provisions of this act applying to authority to make supervised loans ~~(section 16a-2-301)~~, the loan is void and the consumer is not obligated to pay either the amount financed or finance charge. If the consumer has paid any part of the amount financed or ~~of the~~ finance charge, the consumer has a right to recover the payment from the person violating this act or from an assignee of that person's rights who undertakes direct *or indirect* collection of payments or enforcement of rights arising from the debt *including, but not limited to, loans described in K.S.A. 16a-2-301(1), and amendments thereto*. With respect to violations arising from loans made pursuant to ~~open end~~ *open-end* credit, no action pursuant to this subsection may be brought more than two years after the violation occurred. With respect to violations arising from other loans, no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to

which the charge was paid. Persons subject to the penalties in this subsection shall not include attorneys or collection agencies ~~who~~ that do not purchase a consumer obligation.

(3) A consumer is not obligated to pay a charge in excess of that allowed by this act, and if the consumer has paid an excess charge the consumer has a right to a refund of twice the excess charge. ~~A refund may be made by reducing the consumer's obligation by twice the amount of the excess charge.~~ If the consumer has paid an amount in excess of the lawful obligation under the agreement, the consumer may recover twice the excess amount from the person who made the excess charge or from an assignee of that person's rights who undertakes direct or indirect collection of payments from or enforcement of rights against debtors arising from the debt *including, but not limited to, loans described in K.S.A. 16a-2-301(1), and amendments thereto.* Persons subject to the penalties in this subsection shall not include attorneys or collection agencies who do not purchase a consumer obligation.

(4) If a creditor has contracted for or received a charge in excess of that allowed by this act, or if a consumer is entitled to a refund and a person liable to the consumer refuses to make a refund within a reasonable time after demand, the consumer may recover from the creditor or the person liable in an action ~~other than~~ *except for* a class action a penalty in an amount determined by the court not less than \$100 or more than \$1,000. With respect to excess charges arising from sales or loans made pursuant to ~~open-end~~ *open-end* credit, no action pursuant to this subsection may be brought more than two years after the time the excess charge was made. With respect to excess charges arising from other consumer credit transactions, no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was made. Persons subject to the penalties in this subsection shall not include attorneys or collection agencies who do not purchase a consumer obligation.

(5) Except as otherwise provided, no violation of the provisions of K.S.A. 16a-1-101 ~~through 16a-9-102~~ *et seq.*, and amendments thereto, impairs rights on a debt.

(6) A creditor has no liability for a penalty under subsection (1) or subsection (4) if within 15 days after discovering an error, and prior to the institution of an action under this section or the receipt of written notice of the error, the creditor notifies the person concerned of the error and corrects the error. If the violation consists of a prohibited agreement, giving the consumer a corrected copy of the writing containing the error is sufficient notification and correction. If the violation consists of an excess charge, correction shall be made by an adjustment or refund.

(7) If the creditor establishes by a preponderance of evidence that a violation is unintentional or the result of a bona fide error of law or fact notwithstanding the maintenance of procedures reasonably adapted to avoid any such violation or error, no liability is imposed under subsections (1), (2), and (3), the validity of the transaction is not affected, and no liability is imposed under subsection (4) except for refusal to make a refund.

(8) In an action in which it is found that a creditor has violated any provision of K.S.A. 16a-1-101 ~~through 16a-9-102~~ *et seq.*, and amendments thereto, the court shall award to the consumer the costs of the action and to the consumer's attorneys their reasonable fees. Reasonable attorney's fees shall be determined by the value of the time ~~reasonably~~ expended by the attorney and not by the amount of the recovery on behalf of the consumer.

(9) A creditor who in good faith complies with a written administrative interpretation shall not be subject to any penalties under this section for any act done or omitted in conformity with such written administrative interpretation.

Sec. 102. K.S.A. 16a-5-203 is hereby amended to read as follows: 16a-5-203. (1) Except as otherwise provided in this section, a creditor

who, in violation of the provisions of the rules and regulations adopted by the administrator pursuant to K.S.A. 16a-6-117, and amendments thereto, fails to disclose information to a person entitled to the information under the provisions of K.S.A. 16a-1-101 through 16a-9-102 *et seq.*, and amendments thereto, or under rules and regulations adopted by the administrator is liable to that person in an amount equal to the sum of:

(a) Twice the amount of the finance charge in connection with the transaction, but the liability pursuant to this paragraph shall be not less than \$200 or more than \$2,000; and

(b) in the case of a successful action to enforce the liability under paragraph (a), the costs of the action together with reasonable attorney's fees as determined by the court.

