2020 KANSAS CONSUMER & MORTGAGE LENDING LAW BOOK

Credit Services Organization Act

Kansas Mortgage Business Act

Kansas Uniform Consumer Credit Code

Kansas Money Transmitter Act

(Current as of July 2020)

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Please note that bills enacting new laws generally take effect July 1 of each year, and from July 1 to the date when the statute books are updated and published, the correct versions of new laws are contained in the bills that passed during that year's legislative session. Bills passed during the session may be found summarized in the Kansas Session Laws.

The Kansas Statutes may be viewed online at the Kansas Legislature website: http://www.kslegislature.org/li/.

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KANSAS STATUTES

Chapter 50 – UNFAIR TRADE AND CONSUMER PROTECTION

Article 11 – CREDIT SERVICES 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 in this act.

History: L. 2004, ch. 22, § 1; L. 2012, ch. 161, § 16; May 31.

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; licensing 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) 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) 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 licensee.

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 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 licensee.

(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; licensee'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:

(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; licensee's report to state bank commissioner; when required; contents; information confidential.

(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 licensee; 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 license; 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 agent for requesting information from and distributing information to the department of justice or any governmental 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.

KANSAS ADMINISTRATIVE REGULATIONS

Agency 17 – OFFICE OF THE STATE BANK COMMISSIONER

Article 25 – CREDIT SERVICES ORGANIZATIONS

K.A.R. 17-25-1. Registration and renewal fees.

When filing any application or renewal pursuant to the Kansas credit services organization act, K.S.A. 50-1116 et seq. and amendments thereto, each applicant or registrant shall remit to the office of the state bank commissioner the applicable nonrefundable fee, as follows:

(a) Application for initial registration $400

(b) Renewal application for registration.....$150

(Authorized by K.S.A. 50-1118 and K.S.A. 50-1128; implementing K.S.A. 50-1118; effective April 4, 2008; amended Sept. 26, 2014.)

KANSAS STATUTES

Chapter 9 – BANKS AND BANKING; TRUST COMPANIES

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KANSAS STATUTES

Chapter 9 – BANKS AND BANKING; TRUST COMPANIES

Article 22 – MORTGAGE BUSINESS

K.S.A. 9-2201. Mortgage business; definitions.

As used in this act:

(a) "Application" means the submission of a consumer's financial information, including 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.

(b) "Bona fide office" means an applicant's or licensee's place of business with an office that:

(1) Is located in this state;

(2) is not located in a personal residence;

(3) has regular hours of operation;

(4) is accessible to the public;

(5) is leased or owned by the licensee and serves as an office for the transaction of the licensee's mortgage business;

(6) is separate from any office of another registrant; and

(7) is accessible to all of the licensee's books, records and documents.

(c) "Branch office" means a place of business, other than a principal place of business, where mortgage business is conducted and which is licensed as required by this act.

(d) "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.

(e) "Individual" means a human being.

(f) "License" means a license issued by the commissioner to engage in mortgage business as a mortgage company.

(g) "Licensee" means a person who is licensed by the commissioner as a mortgage company.

(h) "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 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.

(i) "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 an 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.

(j) "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.

(k) "Mortgage company" means a person engaged in mortgage business from a principal place of business or branch office, which has been licensed as required by this act.

(l) "Mortgage loan" means a loan or agreement to extend credit made to one or more individuals 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.

(m) "Mortgage servicer" means any person engaged in mortgage servicing.

(n) "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.

(o) "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.

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

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

(r) "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.

(s) "Principal place of business" means a licensed 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.

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

(u) "Registrant" means any individual who holds a valid registration to conduct mortgage business in this state as a loan originator.

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

History: L. 1996, ch. 175, § 1; L. 1999, ch. 45, § 1; L. 2001, ch. 88, § 2; L. 2001, ch. 166, § 1; L. 2009, ch. 29, § 4; L. 2015, ch. 33, § 7; L. 2016, ch. 15, § 1; July 1.

K.S.A. 9-2202. Exempt from licensure.

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.

History: L. 1996, ch. 175, § 2; L. 1999, ch. 45, § 2; L. 2001, ch. 88, § 3; L. 2009, ch. 29, § 5; L. 2016, ch. 15, § 2; July 1.

K.S.A. 9-2203. License required to conduct mortgage business; registration required for a loan originator; penalty; statute of limitations for prosecution.

(a) Mortgage business shall only be conducted in this state at or from a mortgage company licensed by the commissioner as required by this act. A licensee shall be responsible for all mortgage business conducted on their behalf by loan originators or other employees.

(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) Loan origination shall only be conducted at or from a mortgage company and a registrant shall only engage in mortgage business on behalf of one mortgage company.

(d) 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.

(e) 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.

(f) 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.

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

History: L. 1996, ch. 175, § 3; L. 1999, ch. 45, § 3; L. 2001, ch. 88, § 4; L. 2005, ch. 144, § 1; L. 2009, ch. 29, § 6; L. 2016, ch. 15, § 3; L. 2017, ch. 52, § 8; July 1.

K.S.A. 9-2204. Application for license for mortgage company; application for registration for loan originator; content; incomplete application.

(a) Any person required to be licensed as a mortgage company pursuant to this act shall submit to the commissioner a separate application for the principal place of business and each branch office on forms prescribed and provided by the commissioner. The application or applications shall contain information the commissioner deems necessary to adequately identify:

(1) The nature of the mortgage business to be conducted, principal place of business address and each branch office address;

(2) the identity, character and qualifications of an individual applicant;

(3) the identity, character and qualifications of the loan originators, owners, officers, directors, members, partners and employees of the applicant;

(4) the name under which the applicant intends to conduct business; and

(5) other information the commissioner requires to evaluate the financial responsibility and condition, character, qualifications and fitness of the applicant and compliance with the provisions of this act.

(b) Any individual required to register as a loan originator pursuant to this act shall submit to the commissioner an application for registration on forms prescribed and provided by the commissioner. The application shall contain information the commissioner deems necessary to adequately identify the location where the individual engages in mortgage business activities, the licensee for whom the registrant will conduct mortgage business

and other information the commissioner requires to evaluate the condition, character, qualifications, and fitness of the applicant and compliance with the provisions of this act.

(c) Each application shall be accompanied by a nonrefundable fee of not less than $50, which may be increased by rules and regulations pursuant to K.S.A. 9-2209, and amendments thereto.

(d) The commissioner shall consider an application for a license or registration abandoned if the applicant fails to complete the application within 60 days after the commissioner 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 or registration and shall pay the fee set forth in subsection (c) upon such application.

(e) An application shall be approved, and a nonassignable license or registration shall be issued to the applicant provided:

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

(2) the commissioner determines the proposed name under which an applicant for a mortgage company license intends to conduct business is not misleading or otherwise deceptive; and

(3) the commissioner determines the financial responsibility and condition, character, qualifications and fitness of the applicant warrants a belief that the business of the applicant will be conducted competently, honestly, fairly and in accordance with all applicable state and federal laws.

History: L. 1996, ch. 175, § 4; L. 1999, ch. 45, § 4; L. 2000, ch. 17, § 1; L. 2001, ch. 88, § 5; L. 2017, ch. 52, § 9; July 1.

K.S.A. 9-2205. License or registration; renewal.

(a) A license or registration shall become effective as of the date specified in writing by the commissioner.

(b) A license shall be renewed annually by filing with the commissioner, at least 30 days prior to the expiration of the license, a renewal application, containing information the commissioner requires to determine the existence of material changes from the information contained in the applicant's original license application or prior renewal applications.

(c) A registration shall be renewed annually by filing with the commissioner, at least 30 days prior to the expiration of the registration, a renewal application, containing information the commissioner requires to determine the existence of material changes from the information

contained in the applicant's original registration application or prior renewal applications, including the completion of any continuing education requirements.

(d) Each renewal application shall be accompanied by a nonrefundable fee which shall be established by rules and regulations pursuant to K.S.A. 9-2209, and amendments thereto.

(e) Any renewal application received by the commissioner after the expiration date of the current license or registration shall be treated as an original application and shall be subject to all reporting and fee requirements contained in K.S.A. 9-2204, and amendments thereto.

History: L. 1996, ch. 175, § 5; L. 1999, ch. 45, § 5; L. 2001, ch. 88, § 6; L. 2005, ch. 144, § 2; L. 2009, ch. 29, § 7; L. 2016, ch. 15, § 4; July 1.

K.S.A. 9-2206. Application denied; application abandoned; appeal.

(a) If the commissioner fails to issue a license or registration within 60 days or grant a renewal within 30 days after an application is deemed complete by the commissioner, the applicant may make written request for a hearing. The commissioner shall conduct a hearing in accordance with the Kansas administrative procedure act.

(b) If an application is considered abandoned pursuant to K.S.A. 9-2204, and amendments thereto, an applicant may make written request for a hearing. The commissioner shall conduct a hearing in accordance with the Kansas administrative procedure act.

History: L. 1996, ch. 175, § 6; L. 1999, ch. 45, § 6; L. 2001, ch. 88, § 7; L. 2016, ch. 15, § 5; L. 2017, ch. 52, § 10; July 1.

K.S.A. 9-2207. Denial, suspension or revocation of license or registration; notice; disciplinary proceedings.

(a) The commissioner may deny, suspend, revoke, or refuse to renew a license or registration issued pursuant to this act, if the commissioner finds, after notice and opportunity for a hearing conducted in accordance with the provisions of the administrative procedures act, that:

(1) The applicant, licensee or registrant has repeatedly or willfully violated any section of this act or any rule and regulation or order lawfully made pursuant to this act;

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

(3) the applicant, licensee or registrant has filed with the commissioner any document or statement containing any false representation of a material fact or fails to state a material fact;

(4) the applicant, licensee or registrant has been convicted of any crime involving fraud, dishonesty or deceit, except that no registration shall be granted to any loan originator who:

(A) Has had a mortgage loan originator license or registration revoked in any governmental jurisdiction; or

(B) has been convicted of or pled guilty or nolo contendere to a felony in a domestic, foreign or military court:

(i) During the seven-year period preceding the date of the application for licensing and registration; or

(ii) at any time preceding such date of application, if such felony involved an act of fraud, dishonesty, deceit, a breach of trust or money laundering;

(5) the applicant, licensee or registrant has engaged in or is engaging in deceptive business practices;

(6) the applicant, licensee or registrant, or an employee of the applicant, licensee or registrant, has been the subject of any disciplinary action by this agency or any other state or federal regulatory agency;

(7) a final judgment has been entered against the applicant, licensee or registrant in a civil action and the commissioner finds, based upon the conduct on which the judgment is based, that licensing or registration of such person would be contrary to the public interest;

(8) the applicant, licensee or registrant, or an employee of the applicant, licensee or registrant has been convicted of engaging in mortgage business activity without authorization pursuant to K.S.A. 9-2203, and amendments thereto, or a substantially similar offense in another state; or

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

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

(1) The imposition of an administrative penalty;

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

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

(4) the licensee's or registrant's voluntary surrender of any license or registration issued under this act.

