

## Chapter 50 -- UNFAIR TRADE AND CONSUMER PROTECTION

### Article 11 --- Credit Service Organizations

#### **K.S.A. 50-1116. Kansas credit services organization act; citation; scope.**

(a) K.S.A. 50-1116 through 50-1135, and amendments thereto, shall be known and may be cited as the Kansas credit services organization act.

(b) Any individual licensed to practice law in this state acting within the course and scope of such individual's practice as an attorney, and such individual's law firm, shall be exempt from the provisions of this act.

**History:** Laws 2004, ch. 22, § 1; Laws 2012, ch. 161, § 16, eff. May 31, 2012.

#### **K.S.A. 50-1117. Same; definitions.**

Definitions as used in this act:

(a) "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.

(b) "Consumer" means an individual who is a resident of this state.

(c) "Credit services organization" means a person who engages in, or holds out to the public as willing to engage in, the business of debt management services for a fee, compensation or gain, or in the expectation of a fee, compensation or gain.

(d) "Debt management service" means:

(1) Receiving or offering to receive funds from a consumer for the purpose of distributing the funds among such consumer's creditors in full or partial payment of such consumer's debts;

(2) improving or offering to improve a consumer's credit record, history rating or score; or

(3) negotiating or offering to negotiate to defer or reduce a consumer's obligations with respect to credit extended by others.

(e) "Insolvent" means a person whose debts exceed their assets.

(f) "Law firm" means a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization.

(g) "Licensee" means a person who is licensed by the commissioner as a credit services organization.

(h) "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.

(i) "Person" means any individual, corporation, partnership, association, unincorporated organization or other form of entity, however organized, including a nonprofit entity.

(j) "Trust account" means an account established by the applicant or licensee in a federally insured financial institution used to hold funds paid by consumers to a credit services organization for designation indicating the funds in the account are:

(1) Not funds of the applicant or licensee or its owners, officers or employees; and

(2) unavailable to creditors of the applicant or licensee.

**History:** L. 2004, ch. 22, § 2; L. 2012, ch. 161, § 17; L. 2017, ch. 52, § 13; July 1.

**K.S.A. 50-1118. Same; registration required to conduct credit services organization business; application.**

(a) No person shall engage in, or hold such person out as willing to engage in any credit services organization business with a resident of this state without first obtaining licensing from the commissioner. Any person required to be licensed as a credit services organization shall submit to the commissioner an application for licensing on forms prescribed and provided by the commissioner. The application for licensing shall include:

- (1) The applicant's name, business address, telephone number and website address, if any;
- (2) the name and address of each owner, officer, director, member or partner of the applicant;
- (3) a description of the ownership interest of any officer, director, member, partner, agent or employee of the applicant in any affiliate or subsidiary of the applicant or in any other entity that provides any service to the applicant or any consumer relating to the applicant's credit services organization business;
- (4) a description of the applicant's consumer education program; and
- (5) any other information the commissioner may deem necessary to evaluate the financial responsibility and condition, character, qualifications and fitness of the applicant.

(b) Each application for licensing shall be accompanied by a nonrefundable fee which shall be established by the commissioner through the adoption of rules and regulations.

(c) The application shall be approved and a nontransferable and non-assignable license shall be issued to the applicant provided:

- (1) The commissioner has received the complete application and fee required by this section; and
- (2) the commissioner determines the financial responsibility and condition, character, qualifications and fitness of the applicant warrants a belief the business of the applicant will be conducted competently, honestly, fairly and in accordance with all applicable state and federal laws.

(d) Each credit services organization license issued under this section shall expire on April 30 of each year. A license shall be renewed by filing with the commissioner, at least 30 days prior to the expiration of the license, a complete renewal application, containing information the commissioner requires to determine the existence and effect of any material changes from the information contained in the applicant's original application, annual reports or prior renewal applications. Each renewal shall be accompanied by a nonrefundable renewal fee which shall be established by rules and regulations of the commissioner.

(e) If the commissioner fails to issue a license within 60 days after a filed application is deemed complete by the commissioner, the applicant may make written request for hearing. The commissioner shall conduct a hearing in accordance with the Kansas administrative procedure act.