(2) A creditor has no liability under this section if within 15 days after discovering an error, and prior to the institution of an action under this section or the receipt of written notice of the error, the creditor notifies the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to assure that the person will not be required to pay a credit service charge or loan finance charge in excess of the amount or percentage rate actually disclosed.

(3) A creditor may not be held liable in any action brought under this section for a violation of the provisions of K.S.A. 16a-1-101 through 16a-9-102 *et seq.*, and amendments thereto, if the creditor shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error.

(4) Any action which may be brought under this section against the original creditor in any credit transaction involving a security interest in land may be maintained against any subsequent assignee of the original creditor where the assignee, its subsidiaries, or affiliates were in a continuing business relationship with the original creditor either at the time the credit was extended or at the time of the assignment, unless the assignment was involuntary; or the assignee shows by a preponderance of evidence that it did not have reasonable grounds to believe that the original creditor was engaged in violations of this act and that it maintained procedures reasonably adapted to apprise it of the existence of the violations.

(5) No action pursuant to this section may be brought more than one year after the date of the occurrence of the violation.

(6) The liability of the creditor under this section is in lieu of and not in addition to the creditor's liability under the federal truth in lending act; ~~no action with respect to the same violation may be maintained pursuant to both this section and the federal truth in lending act.~~

Sec. 103. K.S.A. 16a-5-301 is hereby amended to read as follows: 16a-5-301. (1) It is unlawful for any person to violate any of the provisions of this act, any rule and regulation adopted or order issued under this act. A conviction for an intentional violation is a class A nonperson misdemeanor. A second or subsequent conviction of this subsection is severity level 7 nonperson felony. ~~No person may be imprisoned for the violation of this section if such person proves that such person had no knowledge of the rule and regulation or order.~~

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

(3) A person, other than a supervised financial organization or an attorney or collection agency who does not purchase the credit obligation, who willfully engages in the business of entering into consumer credit transactions, or of taking assignments of rights against consumers arising therefrom and undertakes direct or indirect collection of payments or enforcement of these rights, without

complying with the provisions of this act concerning notification (~~K.S.A. 16a-6-202, and amendments thereto~~) or payment of fees (~~K.S.A. 16a-6-203, and amendments thereto~~), is guilty of a class A misdemeanor and upon conviction thereof shall be punished in the manner provided by law.

Sec. 104. K.S.A. 16a-6-104 is hereby amended to read as follows: 16a-6-104. ~~This act shall be administered by the consumer credit commissioner of Kansas who is also referred to as the administrator.~~

(1) In addition to other powers granted by this act, the administrator ~~within the limitations provided by law~~ may:

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

(b) ~~counsel~~ *provide guidance* to persons and groups on their rights and duties under K.S.A. 16a-1-101 ~~to 16a-9-102, inclusive et seq.~~, and amendments thereto;

(c) establish *or support* programs for the education of consumers with respect to credit practices ~~and problems and~~:

(A) As a condition in settlements of investigations or examinations, the administrator may ~~receive~~ *require* a payment designated for consumer education to be expended as directed by the administrator for such purpose; *and*

(B) *the administrator may fund consumer education programs from operating funds in an amount up to 1% of operating funds.*

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

(e) adopt, amend and revoke rules and regulations to carry out the specific provisions of K.S.A. 16a-1-101 ~~to 16a-9-102, inclusive et seq.~~, and amendments thereto, ~~and to implement the requirements of the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289);~~

(f) issue, amend and revoke written administrative interpretations. ~~Such written administrative interpretations shall be approved by the attorney general and published in the Kansas register within 15 days of issuance. The administrator shall annually publish all written administrative interpretations in effect;~~

(g) maintain offices within this state; *and*

(h) ~~appoint any necessary attorneys, hearing examiners, clerks, and other employees and agents and fix their~~ *set such employees'* compensation, and authorize attorneys appointed under this section to appear for and represent the administrator in court;