History: L. 1996, ch. 175, § 7; L. 1999, ch. 45, § 7; L. 2000, ch. 17, § 2; L. 2001, ch. 88, § 8; L. 2009, ch. 29, § 8; July 1.

K.S.A. 9-2208. License; display; signed acknowledgment; contents; advertising or solicitation disclosure.

(a) Each licensee shall make available the evidence of licensure of each licensed location 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.

(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.

History: L. 1996, ch. 175, § 8; L. 1999, ch. 45, § 8; L. 2000, ch. 17, § 3; L. 2001, ch. 88, § 9; L. 2005, ch. 144, § 3; L. 2016, ch. 15, § 6; July 1.

K.S.A. 9-2209. Commissioner, powers and duties.

(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 which 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 which 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 which 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 prelicensing 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 which 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 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. The provisions of this paragraph shall expire on July 1, 2021, unless the legislature reviews and reenacts this provision pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2021; and

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

(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 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.

History: L. 1996, ch. 175, § 9; L. 1999, ch. 45, § 9; L. 2000, ch. 17, § 4; L. 2001, ch. 88, § 10; L. 2005, ch. 144, § 4; L. 2009, ch. 29, § 9; L. 2016, ch. 15, § 7; L. 2017, ch. 81, § 4; July 1.

K.S.A. 9-2210. Fees; disposition.

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. 1996, ch. 175, § 10; Apr. 25.

K.S.A. 9-2211. Bonding requirements; minimum net worth requirements.

(a) Each applicant or licensee who maintains a bona fide office shall file with the commissioner a surety bond in the amount of not less than $50,000, in a form acceptable to the commissioner, issued by an 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 meeting the following requirements:

(1) The bond shall be payable to the office of the state bank commissioner and shall be in an amount established by the commissioner by rules and regulations adopted pursuant to K.S.A. 9-2209, and amendments thereto;

(2) the terms of the bond shall provide that it may not be terminated without 30 days prior written notice to the commissioner, provided that such termination shall not affect the surety's liability for violations of the Kansas mortgage business 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; and

(3) the bond shall be available for the recovery of expenses, fines and fees levied by the commissioner under this act, and for losses or damages which are determined by the commissioner to have been incurred by any borrower or consumer as a result of the applicant's or licensee's failure to comply with the requirements of this act.

(b) Each applicant or licensee who does not maintain a bona fide office shall comply with both of the following:

(1) File with the commissioner a surety bond in the amount of not less than $100,000, in a form acceptable to the commissioner, issued by an 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 meeting the requirements set forth in subsections (a)(1), (a)(2) and (a)(3) of this section; and

(2) submit evidence that establishes, to the commissioner's satisfaction, that the applicant or licensee shall at all times maintain a minimum net worth of $50,000. Evidence of net worth shall include the submission of a balance sheet of the applicant or a consolidated financial statement of the entity that owns or controls the applicant accompanied by a written statement by an independent certified public accountant attesting that the balance sheet or the consolidated financial statement has been reviewed in accordance with generally accepted accounting principles. Should the applicant or licensee choose a different accounting system other than generally accepted accounting principles, the burden to demonstrate that the accounting principles meet or exceed the generally accepted accounting principles shall be on the applicant or licensee using the alternate accounting principle method.

History: L. 1999, ch. 45, § 10; L. 2001, ch. 88, § 11; L. 2005, ch. 144, § 5; L. 2009, ch. 29, § 10; L. 2016, ch. 15, § 8; L. 2017, ch. 52, § 11; July 1.

K.S.A. 9-2212. Prohibited acts for persons licensed or registered under act.

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 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) record a mortgage if moneys are not available for the immediate disbursal 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;

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

(l) 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;

(m) 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;

(n) 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

(o) 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.

History: L. 1999, ch. 45, § 11; L. 2000, ch. 17, § 5; L. 2001, ch. 88, § 12; L. 2009, ch. 29, § 11; L. 2016, ch. 15, § 9; July 1.

K.S.A. 9-2213. Time limit for deposit of escrow funds; records required.

(a) Within three business days of receipt a licensee shall deposit all fees and money received from a borrower prior to the time a loan is consummated in an escrow account in a bank, savings bank, savings and loan association or credit union incorporated under the laws of this state, or organized under the laws of the United States or another state.

(b) For each borrower the licensee shall maintain a separate record of all money received for any service performed or to be performed, including any payment to a third party, setting forth:

(1) The date the money was received;

(2) the amount of money received;

(3) the date the money was deposited in the escrow account; and

(4) the date, description, and justification for each disbursement.

(c) Upon the request of a borrower, a copy of the record required by subsection (b) shall be provided to the borrower:

(1) Within five business days of consummation of the loan; or

(2) within five business days of receipt of written notice of the borrower's intention to withdraw from the loan transaction.

History: L. 1999, ch. 45, § 12; L. 2000, ch. 17, § 6; L. 2001, ch. 88, § 13; Nov. 1.

K.S.A. 9-2214. Ownership of documents.

All original documents provided to the licensee by the borrower or at the expense of the borrower, including any appraisals, are the property of the borrower and at the borrower's request, shall be returned to the borrower without further expense if the loan is not consummated.

History: L. 1999, ch. 45, § 13; L. 2001, ch. 88, § 14; Nov. 1.

K.S.A. 9-2215. Change in licensee's business; notice.

(a) A licensee shall provide written notice to the commissioner within 10 business days of the occurrence of any of the following events:

(1) The closing or relocation of the principal place of business or any branch office;

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

(3) the addition or loss of any loan originator, owner, officer, partner or director.

(b) The commissioner may request additional information concerning any written notice received pursuant to subsection (a) and charge a reasonable fee for any action required by the commissioner as a result of such notice and additional information.

History: L. 1999, ch. 45, § 14; L. 2001, ch. 88, § 15; Nov. 1.

K.S.A. 9-2216. Retention of records; time period; inspection of records; security of records; preservation of records.

(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 noneraseable, 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.

History: L. 1999, ch. 45, § 15; L. 2001, ch. 88, § 16; L. 2005, ch. 144, § 6; L. 2009, ch. 29, § 12; L. 2016, ch. 15, § 10; July 1.

K.S.A. 9-2216a. Annual written report; penalty; information confidential.

(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 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 shall expire on July 1, 2022, unless the legislature reviews and reenacts this provision prior to July 1, 2022.

History: L. 2001, ch. 88, § 1; L. 2009, ch. 29, § 13; L. 2016, ch. 15, § 11; L. 2017, ch. 52, § 12; July 1.

K.S.A. 9-2217. Confidentiality of examination reports; exceptions.

Examination reports and correspondence regarding the reports made by the commissioner or the commissioner's examiners are confidential, except that 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 examiners.

History: L. 1999, ch. 45, § 16; Apr. 8.

K.S.A. 9-2218. 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 or order hereunder, 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, in addition to any civil penalty otherwise provided by law, the commissioner may impose an additional penalty not to exceed $10,000 for each such violation;

(4) censure the person if the person is registered or licensed under this act;

(5) bar or suspend the person from applying for a license or registration under this act, or associating with a mortgage business or supervised lender licensed in this state;

(6) 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; or

(7) that the person take such affirmative action as in the judgment of the commissioner will carry out the purposes of 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 will remain in effect until it is modified or vacated by the commissioner.

History: L. 1999, ch. 45, § 17; L. 2000, ch. 17, § 7; L. 2005, ch. 144, § 7; July 1.

K.S.A. 9-2219. Injunction.

Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this act or any rule and regulation or order hereunder, the commissioner may bring an action in any court of competent jurisdiction to enjoin the acts or practices and to enforce compliance with this act or any rule and regulation or order hereunder. Upon a proper showing, a permanent or temporary injunction, restraining order, restitution, writ of mandamus or other equitable relief shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner shall not be required to post a bond.

History: L. 1999, ch. 45, § 18; Apr. 8.

K.S.A. 9-2220. Citation of act; severability.

(a) The provisions of K.S.A. 9-2201 through 9-2220, and amendments thereto, and K.S.A. 9-2216a, 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.

History: L. 1999, ch. 45, § 19; L. 2001, ch. 88, § 17; L. 2009, ch. 29, § 14; July 1.

KANSAS ADMINISTRATIVE REGULATIONS

Agency 17 – OFFICE OF THE STATE BANK COMMISSIONER

Article 24 – MORTGAGE BUSINESS

17-24-1 Signed acknowledgment; contents.
17-24-2 Mortgage business fees.
17-24-3 Prelicensing and continuing education; requirements.
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KANSAS ADMINISTRATIVE REGULATIONS

Agency 17 – OFFICE OF THE STATE BANK COMMISSIONER

Article 24 – MORTGAGE BUSINESS

K.A.R. 17-24-1. Signed acknowledgment; contents.

Before a licensee enters into any contract for the provision of services or receives any compensation or promise of compensation for a mortgage loan, the licensee shall acquire from the customer a signed acknowledgment containing only the following items:

(a) The name and address of the mortgage business;

(b) the name and position of the individual presenting the acknowledgment to the customer for a signature;

(c) a statement in at least 10-point boldface letters that reads as follows: "(name of licensee) is a mortgage business licensed with the Kansas Office of the State Bank Commissioner in accordance with the laws of the state of Kansas. This license does not represent an endorsement or recommendation of the licensee's products or services by the Office of the State Bank Commissioner. As a consumer, you may submit a complaint or inquiry about this mortgage business by delivering a written statement to the Office of the State Bank Commissioner, 700 Jackson, Suite 300, Topeka, Kansas 66603"; and

(d) the original signature of the customer or customers and the date on which the signature or signatures were attached.