**History:** L. 2004, ch. 22, § 3; L. 2017, ch. 52, § 14; July 1.

**K.S.A. 50-1119. Same; bond; requirements.**

Each applicant or licensee shall file with the commissioner a surety bond in a form acceptable to the commissioner. The surety bond shall be issued by a surety or insurance company authorized to conduct business in this state, securing the applicant's or licensee's faithful performance of all duties and obligations of a licensee. The surety bond shall:

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

(b) provide that the bond may not be terminated without 30 days prior written notice to the commissioner, and that such termination shall not affect the surety's liability for violations of the Kansas credit services organization act 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 principal that gives rise to a claim under the bond;

(c) provide that the bond shall not expire for two years after the date of surrender, revocation or expiration of the applicant's or licensee's license, whichever shall first occur;

(d) be available for:

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

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

(e) the amount of the bond shall be \$25,000. The amount of the bond may be increased up to \$1,000,000, as further defined by rules and regulations adopted by the commissioner.

**History:** L. 2004, ch. 22, § 4; L. 2017, ch. 52, § 15; July 1.

**K.S.A. 50-1120. Same; duties of registrant.**

No person required to be licensed by this act shall engage in debt management services unless:

(a) The licensee has provided the consumer with a credit education program designed to improve the financial literacy of the consumer.

(b) The licensee has:

(1) (A) Taken reasonable steps to identify all creditors of a consumer; and

(B) prepared and provided to the consumer a written financial analysis of an initial budget plan for all of the consumer's debt obligations which indicates the consumer can reasonably meet the requirements set forth in the budget plan. For purposes of the initial budget plan, the licensee shall include all outstanding debt obligations as listed on the consumer's credit report as well as any debt obligations identified by the consumer; and

(2) provided to the consumer a list of each creditor the licensee reasonably expects:

(A) To participate in the debt management services agreement; and

(B) not to participate in the debt management services agreement.

(c) The licensee and the consumer have entered into a written debt management services agreement and a copy of the signed agreement has been provided to the consumer by the licensee. Such agreement shall be in at least 12 point type, signed and dated by the consumer and licensee and include:

(1) The full legal name, doing business as "dba" name, address and phone number of the licensee;

(2) the name, address and phone number of the consumer;

(3) a description of the debt management services to be provided to the consumer and an itemization of any fees to be charged to the consumer;

(4) a notice of the consumer's right to rescind the debt management services agreement at any time by giving written notice of rescission to the licensee;

(5) a schedule of payments, including the amount and due date of each payment, that the consumer must make to the licensee for disbursement to such consumer's creditors;

(6) a list of each participating creditor of the consumer to which payments will be

made by the licensee under the debt management services agreement. The listing shall include the:

- (A) Amount owed to each creditor;
  - (B) amount of each payment;
  - (C) date on which each payment will be made; and
  - (D) anticipated payoff date for each creditor;
- (7) the name of each creditor that the licensee reasonably expects not to participate in the debt management services agreement;
  - (8) a disclosure that the licensee also may receive compensation from the consumer's creditors for providing debt management services to the consumer;
  - (9) a disclosure that the licensee may not, as a condition of entering into a debt management services agreement, require a consumer to purchase any other product or service, nor solicit or offer to sell any other product or service to the consumer during the term of the debt management services agreement;
  - (10) a disclosure that the licensee may not require a voluntary contribution from a consumer for any service provided by the licensee to the consumer;
  - (11) a disclosure that, by executing the debt management services agreement, the consumer authorizes any financial institution in which the licensee has established a trust account for the deposit of the consumer's funds to disclose to the commissioner any financial records relating to the trust account during the course of any investigation or examination by the commissioner; and
  - (12) a notice substantially similar to the following: "The Kansas Office of the State Bank Commissioner accepts questions and complaints from consumers regarding (name and license number of licensee) at 700 SW Jackson, Suite 300, Topeka, Kansas, 66603, or by calling toll-free 1-877-387-8523".

(d) All solicitations and published advertisements concerning a credit services organization directed at Kansas residents, including those on the internet or by other electronic means, shall contain the name and license number 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 purposes of this subsection, "advertising" does not include business cards or promotional items.

(e) No solicitation or advertisement shall contain false, misleading or deceptive information.

(f) No licensee shall conduct credit services organization business in this state using any name other than the name or names stated on its license.

**History:** L. 2004, ch. 22, § 5; L. 2017, ch. 52, § 16; July 1.

**K.S.A. 50-1121. Same; prohibited acts.**

No person required to be licensed under this act shall:

(a) Delay payment of a consumer's debt for the purpose of increasing interest, costs, fees or charges payable by the consumer.

(b) Make any misrepresentation of any material fact or false promise to:

- (1) Influence, persuade or induce a consumer to enter into a debt management services agreement; or
- (2) cause or contribute to any misrepresentation by any other person acting on such person's behalf.