(i) examine periodically at intervals the administrator deems appropriate the loans, business and records of every licensee, ~~registrant or person filing notification pursuant to K.S.A. 16a-6-201 through 16a-6-203, and amendments thereto~~ *or consumer credit filer*, except licensees ~~which~~ *that* are supervised financial organizations. The official or agency responsible for the supervision of each supervised financial organization shall examine the loans, business and records of each such organization in the manner and periodically at intervals prescribed by the administrator. In addition, for the purpose of discovering violations of K.S.A. 16a-1-101 ~~through 16a-9-102 et seq.~~, and amendments thereto, or securing information lawfully required, the administrator or the official or agency to whose supervision the organization is subject to K.S.A. 16a-6-105, and amendments thereto, may at any time investigate the loans, business and records of any supervised lender. For examination purposes the administrator shall have free and reasonable access to the offices, places of business and records of the ~~lender, registrant or person filing notification~~ *licensee or consumer credit filer* and the administrator may control access to any documents and records of a licensee, ~~registrant or person filing notification under examination~~ *or consumer credit filer*;

(j) refer such evidence as may be available concerning violations

of this act or of any rule and regulation or order to the attorney general or *in consultation with the attorney general* to the proper county or district attorney, who may in the prosecutor's discretion, with or without such a ~~reference~~ *referral*, institute the appropriate criminal proceedings under this act. Upon receipt of such reference, the attorney general or the county attorney or district attorney may request that a ~~duly employed attorney of the administrator~~ prosecute or assist in the prosecution of such violation on behalf of the state. Upon approval of the administrator, such employee shall be appointed special prosecutor for the attorney general or the county attorney or district attorney to serve without compensation from the attorney general or the county attorney or district attorney. Such special prosecutor shall have all the powers and duties prescribed by law for assistant attorneys general or assistant county or district attorneys, and such other powers and duties as are lawfully delegated to such special prosecutors by the attorney general or the county attorney or district attorney *the laws of this state*;

(k) if deemed necessary by the administrator, require fingerprinting of any applicant, licensee, *owners or* members thereof if a copartnership or association, or officers and directors thereof if a corporation, or any agent or other person acting on their behalf. The administrator, or the administrator's designee, ~~may~~ *shall* submit such fingerprints to the Kansas bureau of investigation, federal bureau of investigation, or other law enforcement agency for the purposes of verifying the identity of such persons and obtaining records of their criminal arrests and convictions. For purposes of this section and in order to reduce the points of contact which the federal bureau of investigation may have to maintain with the individual states, the administrator may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the department of justice or any governmental agency;

(l) exchange information regarding the administration of this act with any agency of the United States or any state which regulates the licensee, ~~registrant or person required to file notification, or consumer credit filer~~ who administers statutes, rules and regulations or other programs related to consumer credit and to enter into information sharing arrangements with other governmental agencies or associations representing governmental agencies which are deemed necessary or beneficial to the administration of this act;

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

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

(~~o~~) use the nationwide mortgage licensing system and registry as a channeling agent for requesting and distributing any information regarding residential mortgage loan originator registration or supervised lender licensing to and from any source so directed by the administrator;

(~~p~~)(n) establish relationships or contracts with the nationwide mortgage licensing system and registry or other entities to collect and maintain records and process transaction fees or other fees related to applicants, licensees, ~~registrants~~ or other persons subject to the act and to take such other actions as may be reasonably necessary to participate in the nationwide mortgage licensing system and registry. The administrator shall regularly report violations of law, ~~as well as~~

enforcement actions and other relevant information, to the nationwide mortgage licensing system and registry, ~~and make publicly available the proposed budget, fees, and audited financial statements of the nationwide mortgage licensing system and registry as may be prepared by the nationwide mortgage licensing system and registry and provided to the administrator;~~

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

~~(r) require that any mortgage loan originator applicant, registrant or other person complete a minimum number of prelicensing education hours and complete continuing education hours on an annual or biannual basis. Prelicensing and continuing education courses shall be approved by the administrator or the administrator's designee and may be made a condition of application approval and renewal; and~~

~~(s)(o) require any licensee or registrant to file reports with the nationwide mortgage licensing system and registry in the form prescribed by the administrator or the administrator's designee.~~

(2) The administrator shall enforce the provisions of this act and the rules and regulations and interpretations adopted thereunder with respect to a creditor, unless the creditor's compliance is regulated exclusively or primarily by another state or federal agency.

(3) To keep the administrator's rules and regulations in harmony with the rules of administrators in other jurisdictions ~~which enact the revised uniform consumer credit code~~, the administrator, so far as is consistent with the purposes, policies and provisions of K.S.A. 16a-1-101 ~~to 16a-9-102, inclusive et seq.~~, and amendments thereto, may:

(a) Before adopting, amending and revoking rules and regulations, advise and consult with administrators in other jurisdictions ~~which enact the uniform consumer credit code~~; and

(b) in adopting, amending and revoking rules and regulations, take into consideration the rules of administrators in other jurisdictions ~~which enact the revised uniform consumer credit code~~.