(Authorized by K.S.A. 9-2208 and 9-2209; implementing K.S.A. 9-2208; effective, T-17-4-9-99, April 9, 1999; effective July 16, 1999; amended Oct. 3, 2003.)

K.A.R. 17-24-2. Mortgage business fees.

At the time of filing any application pursuant to the Kansas mortgage business act, K.S.A. 9-2201 et seq. and amendments thereto, each applicant, licensee, or registrant shall remit to the office of the state bank commissioner the following applicable nonrefundable fees:

(a) New or renewal application for each principal place of business.....$400

(b) New or renewal application for each branch office $300

(c) Application for new registration as a loan originator $100

(d) Renewal registration as a loan originator.....$50

(Authorized by K.S.A. 2013 Supp. 9-2209; implementing K.S.A. 9-2204, K.S.A. 2013 Supp. 9-2205 and K.S.A. 9-2215; effective, T-17-4-9-99, April 9, 1999; amended Dec. 21, 2001; amended Oct. 2, 2009; amended Sept. 26, 2014.)

K.A.R. 17-24-3. Prelicensing and continuing education; requirements.

(a) Each individual required to register as a loan originator pursuant to the Kansas mortgage business act, K.S.A. 9-2201 et seq. and amendments thereto, shall complete at least 20 hours of prelicensing professional education (PPE) approved in accordance with subsection (c), which shall include at least the following:

(1) Three hours of federal law and regulations;

(2) three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(3) two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) Each individual required to register as a loan originator pursuant to the Kansas mortgage business act, K.S.A. 9-2201 et seq. and amendments thereto, shall annually complete at least eight hours of approved continuing professional education (CPE) as a condition of registration renewal, which shall include at least the following:

(1) Three hours of federal law and regulations;

(2) two hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(3) two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(c) Each PPE and each CPE course shall first be approved by the office of the state bank commissioner (OSBC), or its designee, before granting credit.

(d) In addition to the specific topic requirements in subsections (a) and (b), PPE and CPE courses shall focus on issues of mortgage business, as defined by K.S.A. 9-2201 and amendments thereto, or related industry topics.

(e) One PPE or CPE hour shall consist of at least 50 minutes of approved instruction.

(f) Each request for PPE or CPE course approval shall be submitted on a form approved by the OSBC. A request for PPE or CPE course approval may be submitted by any person, as defined by K.S.A. 9-2201 and amendments thereto.

(g) Evidence of satisfactory completion of approved PPE or CPE courses shall be submitted in the manner prescribed by the commissioner. Each registrant shall ensure that PPE or CPE credit has been properly submitted to the OSBC and shall maintain verification records in the form of completion certificates or other documentation of attendance at approved PPE or CPE courses.

(h) Each CPE year shall begin on the first day of January and shall end on the 31st day of December each year.

(i) A registrant may receive credit for a CPE course only in the year in which the course is taken. A registrant shall not take the same approved course in the same or successive years to meet the annual requirements for CPE.

(j) Each registrant who fails to renew the registrant's certificate of registration, in accordance with K.S.A. 9-2205 and amendments thereto, shall obtain all delinquent CPE before receiving a new certificate of registration.

(k) A registrant who is an instructor of an approved continuing education course may receive credit for the registrant's own annual continuing education requirement at the rate of two hours of credit for every one hour taught.

(Authorized by and implementing K.S.A. 2008 Supp. 9-2209, as amended by 2009 SB 240, § 9; effective March 1, 2002; amended Oct. 2, 2009.)

K.A.R. 17-24-4. Record retention.

(a) In any mortgage transaction in which the licensee does not close the mortgage loan in the licensee's name, the licensee shall retain the following documents, as applicable, for at least 36 months following the loan closing date, or if the loan is not closed, the loan application date:

(1) The application;

(2) the good faith estimate;

(3) the early truth-in-lending disclosure statement;

(4) any written agreements with the borrower that describe rates, fees, broker compensation, and any other similar fees;

(5) an appraisal performed by a Kansas-licensed or Kansas-certified appraiser completed within 12 months before the loan closing date, 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, or, for a nonpurchase money real estate transaction, the

estimated market value as determined through an acceptable automated valuation model, pursuant to K.S.A. 16a-1-301(6) and amendments thereto;

(6) the signed Kansas acknowledgment as required by K.S.A. 9-2208(b), and amendments thereto;

(7) the adjustable rate mortgage (ARM) disclosure;

(8) the home equity line of credit (HELOC) disclosure statement;

(9) the affiliated business arrangement disclosure;

(10) evidence that the special information booklet, consumer handbook on adjustable rate mortgages, home equity brochure, reverse mortgage booklet, or any suitable substitute was delivered in a timely manner;

(11) the certificate of counseling for home equity conversion mortgages (HECMs);

(12) the loan cost disclosure statement for HECMs;

(13) the notice to the borrower for HECMs;

(14) phone log or any correspondence with associated notes detailing each contact with the consumer;

(15) any documentation that aided the licensee in making a credit decision, including a credit report, title work, verification of employment, verification of income, bank statements, payroll records, and tax returns;

(16) the settlement statement; and

(17) all paid invoices for appraisal, title work, credit report, and any other closing costs.

(b) In any mortgage transaction in which the licensee provides any money to fund the loan or closes the mortgage loan in the licensee's name, the licensee shall retain both the documents required in subsection (a) and the following documents, as applicable, for at least 36 months from the mortgage loan closing date:

(1) The high loan-to-value notice required by K.S.A.16a-3-207 and amendments thereto;

(2) the final truth-in-lending disclosure statement, including an itemization of the amount financed and an itemization of any prepaid finance charges;

(3) any credit insurance requests and insurance certificates;

(4) the note and any other applicable contract addendum or rider;

(5) a copy of the filed mortgage or deed;

(6) a copy of the title policy or search;

(7) the assignment of the mortgage and note;

(8) the initial escrow account statement or escrow account waiver;

(9) the notice of the right to rescind or waiver of the right to rescind, if applicable;

(10) the special home ownership and equity protection act disclosures required by regulation Z in 12 CFR 226.32(c) and 226.34(a)(2), as amended and in effect on October 1, 2009, if applicable;

(11) the mortgage servicing disclosure statement and applicant acknowledgement;

(12) the notice of transfer of mortgage servicing;

(13) any interest rate lock-in agreement or float agreement; and

(14) any other disclosures or statements required by law

(c) In any mortgage transaction in which the licensee owns the mortgage loan or the servicing rights of the mortgage loan and directly or indirectly undertakes collection of payments or enforcement of rights against debtors, the licensee shall retain the documents required in subsections (a) and (b) and the following documents, as applicable, for at least 36 months from the final entry to each account:

(1) A complete payment history, including the following:

(A) An explanation of transaction codes, if used;

(B) the principal balance;

(C) the payment amount;

(D) the payment date;

(E) the distribution of the payment amount to the following:

(i) Interest;

(ii) principal;

(iii) late fees or other fees; and

(iv) escrow; and

(F) any other amounts that have been added to, or deducted from, a consumer's account;

(2) any other statements, disclosures, invoices, or information for each account, including the following:

(A) Documentation supporting any amounts added to a consumer's account or evidence that a service was actually performed in connection with these amounts, or both, including costs of collection, attorney's fees, property inspections, property preservations, and broker price opinions;

(B) annual escrow account statements and related escrow account analyses;

(C) notice of shortage or deficiency in escrow account;

(D) loan modification agreements;

(E) forbearance or any other repayment agreements;

(F) subordination agreements;

(G) foreclosure notices;

(H) evidence of sale of foreclosed homes;

(I) surplus or deficiency balance statements;

(J) default-related correspondence or documents;

(K) the notice of the consumer's right to cure;

(L) any property insurance advance disclosure;

(M) force-placed property insurance;

(N) notice and evidence of credit insurance premium refunds;

(O) deferred interest;

(P) suspense accounts;

(Q) phone log or any correspondence with associated notes detailing each contact between the servicer and the consumer; and

(R) any other product or service agreements; and

(3) documents related to the general servicing activities of the licensee, including the following:

(A) Historical records for all adjustable rate mortgage indices used;

(B) a log of all accounts sold, transferred, or assigned that details to whom the accounts were sold, transferred, or assigned;

(C) a log of all accounts in which foreclosure activity has been initiated;

(D) a log of all credit insurance claims and accounts paid by credit insurance; and

(E) a schedule of servicing fees and charges imposed by the licensee or a third party.

(d) In addition to meeting the requirements specified in subsections (a), (b), and (c), each licensee shall retain for at least the previous 36 months the documents related to the general business activities of the licensee, which shall include the following:

(1) The business account check ledger or register;

(2) all financial statements, balance sheets, or statements of condition;

(3) all escrow account ledgers and related deposit statements as required by K.S.A. 9-2213, and amendments thereto;

(4) a journal of mortgage transactions as required by K.S.A. 9-2216a and amendments thereto;

(5) all lease agreements for Kansas locations; and

(6) a schedule of the licensee's fees and charges.

(Authorized by K.S.A. 9-2209, as amended by 2009 SB 240, § 9; implementing K.S.A. 2008 Supp. 9-2208, K.S.A. 9-2213, and K.S.A. 2008 Supp. 9-2216, as amended by 2009 SB 240, § 12; effective Oct. 31, 2003; amended Oct. 2, 2009.)

K.A.R. 17-24-5. Prelicensure testing.

(a) On and after July 31, 2010, each individual required to register as a loan originator pursuant to the Kansas mortgage business act, K.S.A. 9-2201 et seq. and amendments thereto, shall pass a qualified written test. For purposes of this regulation, the commissioner's designee

for developing and administering the qualified written test shall be the nationwide mortgage licensing system and registry.

(b) A written test shall not be treated as a qualified written test for purposes of subsection (a) unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including the following:

(1) Ethics;

(2) federal laws and regulations pertaining to mortgage origination;

(3) state laws and regulations pertaining to mortgage origination; and

(4) federal and state laws and regulations, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(c) (1) An applicant shall not be considered to have passed a qualified written test unless the applicant achieves a test score of at least 75 percent.

(2) An applicant may retake a test three consecutive times, with each consecutive taking occurring at least 30 days after the preceding test.

(3) After failing three consecutive tests, an applicant shall wait at least six months before taking the test again.

(4) A registrant who fails to maintain a valid license for five years or longer shall retake the test, not including any time during which the individual is a registered loan originator, as defined in section 1503 of title V, S.A.F.E. mortgage licensing act of 2008, P.L. 110-289.