(c) Make or use any false or misleading representation in the offer or sale of the services of a debt management services agreement or credit services organization business.

(d) Engage, directly or indirectly, in any fraudulent or deceptive act, practice or course of business in connection with the offer or sale of the services of a credit services

organization.

(e) Make, or advise a consumer to make, any statement with respect to a consumer's credit worthiness, credit standing or credit capacity that is false or misleading, or that should be known by the exercise of reasonable care to be false or misleading, to a consumer reporting agency or to a person who has extended credit to a consumer or to whom a consumer is applying for an extension of credit.

(f) Advertise or cause to be advertised the services of a credit services organization to Kansas consumers without first obtaining proper licensure from the commissioner.

(g) Receive compensation for rendering debt management services where the person has otherwise acted as a creditor for the consumer.

(h) Transfer, assign or attempt to transfer or assign, a license to any other person.

(i) Conduct credit services organization activities using any name other than the name or names approved by the commissioner.

(j) Operate as a collection agency.

(k) Receive or charge any fee in the form of a promissory note or other promise to pay.

(l) Accept or receive any reward, bonus, premium, commission or any other consideration for referring a consumer to any person.

(m) Give a reward, bonus, premium, commission or any other consideration for the referral of a consumer to the licensee's credit services organization business and charge the consumer for the amount.

(n) Lend money or provide credit to a consumer.

(o) Obtain a mortgage or other security interest in real or personal property owned by a consumer.

(p) Structure a debt management services agreement in any manner that would result in a negative amortization of any of the consumer's debts.

(q) Charge for or provide credit insurance.

(r) Purchase any debt or obligation of a consumer.

(s) Use any communication which simulates in any manner a legal or judicial process, or which gives the false appearance of being authorized, issued or approved by a government, governmental agency or attorney-at-law.

(t) While operating as a licensee, or a director, manager or officer of such licensee, be a director, manager, officer or owner of any creditor or a subsidiary of any such creditor, that is receiving or will receive payments from the licensee on behalf of a consumer with whom the licensee has entered into a debt management services agreement.

(u) Attempt to cause a consumer to waive or agree to forego rights or benefits under this act.

**History:** L. 2004, ch. 22, § 6; L. 2017, ch. 52, § 17; July 1.

**K.S.A. 50-1122. Same; registrant's duties regarding certain funds paid to registrant.**

(a) Within four calendar days after receipt of any funds paid to the licensee by or on behalf of a consumer for disbursement to such consumer's creditors, a licensee shall deposit such funds in a trust account established for the benefit of consumers.

(b) A licensee shall:

- (1) Maintain separate records of account for each consumer to whom the licensee provides debt management services;
- (2) disburse any funds paid by or on behalf of a consumer to such consumer's creditors within 20 calendar days after receipt of such funds or the latest date before the consumer would incur any fee, charge or penalty due to delay in payment;
- (3) correct any misdirected payments resulting from an error by the licensee;
- (4) reimburse the consumer for any actual fees or other charges imposed by a creditor as a result of the misdirection; and
- (5) disburse a consumer's funds from the trust account only to such consumer's creditors or back to the consumer.

(c) If a consumer rescinds the debt management services agreement, all funds held in the trust account on behalf of such consumer shall be refunded to the consumer within 10 calendar days from receipt of rescission by the licensee.

(d) A licensee shall not commingle any trust account established for the benefit of consumers with any operating accounts of the licensee.

**History:** L. 2004, ch. 22, § 7; L. 2017, ch. 52, § 18; July 1.

**K.S.A. 50-1123. Same; registrant's report to consumer; required contents.**

A licensee shall provide a report at least once every three months to each consumer who has entered into a debt management services agreement with the licensee. The report shall include the:

- (a) Total amount received from the consumer to date;
- (b) total amount paid to each creditor to date;
- (c) total payoff amount or an estimated balance due to each creditor on any debt owed by the consumer;
- (d) fees paid to the licensee by the consumer; and
- (e) amount held in the trust account on behalf of the consumer, or statement that no amount is currently held.

**History:** L. 2004, ch. 22, § 8; L. 2017, ch. 52, § 19; July 1.

**K.S.A. 50-1124. Same; registrant's report to state bank commissioner; when required; contents.**

(a) (1) On or before April 1, of each year, each licensee shall file with the commissioner an annual report relating to credit services organization business conducted by the licensee during the preceding calendar year. The annual report shall be on a form prescribed by the commissioner.