(4) Except for refund of an excess charge, no liability is imposed under K.S.A. 16a-1-101 ~~to 16a-9-102, inclusive et seq.~~, and amendments thereto, for an act done or omitted in conformity with a rule and regulation or written administrative interpretation of the administrator in effect at the time of the act or omission notwithstanding that after the act or omission the rule and regulation or written administrative interpretation may be determined by judicial or other authority to be invalid for any reason.

(5) The administrator prior to December 1 of each year shall establish such fees as are authorized under the provisions of K.S.A. 16a-1-101 ~~to 16a-9-102, inclusive et seq.~~, and amendments thereto, for the ensuing calendar year in such amounts as the administrator may determine to be sufficient to meet the budget requirements of the administrator for each fiscal year.

Sec. 105. K.S.A. 16a-6-105 is hereby amended to read as follows: 16a-6-105. (1) With respect to supervised financial organizations, the powers of examination and investigation ~~(K.S.A. 16a-2-305 and K.S.A. 16a-6-106, and amendments thereto)~~ and administrative enforcement ~~(K.S.A. 16a-6-108, and amendments thereto)~~ shall be exercised by the official or agency to whose supervision the organization is subject. Should a supervised financial organization become licensed hereunder, a report of that portion of each examination made by the supervisory official or agency of such organization relating to compliance with the provisions of chapter 16a of the Kansas Statutes Annotated, *and amendments thereto*, shall be filed with the administrator. All other powers of the administrator under this act may be exercised by the administrator with respect to a supervised financial organization except

that compliance with truth in lending shall be governed as set forth in ~~subsection (2) of~~ K.S.A. 16a-6-104(2), and amendments thereto.

(2) If the administrator receives a complaint or other information concerning noncompliance with this act by a supervised financial organization, the administrator shall inform the official or agency having supervisory authority over the organization concerned. The administrator may request information about supervised financial organizations from the officials or agencies supervising them. If such officials or agencies have cause to believe the ~~licensee~~ *license* of any supervised financial organization subject to their supervision is subject to suspension or revocation for any reason stated in K.S.A. 16a-2-303, and amendments thereto, such official or agency shall notify the administrator and assist the administrator in the enforcement of this act.

(3) The administrator and any official or agency of this state having supervisory authority over a supervised financial organization are authorized and directed to consult and assist one another in maintaining compliance with the provisions of K.S.A. 16a-1-101 ~~through 16a-9-102 et seq.~~, and amendments thereto. They may jointly pursue investigations, prosecute suits, and take other official action, as they deem appropriate, if either of them otherwise is empowered to take the action.

Sec. 106. K.S.A. 16a-6-106 is hereby amended to read as follows: 16a-6-106. (1) The administrator may:

(a) Conduct ~~public or private~~ examinations or investigations within or outside of this state as necessary to determine whether any license should be granted, denied or revoked or whether any person has violated or is about to violate any provision of this act or any rule and regulation, administrative interpretation, or order hereunder; or to aid in the enforcement of this act or in the prescribing of forms or adoption of rules and regulations; *and*

(b) require or permit any person to file a statement in writing, under oath or otherwise as the administrator determines, of all the facts and circumstances concerning any violation of this act or any rule and regulation, administrative interpretation or order hereunder.

(2) *All examination material shall be confidential by law and privileged and shall not be subject to the open records act, subpoena and discovery or admissible in evidence in any private civil action. The provisions of this subsection providing for the confidentiality of public records shall expire on July 1, 2030, unless the legislature reviews and reenacts such provisions in accordance with K.S.A. 45-229, and amendments thereto, prior to July 1, 2030.*

(3) For the purpose of any examination, investigation or proceeding under this act, the administrator or any officer designated by the administrator may administer oaths and affirmations, subpoena witnesses, compel such witnesses' attendance, adduce evidence and require the production of any matter which is relevant to the examination or investigation, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of relevant information or items.

~~(3)~~(4) In case of contumacy by, or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the administrator, may issue to that person an order requiring the person to appear before the administrator, or the officer designated by the administrator, there, to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Any failure to obey the order of the court may be punished by the court as a contempt of court.

~~(4)~~(5) No person is excused from attending and testifying or from producing any document or record before the administrator or in obedience to the subpoena of the administrator or any officer designated by the the administrator or in any proceeding instituted by the administrator, ~~on the ground that the testimony or evidence~~

~~(documentary or otherwise) required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture. No individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which such person is compelled, after claiming privilege against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.~~

~~(5)(6)~~ The administrator may issue and apply to enforce subpoenas in this state at the request of ~~a consumer code administrator~~ of another state if the activities constituting an alleged violation for which the information is sought would be a violation of the ~~Kansas~~ uniform consumer credit code if the activities had occurred in this state.