(Authorized by and implementing K.S.A. 2008 Supp. 9-2209, as amended by 2009 SB 240, § 9; effective Oct. 2, 2009.)

K.A.R. 17-24-6. Bond requirements.

Each applicant for a new or renewal Kansas mortgage business act license shall submit a bond in the following amounts:

(a) For any applicant who maintains a bona fide office, $50,000.00 or, if the applicant or licensee originated or made more than $50,000,000.00 in Kansas mortgage loans during the previous calendar year, $75,000.00; or

(b) for each applicant or licensee who does not maintain a bona fide office, $100,000.00 or, if the applicant or licensee originated more than $50,000,000.00 in Kansas mortgage loans during the previous calendar year, $125,000.00.

(Authorized by K.S.A. 2008 Supp. 9-2209, as amended by 2009 SB 240, § 9, and K.S.A. 2008 Supp. 9-2211, as amended by 2009 SB 240, § 10; implementing K.S.A. 2008 Supp. 9-2211, as amended by 2009 SB 240, § 10; effective Oct. 2, 2009.)

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Chapter 16 – CONTRACTS AND PROMISES

Article 1 – GENERAL PROVISIONS

K.S.A. 16-117. Credit agreements; definitions.

As used in this act:

(a) "Credit agreement" means an agreement by a financial institution to lend or delay repayment of money, goods or things in action, to otherwise extend credit or to make any other financial accommodation. For purposes of this act the term "credit agreement" does not include the following agreements: Open-end or closed-end promissory notes, real estate mortgages, security agreements, guaranty agreements, letters of credit, deposit account agreements, agreements in connection with deposit accounts for the payment of overdrafts, agreements in connection with student loans insured or guaranteed pursuant to the federal higher education act of 1965, and acts amendatory thereof and supplementary thereto, and agreements in connection with "lender credit cards" as defined in the uniform consumer credit code;

(b) "creditor" means a financial institution which extends credit or extends a financial accommodation under a credit agreement with a debtor;

(c) "debtor" means a person who obtains credit or receives a financial accommodation under a credit agreement with a financial institution; and

(d) "financial institution" means a bank, savings and loan association, savings bank or credit union.

History: L. 1988, ch. 55, § 1; L. 1989, ch. 70, § 1; L. 1998, ch. 56, § 1; July 1.

K.S.A. 16-118. Same; requirements; failure to comply.

(a) A debtor or a creditor may not maintain an action for legal or equitable relief or a defense, based in either case upon a failure to perform on an alleged credit agreement, unless the material terms and conditions of the agreement are in writing and signed by the creditor and the debtor.

(b) All credit agreements shall contain a clear, conspicuous and printed notice to the debtor that states that the written credit agreement is a final expression of the credit agreement between the creditor and debtor and such written credit agreement may not be contradicted by evidence of any prior oral credit agreement or of a contemporaneous oral credit agreement between the creditor and debtor. A written credit agreement shall contain a sufficient space for the placement of nonstandard terms, including the

reduction to writing of a previous oral credit agreement and an affirmation, signed or initialed by the debtor and the creditor, that no unwritten oral credit agreement between the parties exists.

(c) Failure to comply with provisions of subsections (a) and (b) shall preclude an action or defense based on any of the following legal or equitable theories:

(1) An implied agreement based on course of dealing or performance or on a fiduciary relationship;

(2) promissory or equitable estoppel;

(3) part performance; or

(4) negligent representation.

History: L. 1988, ch. 55, § 2; L. 1989, ch. 70, § 2; L. 1998, ch. 56, § 2; July 1.

Article 2 – INTEREST AND CHARGES

K.S.A. 16-201. Legal rate of interest.

Creditors shall be allowed to receive interest at the rate of ten percent per annum, when no other rate of interest is agreed upon, for any money after it becomes due; for money lent or money due on settlement of account, from the day of liquidating the account and ascertaining the balance; for money received for the use of another and retained without the owner's knowledge of the receipt; for money due and withheld by an unreasonable and vexatious delay of payment or settlement of accounts; for all other money due and to become due for the forbearance of payment whereof an express promise to pay interest has been made; and for money due from corporations and individuals to their daily or monthly employees, from and after the end of each month, unless paid within fifteen days thereafter.

History: L. 1889, ch. 164, § 1; L. 1980, ch. 74, § 1; July 1.

Source or Prior Law: L. 1863, ch. 33, § 1; G.S. 1868, ch. 51, § 1; L. 1871, ch. 95,§ 1; K.S.A. 41-101.

K.S.A. 16-204. Interest on judgments.

Except as otherwise provided in accordance with law, and including any judgment rendered on or after July 1, 1973, against the state or any agency or political subdivision of the state:

(a) Any judgment rendered by a court of this state before July 1, 1980, shall bear interest as follows:

(1) On and after the day on which the judgment is rendered and before July 1, 1980, at the rate of 8% per annum;

(2) on and after July 1, 1980, and before July 1, 1982, at the rate of 12% per annum;

(3) on and after July 1, 1982, and before July 1, 1986, at the rate of 15% per annum; and

(4) on and after July 1, 1986, at the rate provided by subsection (e).

(b) Any judgment rendered by a court of this state on or after July 1, 1980, and before July 1, 1982, shall bear interest as follows:

(1) On and after the day on which the judgment is rendered and before July 1, 1982, at the rate of 12% per annum;

(2) on and after July 1, 1982, and before July 1, 1986, at the rate of 15% per annum; and

(3) on and after July 1, 1986, at the rate provided by subsection (e).

(c) Any judgment rendered by a court of this state on or after July 1, 1982, and before July 1, 1986, shall bear interest as follows:

(1) On and after the day on which the judgment is rendered and before July 1, 1986, at the rate of 15% per annum; and

(2) on and after July 1, 1986, at the rate provided by subsection (e).

(d) Any judgment rendered by a court of this state on or after July 1, 1986, shall bear interest on and after the day on which the judgment is rendered at the rate provided by subsection (e).

(e) (1) Except as otherwise provided in this subsection, on and after July 1, 1996, the rate of interest on judgments rendered by courts of this state pursuant to the code of civil procedure shall be at a rate per annum:

(A) Which shall change effective July 1 of each year for both judgments rendered prior to such July 1 and judgments rendered during the twelve-month period beginning such July 1; and

(B) which is equal to an amount that is four percentage points above the discount rate (the charge on loans to depository institutions by the New York federal reserve bank as reported in the money rates column of the Wall Street Journal) as of July 1 preceding the date the judgment was rendered. The secretary of state shall publish notice of the interest rate provided by this subsection (e) (1) not later than the second issue of the Kansas register published in July of each year.

(2) On and after the effective date of this act, the rate of interest on judgments rendered by courts of this state pursuant to the code of civil procedure for limited actions shall be 12% per annum.

(3) On and after July 1, 1996, it shall be presumed that applying interest at the rate of 10% per annum will result in the correct total of interest accrued on any judgments, regardless of when the judgments accrued, arising from a person's duty to support another person. The burden of proving that a different amount is the correct total shall lie with any person contesting the presumed amount.

History: L. 1889, ch. 164, § 4; R.S. 1923, 41-104; L. 1969, ch. 114, § 1; L. 1973, ch. 84, § 1; L. 1980, ch. 74, § 2; L. 1982, ch. 88, § 1; L. 1986, ch. 89, § 1; L. 1996, ch. 229, § 160; July 1.

Source or Prior Law: L. 1863, ch. 33, § 4; G.S. 1868, ch. 51, § 5; K.S.A. 41-104.

K.S.A. 16-205. Interest rates or charges; contract rates continue until payment in full; judgments; excess rates and charges void.

(a) When a rate of interest or charges is specified in any contract, that rate shall continue until full payment is made, and any judgment rendered on any such contract shall bear the same rate of interest or charges mentioned in the contract, which rate shall be specified in the judgment; but in no case shall such rate or charges exceed the maximum rate or amount authorized by law, and any bond, note, bill, or other contract for the payment of money, which in effect provides that any interest or charges or any higher rate of interest or charges shall accrue as a penalty for any default, shall be void as to any such provision.

(b) Judgments taken in accordance with the provisions of subsection (a) shall be expressed as follows:

(1) Judgments upon interest-bearing contracts shall provide

(i) the unpaid principal balance,

(ii) the date to which interest is paid,

(iii) the contract rate of interest and

(iv) that the unpaid principal balance shall draw the contract rate of interest from the date to which interest is paid until payment in full.

(2) Judgments upon precomputed interest-bearing contracts shall provide:

(i) The unpaid principal balance shall be ascertained by deducting from the remaining total of payments owed on the contract that portion of the precomputed finance charges that are unearned as of the date of acceleration of the maturity of the contract, as provided in K.S.A. 16a-2-510 for computing the unearned portion of precomputed finance charges in the event of prepayment in full. Any delinquency or deferral charges added to the unpaid balance subsequent to the date of acceleration shall be first deducted from the unpaid balance prior to any such acceleration. The contract shall be accelerated as of the date provided for in the provisions of the contract, or if the contract does not provide for the date on which the contract shall be accelerated, it shall be accelerated as of the actual date of any such acceleration;

(ii) the date to which interest is paid, which date shall be the maturity date of the next installment due after the date of acceleration, except those contracts which are accelerated on an installment due date which shall be the date of acceleration; the date to which interest is paid for those contracts that have matured prior to judgment shall be calculated from maturity date of the contract;

(iii) the contract rate of interest; and

(iv) that the unpaid principal balance shall draw the contract rate of interest from the date to which interest is paid until payment in full.