(2) The information contained in the annual report shall be confidential and may be published only in composite form. The provisions of this paragraph shall expire on July 1, 2022, unless the legislature reviews and reenacts the provision prior to July 1, 2022.

(b) Within 15 calendar days of any of the following events, a licensee shall file a written report with the commissioner describing the event and its expected impact on the licensee's business:

- (1) The filing for bankruptcy or reorganization by the licensee;
- (2) the institution of a revocation, suspension or other proceeding against the licensee by a governmental authority that is related to the licensee's credit services organization business in any state;
- (3) a felony conviction of the licensee or any of its owners, officers, principals, directors, partners, members or debt management counselors.
- (4) a change in the licensee's name or legal entity status; and
- (5) the addition or loss of any owner, officer, partner or director.

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

**History:** L. 2004, ch. 22, § 9; L. 2017, ch. 52, § 20; July 1.

**K.S.A. 50-1125. Same; records; retention; inspection.**

(a) Each licensee shall maintain and preserve complete and adequate business records including a general ledger containing all assets, liabilities, capital, income and expense accounts for a period of five years.

(b) Each licensee shall maintain and preserve complete and adequate records of each debt management services agreement during the term of the agreement and for a period of five years from the date of cancellation or completion of the agreement with each consumer. Such records shall contain all consumer information including, but not limited to, the debt management services agreement and any extensions thereto, payments, disbursements, charges and correspondence.

(c) If the licensee's records are located outside this state, the licensee shall provide the records to the commissioner within three calendar days or, at the commissioner's discretion, pay reasonable and necessary expenses for the commissioner or commissioner's designee to examine them at the place where they are maintained.

**History:** L. 2004, ch. 22, § 10; L. 2017, ch. 52, § 21; July 1.

**K.S.A. 50-1126. Same; fees charged by registrant; when allowed.**

(a) No licensee shall impose any fees or other charges on a consumer, or receive any funds or other payments from a consumer or another person on behalf of a consumer:

- (1) Except as provided in subsection (b)(5), until after the licensee and consumer have executed a debt management services agreement; and
- (2) except as allowed under this section, or as permitted by rule and regulation adopted by the commissioner.

(b) A licensee may:

- (1) Charge a one-time consultation fee not exceeding \$75. The cost of a credit report on a consumer shall be paid from the consultation fee paid by the consumer;
- (2) charge and collect monthly the lesser of a total maintenance fee of \$40 per month, or \$5 per month for each creditor of a consumer that is listed in the debt management services agreement between the licensee and the consumer;
- (3) collect from or on behalf of a consumer the funds for disbursement to creditors that the consumer has agreed to pay to the licensee under the debt management services agreement;
- (4) accept a voluntary contribution from a consumer for a debt management service provided by the licensee to the consumer if the aggregate amount of the voluntary contribution and any other fees received by the licensee from the consumer does not exceed the total amount the licensee is authorized to charge the consumer under paragraphs (1) and (2) of this subsection;
- (5) charge the consumer a reasonable fee for providing reverse mortgage counseling, bankruptcy counseling, student loan counseling, other counseling services authorized by the commissioner, an educational program, or materials and supplies;
- (6) accept fee payments from a consumer's creditors for debt management services rendered to a consumer, provided the consumer's creditor does not assess the fee to the consumer.

- (7) charge the consumer up to \$30 one time for each insufficient payment; and
  - (8) charge the consumer up to \$5 to process a payment made by the consumer to the credit services organization through electronic means, if authorized by the consumer. No charge shall be assessed where the consumer has agreed to make all scheduled payments by electronic means.
- (c) A licensee may waive any of the fees permitted in subsections (b)(1) through (b)(8) if the licensee determines that the consumer is unable to pay the fees.
- (d) No licensee shall:
- (1) Charge an additional fee to a consumer, if the consumer enters into a debt management services agreement with the licensee, to:
    - (A) Prepare a financial analysis or an initial budget plan for the consumer;
    - (B) counsel a consumer about debt management;
    - (C) provide a consumer with the consumer education program described in the licensee's application to engage in business as a credit services organization; or
    - (D) rescind a debt management services agreement.
  - (2) Require a voluntary contribution from a consumer for any service provided by the licensee to the consumer.
  - (3) As a condition of entering into a debt management services agreement, require a consumer to purchase for a fee a counseling session, an educational program or materials and supplies.
- (d) If a licensee imposes any fee or other charge or receives any funds or other payments not authorized under this section, except as a result of an accidental and bona fide error:
- (1) The debt management services agreement shall be void; and
  - (2) the licensee shall return the amount of the unauthorized fees, charges, funds or payments to the consumer.