~~(6)(7)~~ If the person's records are located outside this state, the person shall either make them available to the administrator at a convenient location within this state or, at the administrator's discretion, pay the reasonable and necessary expenses for the administrator or such administrator's representative to examine them at the place where they are maintained. The administrator may designate representatives, including comparable officials of the state in which the records are located, to inspect the records on the administrator's behalf.

~~(7)(8)~~ The administrator may charge as costs of investigation or examination all reasonable expenses, including a per diem and actual travel and lodging expenses to be paid by the party or parties under investigation or examination. The administrator may maintain an action in any court to recover such costs.

(9) The administrator may enter into an informal agreement at any time with a person to resolve a matter arising under this act, rules and regulations adopted pursuant thereto or an order issued pursuant to this act. The adoption of an informal agreement authorized by this subsection shall not be subject to the provisions of K.S.A. 77-501 et seq. or 77-601 et seq., and amendments thereto. Any informal agreement authorized by this subsection shall not be considered an order or other agency action and shall be considered confidential examination material.

Sec. 107. K.S.A. 16a-6-108 is hereby amended to read as follows: 16a-6-108. (1) If the administrator determines after notice and opportunity for a hearing that any person has engaged, is engaging or is about to engage in any act or practice constituting a violation of any provision of this act or any rule and regulation, order or administrative interpretation hereunder, *including, but not limited to, refusal or failure to provide information requested by the administrator*, the administrator by order may require that such person cease and desist from the unlawful act or practice and take such affirmative action as in the judgment of the administrator will carry out the purposes of this act.

(2) If the administrator makes written findings of fact that the public interest will be irreparably harmed by delay in issuing an order under subsection (1), the administrator may issue an emergency cease and desist order. Such order shall be subject to the same procedures as an emergency order issued under K.S.A. 77-536, and amendments thereto. Upon the entry of such an order the administrator shall promptly notify the person subject to the order that it has been entered, of the reasons and that upon written request the matter will be set for a hearing which shall be conducted in accordance with the provisions of the Kansas administrative procedure act. If no hearing is requested and none is ordered by the administrator, the order will remain in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to the person subject to the order, shall by written findings of fact and conclusion of law vacate, modify or make permanent the order.

(3) If the administrator reasonably believes that a person has violated this act or a rule and regulation, order or administrative

interpretation of the administrator under this act, the administrator, in addition to any specific power granted under this act, after notice and hearing in an administrative proceeding, unless the right to notice and hearing is waived by the person against whom the sanction is imposed, may require any or all of the following:

- (a) Censure the person if the person is licensed under this act;
- (b) issue an order against an applicant, ~~licensed person, residential mortgage loan originator registrant~~ *supervised loan licensee, consumer credit filer* or other person who knowingly violates this act or a rule and regulation, order or administrative interpretation of the administrator under this act, *including, but not limited to, refusal or failure to provide information requested by the administrator*; imposing a civil penalty up to a maximum of \$5,000 for each violation. If any person is found to have knowingly or willfully violated any provision of this act, and such violation is committed against elder or disabled persons, as defined in K.S.A. 50-676, and amendments thereto, in addition to any civil penalty otherwise provided by law, the administrator may impose an additional penalty not to exceed \$5,000 for each such violation;
- (c) revoke or suspend the person's license or registration or bar the person from subsequently applying for a license or registration under this act; or
- (d) issue an order requiring the person to pay restitution for any loss arising from the violation or requiring the person to disgorge any profits arising from the violation. Such order may include the assessment of interest not to exceed 8% per annum from the date of the violation.

(4) Any person aggrieved by a final order of the administrator may obtain a review of the order in accordance with the provisions of the Kansas judicial review act.

Sec. 108. K.S.A. 16a-6-109 is hereby amended to read as follows: 16a-6-109. If it is claimed that a person has engaged in conduct subject to an order by the administrator (~~section 16a-6-108~~) or by a court (~~sections 16a-6-110 through 16a-6-112~~), the administrator may accept an assurance in writing that the person will not engage in the conduct in the future. ~~If a person giving an assurance of discontinuance fails to comply with its terms, the assurance is evidence that prior to the assurance he engaged in the conduct described in the assurance~~ *Failure to abide by the assurance of discontinuance shall be evidence that the person engaged in the prior conduct described in the assurance.*

Sec. 109. K.S.A. 16a-6-110 is hereby amended to read as follows: 16a-6-110. The administrator may bring a civil action to restrain a person from violating the provisions of K.S.A. 16a-1-101 ~~through 16a-9-102 et seq., and amendments thereto, or any rules or regulations adopted thereunder~~ and for other appropriate relief.