(3) Judgments upon contracts where the finance charges are computed in dollars per hundred and added on to the original balance to be financed shall provide:

(i) The unpaid principal balance shall be ascertained by deducting from the remaining total of payments owed on the contract that portion of the precomputed finance charges that are unearned as of the date of acceleration of the maturity of the contract as provided in K.S.A. 16a-2-510 for computing the unearned portion of precomputed finance charges in the event of prepayment in full. Any delinquency or deferral charges added to the unpaid balance subsequent to the date of acceleration shall be first deducted from the unpaid balance prior to any such acceleration. The contract shall be accelerated as of the date provided for in the provisions of the contract, or if the contract does not provide for the date on which the contract shall be accelerated, it shall be accelerated as of the actual date of any acceleration;

(ii) the date to which interest is paid, which date shall be the maturity date of the next installment due after the date of acceleration, except those contracts which are accelerated on an installment due date which shall be the date of acceleration; the date to which interest is paid for those contracts that have matured prior to judgment shall be calculated from the maturity date of the contract;

(iii) the contract rate of interest expressed as an annual percentage figure, which may be taken from the contract if it discloses the annual percentage rate, or it shall be ascertained in accordance with the constant ratio method which is mathematically expressed as follows:

$$R = \frac{2mc}{p(n+1)} \quad \text{where}$$

R = rate of change
m = number of payment periods in one year
n = number of payments to discharge the debt
c = charge in dollars
p = principal or cash advanced

and

(iv) that the unpaid principal balance shall draw the contract rate of interest as determined herein from the date to which interest is paid until payment in full.

History: L. 1889, ch. 164, § 5; R.S. 1923, 41-105; L. 1955, ch. 135, § 27; L. 1974, ch. 90, § 1; L. 1976, ch. 96, § 1; July 1.

Source or Prior Law: G.S. 1868, ch. 51, § 6; K.S.A. 41-105.

K.S.A. 16-207. Contract rate; penalties for prepayment of certain loans, recording fees; contracting for interest in excess of limitation, penalties, attorney fees; loans excluded.

(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.

(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 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 uniform consumer credit code, other than its usury provisions. Examples of provisions of the 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 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 uniform consumer credit code, than [then] all applicable provisions of the 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 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 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 uniform consumer credit code.

In the case of a loan described in paragraphs (1) or (2), the applicable provisions of the uniform consumer credit code shall govern the loan in lieu of subsections (b), (c) and (d).

History: L. 1969, ch. 112, § 36; L. 1973, ch. 85, § 132; L. 1975, ch. 125, § 1; L. 1978, ch. 72, § 1; L. 1980, ch. 75, § 1; L. 1980, ch. 76, § 2; L. 1981, ch. 88, § 1; L. 1982, ch. 89, § 1; L. 1983, ch. 74, § 1; L. 1999, ch. 107, § 5; L. 2013, ch. 103, § 1; July 1.

Revisor's Note: Section was also amended by L. 2013, ch. 29, § 1, but that version was repealed by L. 2013, ch. 129, § 2.

K.S.A. 16-207a. State override of federal preemption.

The provisions of section 501 (a) (1) of title V of public law 96-221 shall not apply with respect to loans, mortgages, credit sales and advances made in this state on and after the effective date of this act.

History: L. 1980, ch. 76, § 1; May 17.

K.S.A. 16-207b. Contract rate; exceptions.

The provisions of this act shall not apply to loans made under the provisions of article 52 of chapter 12 of the Kansas Statutes Annotated.

History: L. 1980, ch. 75, § 3; L. 1980, ch. 76, § 3; May 17.

K.S.A. 16-207d. Rules and regulations; loans secured by real estate; adjustable loans.

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, 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.

History: L. 1982, ch. 94, § 2; L. 1983, ch. 75, § 1; July 1.

Revisor's Note: Amendments to 16a-2-401 in 1993 resulted in the renumbering of subsection (8) as subsection (7).

K.S.A. 16-214. Interest rate on advance made for purchase or carrying of securities; advance not subject to uniform consumer credit code.

Whenever advances of money, repayable on demand, are made upon any securities, as defined in K.S.A. 84-8-102(1)(a), and amendments thereto, pledged as collateral for repayment of such advances and in which such advances are used by the borrower only for the purpose of the purchasing or the carrying of such securities, it shall be lawful for a broker-dealer, as defined by K.S.A. 17-12a102, and amendments thereto, to charge, receive or contract to receive and collect, as compensation for making such advances, a rate of interest not to exceed the higher of 10% per annum, or the rate of interest last obtained from a commercial lender by the broker-dealer plus an annual percentage rate of not to exceed 1 1/2%, which rate shall be established by written notification to the borrower. Any such advances shall not be subject to any of the provisions of

articles 1 through 9, inclusive, of chapter 16a of the Kansas Statutes Annotated, and amendments thereto.

History: L. 1977, ch. 69, § 1; L. 2004, ch. 154, § 56; July 1, 2005.

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KANSAS STATUTES

Chapter 16a – CONSUMER CREDIT CODE

Revisor's Note:

The numbering of the sections in this chapter retains the numbering system of the Uniform Consumer Credit Code by prefixing "16a-" at the beginning of each section number. Sections of the Kansas code which correspond to the uniform act are designated by the letters "UCCC" in parentheses after the section number.

The Kansas Comments following sections of this uniform code were originally prepared in 1973 by Barkley Clark, who at that time was the Associate Dean and Professor of Law at the University of Kansas School of Law and who also served as consultant to the committees considering the proposed legislation. Some of the Comments, which are in the nature of Revisor's Notes, are based, in part, on comments promulgated by the National Conference of Commissioners on Uniform State Laws in their 1968 Official Text version of the Code. They have also been edited by the office of Revisor of Statutes, primarily to reflect current Kansas statutory references. The Kansas Comments were revised and updated in 1990 by Paul B. Rasor, former Professor of Law at Washburn University School of Law. The 1995 version of the Kansas Comments were prepared by Barkley Clark and Mark Hargrave, both of whom practice with the law firm Shook, Hardy & Bacon P.C. in Kansas City, Missouri. From 1996 to 2000, the Kansas Comments were revised and updated annually by Shook, Hardy & Bacon L.L.P. In 2010 the Kansas Comments were revised and updated by the Office of the State Bank Commissioner.

The Kansas Comments have not been submitted to or approved by the Kansas Legislature and should not be construed as expressing legislative intent.

Attorney General's Opinions:

- Interest and charges; usury. 79-252.
- Finance charge for consumer loans; supervised lenders. 79-286.
- Consumer loans; finance charge; exemption of adjustable rate loans from maximum finance charge limits. 82-128.
- Limitations on consumer's liability; balloon payments; denial of right to refinance. 82-143.

Article 1 – GENERAL PROVISIONS AND DEFINITIONS

Part 1

SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

K.S.A. 16a-1-101. (UCCC) Short title.

K.S.A. 16a-1-101 through 16a-9-102 shall be known and may be cited as the uniform consumer credit code.

History: L. 1973, ch. 85, § 1; Jan. 1, 1974.

KANSAS COMMENT, 2010:

The Kansas uniform consumer credit code (K.S.A. 16a-1-101 et seq.) is referred to in these comments as the U3C. The Kansas uniform commercial code (K.S.A. 84-1-101 et seq.) is referred to as the UCC. The Kansas consumer protection act (K.S.A. 50-623 et seq.) is referred to as the KCPA. The federal truth in lending act (15 U.S.C.A. § 1601 et seq.) is the TILA. "Regulation Z," when used in these comments, refers to the Federal Reserve Board's truth in lending regulations, 12 C.F.R. Part 226.

The scope and application of the U3C are determined by K.S.A. 16a-1-201 and by the various definitions in K.S.A. 16a-1-301.

These comments take into account all amendments through the 2009 Session Laws of Kansas. They should be read with caution, however, as future amendments are inevitable.

Additional guidance on the U3C may be found in Administrative Regulations, K.A.R. 75-6-1 et seq., and Administrative Interpretations, No. 1001 et seq. which can be found online at http://www.osbckansas.org. The U3C is administered by the Office of State Bank Commissioner — deputy commissioner of the division of consumer and mortgage lending. Recent Kansas legislative bills and supplemental notes can be accessed at http://www.kslegislature.org.

Some states' versions of the uniform act have been held not to be an unconstitutional burden on interstate commerce nor violative of the due process rights of the creditor. See Quik Payday, Inc. v. Stork, 509 F.Supp.2d 974 (D. Kan. 2007), aff'd 549 F.3d 1302 (10th Cir. 2008), cert. denied 129 S.Ct. 2062; and Aldens, Inc. v. Miller, 466 F.Supp. 379 (S.D. Iowa 1979), aff'd 610 F.2d 538, cert. denied 446 U.S. 919; Aldens, Inc. v. Ryan, 571 F.2d 1159 (10th Cir. 1978), cert. denied 99 S.Ct. 180.

Attorney General's Opinions:

- Finance charges; additional charges not included therein. 81-209.
- Disclosure; discounts for cash purchases. 86-115.
- Consumer credit insurance; property and liability insurance. 87-3.

K.S.A. 16a-1-102. (UCCC) Purposes; rules of construction.

(1) K.S.A. 16a-1-101 through 16a-9-102, 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;

(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 against unfair practices by some suppliers of consumer credit, having due regard for the interests of legitimate and scrupulous creditors;

(e) to permit and encourage the development of fair and economically 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, and amendments thereto, includes reference to a related rule and regulation of the administrator adopted pursuant to this act.

History: L. 1973, ch. 85, § 2; L. 1981, ch. 93, § 2; L. 1988, ch. 85, § 1; July 1.

KANSAS COMMENT, 2000:

One of the primary purposes of the U3C is to provide a unified, functional framework for the entire subject of consumer credit. To this end, the U3C places all aspects of consumer credit under a single statutory umbrella. It replaces widely scattered pieces of legislation which were enacted by different Kansas legislatures, at different times, for different reasons: the 1955 consumer loan act, those portions of the 1958 sales finance act dealing with motor vehicles and those dealing with non-motor vehicles, the 1969 truth in lending act, part of the 1929 credit union law, various installment loan provisions, and part of the 1968 buyer protection act. In addition, the U3C alters several provisions in the UCC for transactions involving consumers. For a more detailed listing of statutes affected by the enactment of the U3C in Kansas, see the Kansas comment to K.S.A. 16a-9-101.

Attorney General's Opinions:

- Interest and charges; usury. 79-252.
- Limitations on consumer's liability; balloon payments; denial of right to refinance. 82-143.
- Consumer loans; finance charge; exemption of adjustable rate loans from maximum finance charge limits. 82-227.
- Property insurance; damage to property unrelated to credit transaction. 86-42.
- Attorney fees; national direct student loans. 86-113.
- Disclosure; discounts for cash purchases. 86-115.
- Authority of legislature to transfer money from special revenue funds into state general fund. 2002-45.

K.S.A. 16a-1-103. (UCCC) Supplementary general principles of law applicable.

Unless displaced by the particular provisions of K.S.A. 16a-1-101 through 16a-9-102, 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.