**History:** L. 2004, ch. 22, § 11; L. 2017, ch. 52, § 22; July 1.

**K.S.A. 50-1127. Same; denial, suspension, revocation or refusal to renew registration; notice.**

The commissioner may deny, suspend, revoke or refuse to renew a license issued pursuant to this act, and amendments thereto, if the commissioner 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 any provision of this act, any rule and regulation promulgated thereunder or any order lawfully issued by the commissioner pursuant to this act;
- (b) the applicant or licensee has failed to file and maintain the surety bond required under this act;
- (c) the applicant or licensee is insolvent;
- (d) the applicant or licensee has filed with the commissioner any document or statement containing any false representation of a material fact or omitting to state a material fact;
- (e) the applicant, licensee or any officer, director, member, owner, partner, principal or debt management counselor thereof has been convicted of any crime;
- (f) the applicant or licensee fails to keep and maintain sufficient records to permit an audit satisfactorily disclosing to the commissioner the applicant's or licensee's compliance with the provision of this act;
- (g) the applicant, licensee or an employee of the applicant or licensee has been the subject of any disciplinary action by the commissioner or any other state or federal regulatory agency;
- (h) a final judgment has been entered against the applicant or licensee in a civil



action and the commissioner 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;

(i) the applicant or licensee has engaged in any deceptive business practice;

(j) facts or conditions exist which would have justified the denial of the license or renewal had such facts or conditions existed or been known to exist at the time the application for license or renewal was made; or

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

**History:** L. 2004, ch. 22, § 12; L. 2017, ch. 52, § 23; July 1.

**K.S.A. 50-1128. Same; state bank commissioner; powers and duties.**

This act shall be administered by the commissioner. In addition to other powers granted by this act, the commissioner, within the limitations provided by law, may exercise the following powers:

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

(b) Make any investigation and examination of the operations, books and records of a credit services organization, as the commissioner deems necessary to aid in the enforcement of this act.

(1) The commissioner, or the commissioner's designee, shall have free and reasonable access to the offices, places of business and all records of the licensee that relate to the debt management or credit services organization business. The commissioner may designate persons, including comparable officials of the state in which the records are located, to inspect the records on the commissioner's behalf.

(2) The commissioner may charge reasonable costs of investigation, examination and administration of this act, to be paid by the applicant or licensee, in such amounts as the commissioner may determine to be sufficient to meet the budget requirements of the commissioner for each fiscal year. The commissioner may maintain an action in any court to recover such costs.

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

(d) (1) Exchange any information regarding the administration of this act with any agency of the United States or any state which regulates the applicant or licensee or administers statutes, rules and regulations or programs related to debt management or credit services organization laws.

(2) Examination reports and correspondence regarding such reports made by the commissioner or the commissioner's designees shall be confidential. The commissioner may release examination reports and correspondence regarding the reports in connection with a disciplinary proceeding conducted by the commissioner, a liquidation proceeding or a criminal investigation or proceeding. Additionally, the commissioner may furnish to federal or other state regulatory agencies or any officer or examiner thereof, a copy of any or all examination reports and correspondence regarding the reports made by the commissioner or the commissioner's designees. The provisions of this paragraph shall expire on July 1, 2022, unless the legislature reviews and reenacts this provision prior to July 1, 2022.

(e) Disclose to any person or entity that an applicant's or licensee's application or license has been denied, suspended, revoked or refused renewal.

(f) 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, any rule and regulation promulgated hereunder, or any order issued pursuant to this act.

(g) 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.

(h) Delegate the authority to sign any orders, official documents or papers issued under or related to this act to the deputy of consumer and mortgage lending in the office of the state bank commissioner.

(i) Require fingerprinting of any licensee, agent acting on behalf of a licensee or other person as deemed appropriate by the commissioner, or the commissioner's designee. The commissioner, or 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 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 agency for requesting information from and distributing information to the department of justice or any government agency.

(j) Use the nationwide mortgage licensing system and registry as a channeling agent for requesting and distributing information regarding credit services organization licensing to and from any source so directed by the commissioner.

(k) 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 or other persons subject to this act, and to take other such actions as may be reasonably necessary to participate in the nationwide mortgage licensing system and registry.