Sec. 110. K.S.A. 16a-6-111 is hereby amended to read as follows: 16a-6-111. (1) The administrator may bring a civil action to restrain a creditor or a person acting ~~in his~~ *on such creditor's or person's* behalf from engaging in a course of:

- (a) Making or enforcing unconscionable terms or provisions of consumer credit transactions; *or*
- (b) fraudulent or unconscionable conduct in inducing consumers to enter into consumer credit transactions.

(2) In an action brought pursuant to this section the court may grant relief only if the trier of the fact finds ~~that the~~:

- (a) ~~That the~~ Respondent has made unconscionable agreements or has engaged or is likely to engage in a course of fraudulent or unconscionable conduct;
- (b) ~~that the~~ agreements or conduct of the respondent has caused or is likely to cause injury to consumers; and
- (c) ~~that the~~ respondent has been able to cause or will be able to cause the injury primarily because the transactions involved are credit transactions.

(3) In applying this section, consideration shall be given to each of the following factors, among others:

(a) Belief by the creditor at the time consumer credit transactions are entered into that there was no reasonable probability of payment in full of the obligation by the consumer;

(b) in the case of consumer credit sales or consumer leases, knowledge by the seller or lessor at the time of the sale or lease of the inability of the buyer or lessee to receive substantial benefits from the property or services sold or leased;

(c) in the case of consumer credit sales or consumer leases, gross disparity between the price of the property or services sold or leased and the value of the property or services measured by the price at which similar property or services are readily obtainable in credit transactions by like buyers or lessees;

(d) the fact that the creditor contracted for or received separate charges for insurance with respect to consumer credit sales or consumer loans with the effect of making the sales or loans, considered as a whole, unconscionable; and

(e) the fact that the respondent has knowingly taken advantage of the inability of the consumer reasonably to protect ~~his~~ *such consumer's* interests by reason of physical or mental infirmities, ignorance, illiteracy ~~or~~, inability to understand the language of the agreement; or similar factors.

(4) In an action brought pursuant to this section, a charge or practice expressly permitted by this act is not in itself unconscionable.

Sec. 111. K.S.A. 16a-6-112 is hereby amended to read as follows: 16a-6-112. With respect to an action brought to enjoin violations of K.S.A. 16a-1-101 ~~through 16a-9-102 (section 16a-6-110) et seq., and amendments thereto~~, or unconscionable agreements or fraudulent or unconscionable conduct ~~(section 16a-6-111)~~, the administrator may ~~apply to~~ *petition* the court for appropriate temporary relief against a respondent, pending final determination of proceedings. If the court finds after a hearing held upon notice to the respondent that there is reasonable cause to believe that the respondent is engaging in or is likely to engage in conduct sought to be restrained, it may grant any temporary relief or restraining order it deems appropriate.

Sec. 112. K.S.A. 16a-6-113 is hereby amended to read as follows: 16a-6-113. (1) After demand, the administrator may bring a civil action against a creditor for all amounts of money, other than penalties, which a consumer or class of consumers has a right *to recover* explicitly granted by the provisions of K.S.A. 16a-1-101 ~~through 16a-9-102 to recover et seq., and amendments thereto~~. The court shall order amounts recovered or recoverable under this subsection paid to each consumer or set off against ~~his~~ *such consumer's* obligation. A consumer's action, other than a class action, takes precedence over a prior or subsequent action by the administrator with respect to the claim of that consumer. A consumer's class action takes precedence over a subsequent action by the administrator with respect to claims common to both actions but intervention by the administrator is authorized. An administrator's action on behalf of a class of consumers takes precedence over a consumer's subsequent class action with respect to claims common to both actions. When an action takes precedence over another action under this subsection, ~~to the extent appropriate~~ the other action may be stayed while the ~~precedent~~ *preceding* action is pending and dismissed if the ~~precedent~~ *preceding* action is dismissed with prejudice or results in a final judgment granting or denying the claim asserted in the ~~precedent~~ *preceding* action.