History: L. 1973, ch. 85, § 3; Jan. 1, 1974.

KANSAS COMMENT, 2010:

Many transactions are subject both to the U3C and to other bodies of law, particularly the UCC. In the event of conflict, the U3C controls. See K.S.A. 84-9-201. In other cases, the U3C is supplemented by the UCC and other principles. For example, a consumer credit contract would be subject in appropriate cases to the UCC's general duty of good faith in the performance or enforcement of a contract or duty within the UCC. See K.S.A. 84-1-302(b). In general, such principles have not been repeated in the U3C. In addition, many consumer credit agreements will also be subject to the KCPA, and that act should be consulted in appropriate cases. Finally, consumer remedies under the UCC, the KCPA, and other laws generally supplement those that are available under the U3C. See the Kansas comment to K.S.A. 16a-6-115.

K.S.A. 16a-1-104. (UCCC) Construction against implicit repeal.

K.S.A. 16a-1-101 through 16a-9-102 being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

History: L. 1973, ch. 85, § 4; Jan. 1, 1974.

K.S.A. 16a-1-105. (UCCC) Severability.

If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

History: L. 1973, ch. 85, § 5; Jan. 1, 1974.

K.S.A. 16a-1-107. (UCCC) Waiver; agreement to forego rights; settlement of claims.

(1) Except as otherwise provided in K.S.A. 16a-1-101 through 16a-9-102, 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 violation of K.S.A. 16a-1-101 through 16a-9-102, 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 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 nature and extent of the legal advice received by him, and the value of the consideration are relevant to the issue of unconscionability.

History: L. 1973, ch. 85, § 6; Jan. 1, 1974.

KANSAS COMMENT, 2010:

Unlike the UCC, which broadly permits variation by agreement (K.S.A. 84-1-302(a)), the U3C starts from the premise that a consumer generally may not waive or agree to forego rights or benefits under the U3C. This provision is typical of consumer protection legislation; a similar section is contained in the KCPA. See K.S.A. 50-625; compare K.S.A. 84-9-602. In the absence of a provision of the U3C specifically authorizing a waiver, any waiver or agreement to forego must be part of a settlement, and settlements are subject to review as provided in this section.

Attorney General's Opinions:

- Limitations on consumer's liability; balloon payments; denial of right to refinance. 82-143.

K.S.A. 16a-1-108. (UCCC) Effect of act on powers of organization.

(1) K.S.A. 16a-1-101 through 16a-9-102, and amendments thereto, prescribes maximum charges for all creditors, except lessors and those excluded (K.S.A. 16a-1-202, and amendments thereto), extending 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, 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, 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.

History: L. 1973, ch. 85, § 7; L. 1981, ch. 93, § 3; L. 1993, ch. 200, § 2; L. 1999, ch. 107, § 6; July 1.

KANSAS COMMENT, 2000:

1. This section states the policy of the U3C regarding the displacement of laws regulating suppliers of consumer credit. The U3C displaces many existing usury laws; in addition, subsection (1) displaces existing limitations on maximum charges for all suppliers of consumer credit except lessors and those excluded under K.S.A. 16a-1-202. In other respects, the U3C differentiates among creditors depending on their status as either being sellers or lenders; and among lenders as either being or not being supervised financial organizations as defined in K.S.A. 16a-1-301(44); and finally among supervised financial organizations depending on whether they are
   (1) commercial or industrial banks or trust companies, or
   (2) thrift institutions such as credit unions, savings banks and savings and loan associations whether mutual or not.
2. Subsection (2) frees commercial and industrial banks and trust companies and all creditors other than thrift institutions from existing limitations on their powers based solely on the amount or duration of credit they may extend.
3. Subsection (3) retains all existing limitations on powers of thrift institutions, other than those based on maximum charges, on the theory that those limitations may be required for the protection of their depositors or shareholders. Similarly, subsection (4) retains limits on the powers of supervised financial organizations such as loans-to-one-borrower limits, maximum loan-to-value ratios and the like that are designed to protect deposits.

K.S.A. 16a-1-109. (UCCC) Transactions subject to act by agreement.

The parties to a sale, lease, or loan or modification thereof, which 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.

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.

History: L. 1973, ch. 85, § 8; Jan. 1, 1974.

KANSAS COMMENT, 2010:

The consumer purpose test is the basic standard for determining the coverage of the U3C. This section permits creditors, by inserting an appropriate clause in the contract, to be certain that the transaction is a consumer credit sale, lease or loan for the purposes of the U3C. See K.A.R. 75-6-1. Creditors often contract into the U3C in order to charge the higher rates of finance charges it permits. Of course, contracting into the U3C to take advantage of its higher rate ceilings makes the creditor subject to all of the U3C's restrictions. Thus, the creditor must weigh the costs of complying with the U3C, such as its limits on additional charges (including strict limits on the recovery of attorneys' fees) and its consumer protective default and right to cure provisions against the benefits of the higher finance charge rates it authorizes.

Since the general reform of Kansas usury laws in the early 1980's, there have been no interest rate ceilings on business and agricultural loans. See K.S.A. 16-207(f). In some cases, business creditors have inadvertently subjected themselves to the restrictions of the U3C by using forms designed primarily for consumer loans which contained language bringing the transactions within the U3C. See, e.g., United Kansas Bank & Trust Co. v. Rixner, 4 Kan. App. 2d 662, 610 P.2d 116 (1980), aff'd 228 Kan. 633, 619 P.2d 1156; Farmers State Bank v. Haflich, 10 Kan. App. 2d 333, 699 P.2d 533 (1985). Compare Farmers State Bank v. Cooper, 227 Kan. 547, 608 P.2d 929 (1980), where the printed form was ambiguous because the parties had typed in the words "business loan," and the court allowed the intent of the parties to control.

Creditors might want to contract into the U3C to justify charging a higher rate — in the case of first mortgage loans, purchase money or "margin" loans for securities and transactions that otherwise would be governed by the U3C but for the fact that the amount financed exceeds $25,000. First mortgage loans are generally exempt from the U3C (see K.S.A. 16a-1-301(17)(b) and the Kansas comment to that section), and are subject to their own floating interest rate ceilings. K.S.A. 16-207(b). In addition, while certain high loan-to-value first mortgage loans are covered by the U3C, those loans remain subject to the floating interest rate ceilings of K.S.A. 16-207(b), rather than the U3C's rate ceilings. See K.S.A. 16-207(i)(1) and 16a-2-401(8). If the rates permitted by the floating rate ceilings of K.S.A. 16-207(b) are lower than the rates allowed by the U3C, and the lender wants to charge the higher U3C rates, it can do so by inserting a clause in the agreement making the transaction subject to the U3C. See also the Kansas comment to K.S.A. 16a-2-401.

Similarly, advances by a broker-dealer used by the borrower to buy or carry securities pledged to secure those advances are subject to a floating rate ceiling based on the broker-dealer's own bank loans, although those loans may carry rates up to 10% in any case. K.S.A. 16-214. Those loans are expressly exempted by that section from all aspects of the U3C. Again, however, a broker-dealer can charge the higher U3C rates by contracting into the U3C.

Along the same line, a credit sale or a loan in which the amount financed exceeds $25,000 (and which, in the case of a loan, is not secured by an interest in land) is not covered by the U3C, even if all the other elements of a consumer credit transaction are present. See the definitions of "consumer credit sale" and "consumer loan" in K.S.A. 16a-1-301(14) and 16a-1-301(17) and the Kansas comments to those sections. This dollar limit excludes a growing number of traditional consumer credit transactions from the scope of the U3C as items such as automobiles, boats, and recreational vehicles continue to increase in price. Because they are not covered by the U3C, the general 15% interest rate ceiling in K.S.A. 16-207(a) would be applicable to those high-dollar transactions. Just as with first mortgage

loans and margin loans, however, the creditor presumably can take advantage of the higher U3C rates by contracting into the U3C under this section.

Attorney General's Opinions:

- Interest and charges; usury. 79-252.

Part 2

SCOPE AND JURISDICTION

K.S.A. 16a-1-201. (UCCC) Territorial application.

(1) Except as otherwise provided in this section, K.S.A. 16a-1-101 through 16a-9-102, and amendments thereto, apply to consumer credit transactions made in this state. For purposes of such sections of this act, a consumer credit transaction is made in this state if:

(a) A signed writing evidencing the obligation or offer of the consumer is received by the creditor in this state; or

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

(2) With respect to consumer credit transactions entered into pursuant to open end credit (subsection (31) of K.S.A. 16a-1-301, and amendments thereto), this act applies if the consumer's communication or indication of intention to establish the arrangement is received by the creditor in this state. 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.

(3) The part on 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, 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, and amendments thereto, the residence of a consumer is the address given by the consumer as the consumer's residence in any writing signed by the consumer in connection with a credit transaction. Until the consumer notifies the creditor of a new or different address, the given address is 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) Except as provided in subsection (7) the following agreements by a buyer, lessee, or debtor are invalid with respect to consumer credit transaction to which K.S.A. 16a-1-101 through 16a-9-102, 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.

History: L. 1973, ch. 85, § 9; L. 1977, ch. 70, § 1; L. 1981, ch. 93, § 4; L. 1993, ch. 200, § 3; L. 1999, ch. 107, § 7; July 1.

KANSAS COMMENT, 2010:

1. This section enables Kansas to apply the U3C for the protection of its own consumer residents in multi-state transactions.

2. Under the original version of subsections (1) and (2) of this section, the issue of whether a transaction was deemed to have been made in Kansas (thus triggering application of the entire U3C) was dependent on the place at which the executed contract was received by the creditor and whether any face-to-face solicitations occurred in Kansas.

   Subsection (1)(b) was amended, however, in the 1999 legislative session to remove the "face-to-face" qualifier from the solicitation test. This amendment was driven primarily by a concern over the growing use of the internet as a means of soliciting Kansas consumers to enter into credit transactions with out-of-state creditors.