(l) Charge, establish and collect from licensees such fees as are necessary and in such amounts as the commissioner may determine to be sufficient to meet the expense requirements of the commissioner in administering this act.

(m) Seize and distribute a licensee's trust account funds to protect consumers and the public interest.

(n) For the purpose of any examination, investigation or proceeding under this act, the commissioner or the commissioner's designee 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.

(o) To enter into any informal agreement with any person for a plan of action to address violations of this act. The adoption of an informal agreement authorized by this subsection shall not be subject to the provisions of the Kansas administrative procedure act or the Kansas judicial review act. Any informal agreement authorized by this subsection shall not be considered an order or other agency action, and shall be considered confidential examination material pursuant to K.S.A. 50-1128(d), and amendments thereto. All such examination material shall be confidential by law and privileged, shall not be subject to the open records act, shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private civil action. The provisions of this subsection shall expire on July 1, 2022, unless the legislature reviews and reenacts this provision prior to July 1, 2022.

(p) Issue, amend and revoke written administrative guidance documents in accordance with the applicable provisions of the Kansas administrative procedure act.

**History:** L. 2004, ch. 22, § 13; L. 2017, ch. 52, § 24; July 1.

**K.S.A. 50-1129. Same; cease and desist orders; civil fines.**

(a) If the commissioner determines after notice and opportunity for a hearing pursuant to the Kansas administrative procedure act 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 promulgated or order issued thereunder, the commissioner by order may require any or all of the following:

- (1) That the person cease and desist from the unlawful act or practice;
- (2) that the person pay a fine not to exceed \$10,000 per incident for the unlawful act or practice;
- (3) if any person is found to have 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, the commissioner may impose an additional penalty not to exceed \$10,000 for each such violation, in addition to any civil penalty otherwise provided by law;
- (4) 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.
- (5) that the person take such affirmative action as in the judgment of the commissioner will carry out the purposes of this act; or
- (6) that the person be barred from subsequently applying for licensure under this act.

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

- (1) Such emergency order, even when not an order within the meaning of K.S.A. 77-502, and amendments thereto, shall be subject to the same procedures as an emergency order issued under K.S.A. 77-536, and amendments thereto.
- (2) Upon the entry of such an emergency order, the commissioner shall promptly notify the person subject to the order that it has been entered, of the reasons, and that a hearing will be held upon written request by the person.
- (3) If the person requests a hearing, or in the absence of any request, if the commissioner determines that a hearing should be held, the matter will be set for a hearing which shall be conducted in accordance with the provisions of the Kansas administrative procedure act. Upon completion of the hearing the commissioner shall, by written findings of fact and conclusions of law vacate, modify or make permanent the emergency order.
- (4) If no hearing is requested and none is ordered by the commissioner, the emergency order shall remain in effect until such order is modified or vacated by the commissioner.

**History:** L. 2004, ch. 22, § 14; L. 2017, ch. 52, § 25; July 1.

**K.S.A. 50-1130. Same; subpoenas.**

(a) 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.

(b) No person shall be 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 the commissioner's designee, 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.

**History:** L. 2004, ch. 22, § 15; July 1.

**K.S.A. 50-1131. Same; criminal penalty.**

Any person violating the provisions of this act or any rule and regulation promulgated thereunder upon conviction shall be guilty of a class B nonperson misdemeanor.

**History:** L. 2004, ch. 22, § 16; July 1.

**K.S.A. 50-1132. Same; construction; application of consumer protection act.**

Any violation of this act or any rule and regulation promulgated thereunder is a deceptive act or practice under the Kansas consumer protection act. Any remedy provided by this act shall be construed to be in addition to other remedy provided by the Kansas consumer protection act.

**History:** L. 2004, ch. 22, § 17; July 1.

**K.S.A. 50-1133. Same; private remedies.**

(a) Any consumer injured by a violation of this act or any rule and regulation promulgated thereunder may bring an action for recovery of damages. The damages awarded may not be less than the amount paid by the consumer to the credit services organization plus reasonable attorney fees and court costs.

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

**History:** L. 2004, ch. 22, § 18; July 1.

**K.S.A. 50-1134. Same; injunction.**

The commissioner, attorney general, county or district attorney or a consumer may bring an action in a district court to enjoin any violation of this act or any rule and regulation promulgated thereunder.

**History:** L. 2004, ch. 22, § 19; July 1.

**K.S.A. 50-1135. Same; fees collected by commissioner.**

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

**History:** L. 2004, ch. 22, § 20; July 1.