(2) The administrator may bring a civil action against a creditor or a person acting ~~in his~~ *on such creditor's or person's* behalf to recover a civil penalty for willfully violating this act, and if the court finds that the defendant has engaged in a course of repeated and willful violations of this act, it may assess a civil penalty of no more than ~~five thousand dollars (\$5,000)~~ *\$5,000 per violation*. Any civil action under this subsection shall be brought within two ~~(2)~~ years following the violation.

Sec. 113. K.S.A. 16a-6-115 is hereby amended to read as follows:

16a-6-115. The grant of powers to the administrator in this article does not affect remedies available to consumers under K.S.A. 16a-1-101 through ~~16a-9-102 et seq., and amendments thereto~~, or under other principles of law or equity.

Sec. 114. K.S.A. 16a-6-201 is hereby amended to read as follows: 16a-6-201. (1) This part applies to ~~a~~ *any* creditor engaged in this state in entering into consumer credit transactions and to any person who ~~takes~~ *accepts* assignments of and undertakes collection of payments from or ~~takes~~ assignments of and enforces rights against debtors arising from these transactions.

(2) This ~~part~~ *subsection* shall not apply to:

(a) Supervised financial organizations ~~(K.S.A. 16a-1-301, and amendments thereto); or~~

(b) *supervised loan licensees or those required to be licensed unless the entity:*

(i) *Enters into consumer credit sales or consumer leases;*

(ii) *assigns or accepts assignments of consumer credit sales or consumer leases; or*

(iii) ~~Nothing in this section shall be construed to require the payment of any fees required by this article by attorneys or collection agencies who that receive the same payment for collection purposes.~~

Sec. 115. K.S.A. 16a-6-202 is hereby amended to read as follows: 16a-6-202. (1) ~~Persons subject to this part~~ *Any person subject to K.S.A. 16a-6-201, and amendments thereto*, shall file ~~notification~~ *notice* with the administrator within 30 days after commencing business in this state, and, thereafter, in accordance with rules and regulations adopted by the administrator.

(2) If information in a ~~notification~~ *filing* becomes inaccurate ~~after filing~~, the person ~~filing the notification~~ *consumer credit filer* shall file a ~~corrected or an amended notification in such form and at such time~~ *filing* as prescribed by rules and regulations adopted by the administrator.

Sec. 116. K.S.A. 16a-6-203 is hereby amended to read as follows: 16a-6-203. (1) A ~~person required to file notification~~ *consumer credit filer* shall on or before ~~April 30~~ *August 31* of each year pay to the administrator an annual fee in an amount established pursuant to ~~subsection (5) of K.S.A. 16a-6-104(5), and amendments thereto~~, for each business location for that year.

(2) ~~Persons required to file notification~~ *Consumer credit filers* who are sellers, lessors or lenders shall pay an additional fee at the time and in the manner stated in subsection (1), in an amount established pursuant to ~~subsection (5) of K.S.A. 16a-6-104(5), and amendments thereto~~, for each \$100,000, or part thereof, of the average unpaid balances, including unpaid scheduled periodic payments under consumer leases, arising from consumer credit transactions entered into in this state and held on the last day of each calendar month during the preceding calendar year and held either by the seller, lessor or lender, or by the immediate or a remote assignee who has not filed notification. The unpaid balances of assigned obligations held by an assignee who has not filed notification are presumed to be the unpaid balances of the assigned obligations at the time of their assignment by the seller, lessor or lender.

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

Sec. 117. K.S.A. 16a-6-401 is hereby amended to read as follows: 16a-6-401. This part applies to the administrator, prescribes the procedures to be observed by ~~him~~ *the administrator* in exercising ~~his~~

such powers under K.S.A. 16a-1-101 through 16a-9-102 et seq., and amendments thereto, and supplements the provisions of the part on powers and functions of the administrator (part 1) of this article and of the part on supervised lenders (part 3) of the article on finance charges and related provisions (article 2) under K.S.A. 16a-1-101 et seq., and amendments thereto. Subject to specific provisions found in K.S.A. 16a-1-101 et seq., and amendments thereto, the exercise of powers by the administrator shall be subject to the adoption of rules and regulations pursuant to K.S.A. 77-415 et seq., and amendments thereto, the Kansas administrative procedure act, K.S.A. 77-501 et seq., and amendments thereto, and the Kansas judicial review act, K.S.A. 77-601 et seq., and amendments thereto.