   Under amended subsection (1)(b), the applicability of the U3C to a multi-state transaction turns on whether there is "solicitation in this state." The Court of Appeals for the 10th Circuit affirmed the constitutionality of subsection (1)(b) in the case Quik Payday v. Stork, et al., 549 F.3d 1302, (2008), cert. denied 129 S.Ct. 2062. In that case, the court held that the administrator did not act unconstitutionally when the administrator applied the U3C to an internet payday lender located in Utah. In Quik Payday, an out-of-state payday lender made supervised loans to Kansas consumers via the internet. The lender had no agents or offices in Kansas. However, subsection (1)(b) brought these internet payday loan transactions under the U3C. Additional guidance regarding when a solicitation is deemed to have been made in Kansas may be found in Watkins v. Roach Cadillac, Inc., 7 Kan. App. 2d 8, 637 P.2d 458 (1981), the court held that out-of-state radio and newspaper advertisements which reached a Kansas consumer were "solicitations" sufficiently "within this state" to bring the transaction within the scope of the KCPA. Another example of a case construing a similar phrase is Norton v. Local Loan, 251 N.W.2d 520 (Iowa 1977), the court held that a long distance phone call from the creditor's out-of-state agent to the consumer was "conduct in this state" within the meaning of that phrase in the Iowa U3C.

It seems quite unlikely that a Kansas resident will locate an out-of-state creditor, travel to the creditor's state and consummate a consumer credit transaction with that creditor unless the creditor has "solicited" the consumer by the use of targeted telephone, mail or other direct marketing or general radio, television, or other non-individualized advertisements received or seen by the consumer in Kansas. Thus, as a practical matter, nearly all consumer credit extended by out-of-state creditors to Kansas residents would be deemed to have been made in Kansas. The entire U3C (including its licensing requirements, its disclosure requirements and its substantive limitations) would apply to those transactions.

3. Under subsections (7) and (8), choice of law agreements have been invalidated except where the law chosen is that of the state of the consumer's residence. This eliminates the danger that creditors could induce consumers to agree that the applicable law would be that of a creditor's haven that had no effective credit protection.
4. As noted in Kansas comment 2 to this section, virtually all supervised loans extended to Kansas residents would be deemed to have been made in Kansas and, as a result, out-of-state creditors extending those loans would need a Kansas supervised lender's license. Note, however, that
   (a) an out-of-state supervised financial organization does not need a supervised lender's license to make supervised loans in Kansas and
   (b) federally-insured financial institutions may "export" to Kansas the interest rates and related charges permitted by the law of their home states as a matter of federal law.

   See Smiley v. Citibank (South Dakota), N.A., 116 S.Ct. 1730 (1996).

Attorney General's Opinions:

- Finance charge for consumer loans; supervised lenders. 79-286.
- Scope and jurisdiction of UCCC; territorial application. 90-38.

K.S.A. 16a-1-202. (UCCC) Exclusions.

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;

(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;

(5) transactions covered by the Kansas insurance premium finance company act. (K.S.A. 40-2601 to 40-2613).

History: L. 1973, ch. 85, § 10; Jan. 1, 1974.

KANSAS COMMENT, 2010:

Nonconsumer credit transactions are of course outside the scope of the U3C. In addition, several classes of transactions are expressly excluded in this section even though they might otherwise fall within the ambit of the U3C. Subsections (1) and (3) are derived from TILA 15 U.S.C.A. § 1603, which exempts government agencies and public utilities from truth in lending requirements. With respect to subsection (2), article 4 of the U3C covers the insurance aspects of consumer credit transactions, but the sale of insurance itself is excluded insofar as no installment obligation arises and cancellation may take place at any time. With respect to subsection (4), pawnbroker transactions are exempted from the U3C except for disclosure; they are regulated as to charges, licensing and other matters by K.S.A. 16-706 et seq. With respect to subsection (5), insurance premium financing is excluded from the U3C because of its uniqueness and its unusual rate structure, which is comprehensively covered by K.S.A. 40-2601 et seq.

Other transactions are inferentially excluded for failure to qualify under the definitions of the three key transactions covered by the U3C, "consumer credit sale," "consumer lease," and "consumer loan," or by one of the specific exclusions listed in those definitions. See K.S.A. 16a-1-301(14), (16), and (17), and the corresponding Kansas comments. One of the major categories of consumer transactions excluded from coverage under the U3C for failure to so qualify is the lease-purchase agreement or rent-to-own contract. Those agreements are now comprehensively regulated by the Kansas consumer lease-purchase agreement act, K.S.A. 50-680 et seq.

Part 3

DEFINITIONS

K.S.A. 16a-1-301. General definitions.

In addition to definitions appearing in subsequent articles, in K.S.A. 16a-1-101 through 16a-9-102, 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 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 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) "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) "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) "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.

(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) "Billing cycle" means the time interval between periodic billing statement dates.

(8) "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) "Closed end credit" means a consumer loan or a consumer credit sale which is not incurred pursuant to open end credit.

(10) "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) "Conspicuous" means a term or clause is conspicuous when it is so written that 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) "Consumer" means the buyer, lessee, or debtor to whom credit is granted in a consumer credit transaction.

(14) "Consumer credit sale":

(a) Except as provided in paragraph (b), a "consumer credit sale" is a sale of goods, 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, 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.

(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 uniform consumer credit code.

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

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

(a) Which 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;

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

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

(17) "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.

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

(i) A loan secured by a first mortgage unless:

(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) "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) "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) "Creditor" means a person who regularly extends 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. 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.

(21) "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) "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, and amendments thereto.

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

(24) "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.

(25) 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) "Lender credit card" means a credit card issued by a supervised lender

(27) "Loan":

(a) 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.

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

(30) "Official fees" means:

(a) Fees and charges prescribed by law which 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; 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) "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) "Organization" means a corporation, limited liability company, government or governmental subdivision or agency, trust, estate, partnership, cooperative or association.

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

(34) (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

(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

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

(35) "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) "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.

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

(47) "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) "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 the Kansas uniform consumer credit code and rules and regulations pertaining thereto.

History: L. 1973, ch. 85, § 11; L. 1980, ch. 75, § 4; L. 1980, ch. 76, § 5; L. 1981, ch. 93, § 5; L. 1982, ch. 89, § 2; L. 1984, ch. 83, § 1; L. 1988, ch. 85, § 2; L. 1992, ch. 80, § 1; L. 1993, ch. 200, § 4; L. 1993, ch. 200, § 5; L. 1996, ch. 166, § 2; L. 1998, ch. 106, § 1; L. 1999, ch. 107, § 8; L. 1999, ch. 166, § 8; L. 2000, ch. 27, § 1; L. 2006, ch. 97, § 1; July 1.

Revisor's Note: Section was also amended by L. 2000, ch. 64, § 1, but that version was repealed by L. 2000, ch. 159, § 14.

KANSAS COMMENT, 2010:

Subsection (1):

The definition of "actuarial method" is derived from TILA 15 U.S.C.A. § 1606(a)(1)(A). The assumption underlying the actuarial method is that a periodic payment is applied first to accumulated unpaid finance charges (assuming there are no delinquency charges or other additional charges that take priority over finance charges). If the payment exceeds the unpaid accumulated finance charges, the remainder of the payment is applied to reduce the unpaid principal balance. The application of the actuarial method is really quite simple. First, the annualized stated interest rate is multiplied by the actual outstanding principal balance of the obligation. Next, the product of that calculation is multiplied by the actual number of days in the period in question (or by the assumed number of days in the period in a "360/360" transaction). Finally, the product of that calculation is divided by 365 (or, if agreed to by the parties, by 360). The result is the finance charge for the period in question. The consumer's payment is first allocated to the payment of the calculated finance charge (after deducting any delinquency charges or other additional charges due during the period) and the remainder, if any, is applied to reduce the unpaid principal balance of the obligation.

Subsection (2):

The administrator of the U3C is the deputy commissioner of the consumer and mortgage lending division of the Office of the State Bank Commissioner. Note, however, that the Kansas commissioner of insurance also issues rules and may participate in enforcement of article 4 of the U3C relating to consumer credit insurance. See K.S.A. 16a-4-111 and 16a-4-112. As mentioned in the comments to K.S.A. 16a-1-101, on-line versions of the U3C, these comments and administrative regulations and interpretations can be found at the administrator's web page, http://www.osbckansas.org. Similarly, recent Kansas legislative bills and supplemental notes affecting Kansas consumer credit matters can be accessed at http://www.kslegislature.org.

Subsection (3):

The definition of "agreement" is derived from the UCC. K.S.A. 84-1-201(3). The terms "course of dealing," "usage of trade," and "course of performance" should be given the same meanings under the U3C as under the UCC. See K.S.A. 84-1-303. Allowance should be made for the different context, e.g., consumer compared to commercial, and "course of performance" should apply to lessors and lenders as well as to sellers.

Subsection (4):

The "amount financed" is a key concept with respect to both rate ceilings and disclosures, as it determines the amount on which the finance charge is imposed and serves as a baseline for computing other allowable charges. The "amount financed" focuses on the amount of credit extended to the consumer (or on the consumer's behalf) and includes not only the cash price in a sale or the amount

advanced under a loan, but also other amounts (such as official fees, insurance charges, and other additional charges (K.S.A. 16a-2-501)) that are not part of the finance charge (subsection (22)) to the extent payment of those amounts is deferred. The calculation of the amount financed is governed by a regulation adopted by the administrator (K.A.R. 75-6-26) which, under K.S.A. 16a-6-117, tracks the requirements of Regulation Z. Thus, the amount financed for a particular transaction will generally be disclosed in the truth in lending disclosure statement that the creditor prepares for that transaction under Regulation Z (at least for those transactions that are subject to Regulation Z).

Subsection (5):

The definition of "annual percentage rate" is a key term and determines the applicability of several restrictions and requirements under the U3C, such as limits on negative amortization and the need for a supervised lender's license. The annual percentage rate is designed to reflect in one number the annual cost of credit expressed as a percentage. The calculation of the annual percentage rate is governed by a regulation adopted by the administrator (K.A.R. 75-6-26) which, under K.S.A. 16a-6-117, tracks the requirements of Regulation Z. Thus, the annual percentage rate for a particular transaction will generally be disclosed in the truth in lending disclosure statement that the creditor prepares for that transaction under Regulation Z (at least for those transactions that are subject to Regulation Z).

Subsection (6):

The definition of "appraised value" relates to mortgage loans and is critical for determining whether such loans are governed by the U3C generally (in the case of certain high loan-to-value first mortgage loans) or to certain of its substantive restrictions (in the case of certain high-rate first or second mortgage loans). The creditor may determine the appraised value by looking to

(1) the appraised value of the real estate as reflected in the records of the tax assessor of the relevant county,

(2) the fair market value of the real estate as reflected in a separate written appraisal that meets the statutory requirements, or,

(3) in the case of a nonpurchase money real estate transaction, the estimated value as determined through use of an automated valuation model.