Sec. 118. K.S.A. 16a-6-403 is hereby amended to read as follows: 16a-6-403. (1) In addition to other rule-making requirements imposed by law, the administrator may:

(a) Adopt as a rule a description of the organization of the administrator's office, stating the general course and method of the operations of the office and the methods whereby the public may obtain information or make submissions or requests;

(b) adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the administrator or by the office;

(c) make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted or used by the administrator; *and*

(d) make available for public inspection all final orders, decisions and opinions.

(2) No rule, order or decision of the administrator is valid or effective against any person or party, nor may it be invoked by the administrator for any purpose, until it has been made available for public inspection as herein required. This provision is not applicable in favor of any person or party who has actual knowledge thereof.

Sec. 119. K.S.A. 40-1209 is hereby amended to read as follows: 40-1209. Any director, officer or member of any such company, or any other person, may advance to such company any sum or sums of money necessary for the purposes of its business or to enable it to comply with any of the requirements of the laws of this state, and such moneys and such interest thereon as may have been agreed upon, not exceeding an amount equal to 1½ percentage points below the maximum rate of interest prescribed by ~~subsection (b)~~ of K.S.A. 16-207(a), and amendments thereto, for real estate transactions. The rate of interest to be applied to any specific certificate of indebtedness shall be calculated using the most immediate prior month's usury rate published by the secretary of state in the Kansas register. The sum or sums of money advanced pursuant to this authorization and any interest thereon shall be payable only out of the surplus remaining after providing for all reserves and other liabilities, and shall not otherwise be a liability or claim against the company or any of its assets. No commission or promotion expenses shall be paid in connection with the advance of any such money to the company, and the amount of such advance shall be reported in each annual statement. *Provided, however,* Such certificates of indebtedness shall not be issued nor retired and no interest thereon shall be paid without the approval of the commissioner of insurance who must be satisfied that all requirements of the law have been met.

Sec. 120. K.S.A. 9-2201, 9-2202, 9-2203, 9-2208, 9-2209, 9-2212, 9-2216, 9-2216a, 9-2220, 16-207, 16-207d, 16a-1-101, 16a-1-102, 16a-1-103, 16a-1-104, 16a-1-107, 16a-1-108, 16a-1-109, 16a-1-201, 16a-1-202, 16a-1-301, 16a-1-303, 16a-2-101, 16a-2-102, 16a-2-103, 16a-2-104, 16a-2-201, 16a-2-202, 16a-2-301, 16a-2-302, 16a-2-303, 16a-2-303a, 16a-2-304, 16a-2-307, 16a-2-308, 16a-2-309, 16a-2-310, 16a-2-401, 16a-2-402, 16a-2-403, 16a-2-404, 16a-2-501, 16a-2-502, 16a-2-504, 16a-2-505, 16a-2-506, 16a-2-507, 16a-2-508, 16a-2-510, 16a-3-101, 16a-3-102, 16a-3-201, 16a-3-202, 16a-3-203, 16a-3-203a, 16a-3-

204, 16a-3-205, 16a-3-206, 16a-3-207, 16a-3-208, 16a-3-209, 16a-3-301, 16a-3-302, 16a-3-303, 16a-3-304, 16a-3-305, 16a-3-306, 16a-3-307, 16a-3-308, 16a-3-308a, 16a-3-309, 16a-3-402, 16a-3-403, 16a-3-404, 16a-3-405, 16a-4-101, 16a-4-102, 16a-4-103, 16a-4-104, 16a-4-105, 16a-4-106, 16a-4-107, 16a-4-108, 16a-4-109, 16a-4-110, 16a-4-111, 16a-4-112, 16a-4-201, 16a-4-202, 16a-4-203, 16a-4-301, 16a-4-304, 16a-5-101, 16a-5-102, 16a-5-103, 16a-5-107, 16a-5-108, 16a-5-110, 16a-5-111, 16a-5-112, 16a-5-201, 16a-5-203, 16a-5-301, 16a-6-101, 16a-6-102, 16a-6-104, 16a-6-105, 16a-6-106, 16a-6-108, 16a-6-109, 16a-6-110, 16a-6-111, 16a-6-112, 16a-6-113, 16a-6-115, 16a-6-117, 16a-6-201, 16a-6-202, 16a-6-203, 16a-6-401, 16a-6-402, 16a-6-403, 16a-6-404, 16a-6-405, 16a-6-406, 16a-6-407, 16a-6-408, 16a-6-409, 16a-6-410, 16a-6-414, 16a-9-101, 16a-9-102 and 40-1209 are hereby repealed.

Sec. 121. This act shall take effect and be in force from and after January 1, 2025, and its publication in the statute book.

I hereby certify that the above BILL originated in the House, and passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.