The U3C does not require a creditor to obtain a separate written appraisal — the creditor may always choose to simply rely on the tax assessor's records. However, the creditor may want to obtain a separate written appraisal if, for example, it believes the value reflected in the tax assessor's records is below the fair market value that would be reflected in a separate written appraisal and that the fair market value would be great enough to avoid application of the U3C's restrictions on certain high loan-to-value mortgage loans. In such a case, the creditor may rely on the written appraisal even though the tax assessor's records reflect a lower value. In 2006, the U3C was amended to allow the use of an automated valuation model. Automated valuation models must be validated by an independent credit rating agency and acceptable to the administrator.

Subsection (7):

The concept of the "billing cycle" becomes important with respect to the provisions of the U3C regulating finance charges in open end credit transactions, including credit card transactions. See K.S.A. 16a-2-202 and 16a-2-402.

Subsection (8):

For either rate ceilings or disclosures to be meaningful in credit sales, the amount financed on which finance charges are imposed must include a true cash price. This definition essentially conforms to the definition in Regulation Z, 12 C.F.R. § 226.2(a)(9). The consumer or administrator can rebut the presumption that the cash price disclosed is the true cash price by showing that the cash price disclosed

is not offered to cash buyers in the ordinary course of business. If a seller sells an item in ordinary course for $97 for cash but sells the same item for $100 to buyers wishing to pay installments, the $3 difference is not part of a true cash price but is a disguised finance charge imposed by the seller. See subsection (22). If the cash price disclosed is not a true cash price (i.e., if in the example above the seller discloses $100 as the cash price), the seller may be liable for a violation of the disclosure provisions (see K.S.A. 16a-5-203) and, if the finance charge would have been excessive had the true cash price been used, for an excess charge (see K.S.A. 16a-5-201(3) and (4)).

Nothing in this definition prevents sellers from selling both for cash and on credit for the same price. For purposes of this definition it does not matter whether the charges enumerated in paragraphs (a) and (b) are included in the cash price or separately stated, since they will be included in the amount financed in either case. See subsection (4).

Subsection (9):

The definition of "closed end credit" is residual in that it works by exclusion. In other words, if a consumer loan or consumer credit sale does not qualify as open end credit (see subsection (31)), then by definition it must be closed end credit.

Subsection (10):

The definition of "closing costs" was originally derived from TILA U.S.C.A. § 1605(e). However, the U3C definition was amended in 1996 to move away from the "laundry list" approach of permissible closing costs used by the TILA. As amended, the U3C definition authorizes two broad categories of charges for transactions secured by an interest in land:

(1) actual filing and recording fees, and

(2) all other expenses incurred by the lender in connection with making the loan.

Fees that typically qualify as closing costs include closing agent fees, appraisal fees, recording fees, title examination or insurance fees, document preparation fees, notary fees, pest inspection fees, application fees (if they are charged to all borrowers), courier fees, flood insurance determination fees (but only in connection with the initial decision to extend credit), credit report fees and tax service fees (but only in connection with the initial decision to extend credit). For additional guidance on the types of fees that are permitted, reference should be made to Regulation Z, 12 C.F.R. § 226.4(c)(7), K.A.R. 75-6-9 and to Administrative Interpretation No. 1009. Note that, except for appraisal fees, however, these expenses are considered closing costs only if paid to an unrelated third party. This is more restrictive than Regulation Z, which generally permits fees relating to services provided by a creditor's employees to be excluded from the finance charge. Moreover, all closing costs must be "bona fide and reasonable" and may not exceed the amount actually paid to the third party. This means that so-called "upcharges" of third-party fees are not permitted.

The significance of the definition is that closing costs are not included in the finance charge for purposes of rate ceilings and disclosure. See the Kansas comments to subsection (22) and K.S.A. 16a-2-501. Note that this definition is limited to transactions secured by an interest in land. Comparable costs charged to the consumer in non-real estate transactions would have to be included in the finance charge. This corresponds to the federal rule under truth in lending. Most first mortgage loans are excluded from the coverage of the U3C (see the Kansas comment to subsection (17)); as a result, this definition primarily applies to second mortgage loans.

Subsection (11):

The definition of "code mortgage rate" is used to determine whether certain high-rate first and second mortgage loans are subject to the U3C's restrictions on balloon payments and negative amortization. See subsection (17)(b)(i)(B). The definition uses a floating benchmark that is tied to the

same index as the general usury rate for first mortgage loans (K.S.A. 16-207(b)), although the "margin" is 5% under the U3C instead of 1 1/2% under the general usury statute. Because the code mortgage rate uses a greater margin, it will always exceed the general usury limit for first mortgage loans. Thus, the parties would generally need to contract into the U3C to have a rate of finance charges on a first mortgage loan that exceeds the code mortgage rate. See K.S.A. 16a-1-109. That would make the transaction subject to the entire U3C and, at first blush, would seem to make this definition meaningless. There are at least two points to be made on this issue. First, adjustable mortgages subject to K.S.A. 16-207(h) are not subject to any rate ceiling. Thus, it would be possible to exceed the code mortgage rate on an adjustable mortgage without contracting into U3C. Second, even if a mortgage loan is otherwise subject to the entire U3C, its special restrictions on balloon payments and negative amortization only apply if the interest rate on the loan exceeds the code mortgage rate or if the loan-to-value ratio of the loan exceeds 100%. See K.S.A. 16a-3-308a.

Subsection (12):

The definition of "conspicuous" is derived from the UCC, K.S.A. 84-1-201(10), but the specific examples set out in the UCC provision are omitted. Here, as under the UCC, the issue is whether attention can reasonably be expected to be called to a term. In the UCC, and in the official text of the uniform act, this issue was made a question of law. In this subsection, however, the Kansas legislature made the issue of conspicuousness a question of fact in consumer credit transactions. A similar variation was made in the section on unconscionability. See the Kansas comment to K.S.A. 16a-5-108.

Subsection (14):

Since most of the operative provisions of the U3C apply to consumer credit sales, consumer leases, or consumer loans, the definitions of these terms are the key scope definitions of the U3C. Under the definition of "consumer credit sale" in this subsection, the U3C applies to the same sales transactions as does the TILA. The requirement that a sale either be payable in more than four installments or subject to a finance charge excludes a great mass of transactions, e.g., the 30-day retail charge account and the short term credit furnished by professional people and artisans on a one-payment basis in connection with sales of their services for which no charge for credit is made. On the other hand, the U3C applies to merchants who sell on installments but make no identifiable charge for credit.

Sales or leases pursuant to a lender credit card give rise to loans as between the card issuer and cardholder, not to credit sales. See the Kansas comment to subsection (27). As originally adopted, the U3C covered consumer credit sales of land only if the rate of finance charge was above 12%. As a result of a non-uniform amendment in subparagraph (b)(ii), however, installment land sales are excluded from the U3C. Those transactions are instead regulated by K.S.A. 16-207(b) or (h) unless made subject to the U3C by agreement of the parties. See the Kansas comment to subsection (17) for a more complete discussion of the U3C's scope and policy with regard to land transactions.

Subsection (15):

Like the term "consumer," the term "consumer credit transaction" is all-embracing but takes meaning only from the more specific definitions of "consumer credit sale," "consumer loan," and "consumer lease." When the term "consumer credit transaction" is used, the intent is to make clear that the provision applies to all forms of consumer transactions. When a particular provision of the U3C is meant to apply only to consumer sales, or consumer lease, or consumer loans, those terms are used.

Subsection (16):

Leasing has become a popular alternative to credit sales as a means of distributing goods to consumers and merits inclusion in a comprehensive consumer credit code. The four month term requirement in paragraph (c) conforms to the federal Consumer Leasing Act, TILA 15 U.S.C.A. § 1667. It excludes from the U3C the innumerable hourly, daily, or weekly rental or hire agreements typically

involving automobiles, trailers, home repair tools, sick room equipment, and the like. It also excludes the popular rent-to-own contracts for furniture, appliances, and electronic entertainment equipment, which typically obligate consumers only one week or month at a time. On the other hand, if the transaction, though in form a lease, is in substance a sale, it is treated as a sale for all purposes in the U3C and the provisions on consumer leases are inapplicable. See the definition of "sale of goods," subsection (38).

For those consumer leases which are covered, the U3C requires disclosure of the elements of the transaction (K.S.A. 16a-3-201 and K.A.R. 75-6-26); contains a number of contract limitations on agreements and practices (part 3 of article 3, notably K.S.A. 16a-3-301(2)) and on the lessee's liability (part 4 of article 3, notably K.S.A. 16a-3-401); regulates insurance provided in relation to consumer lease transactions (article 4); makes provisions for remedies and penalties in consumer lease transactions (article 5); and gives the administrator powers over consumer lease transactions (article 6). Since a finance charge is not made in the usual consumer lease transaction, the rate ceiling provisions of the U3C are inapplicable.

Subsection (17):

The primary definition of "consumer loan" in paragraph (a) generally parallels that of "consumer credit sale" in subsection (14)(a). It includes all loans under $25,000 made by a person regularly engaged in the business of making loans to individuals for personal, family or household purposes, as long as they are repayable in more than four installments or a finance charge is imposed. See the Kansas comment to subsection (27).

Changes in the first mortgage market have resulted in the availability of certain types of high-rate and high loan-to-value first mortgages that some view as raising the same consumer protection issues that historically existed only for second mortgage loans. As a result, the exclusion of first mortgages in subsection (b)(i) was narrowed in the 1999 legislative session so that certain first mortgage loans are subject to all or part of the U3C. Specifically, if the loan-to-value ratio (subsection (28)) of a first mortgage loan exceeds 100%, then the loan is subject to the entire U3C other than its rate ceilings — the permissible rate of interest on such a high loan-to-value first mortgage loan continues to be governed by K.S.A. 16-207(b), although the U3C's limits on prepaid finance charges apply to the transaction. See K.S.A. 16a-2-401(8). On the other hand, if the annual percentage rate on a first mortgage loan exceeds the code mortgage rate (subsection (11)), then the loan is subject to the U3C's restrictions on negative amortization and balloon payments. See K.S.A. 16a-3-308a. However, unless the transaction is otherwise subject to the U3C (because, for example, the parties contracted into the U3C or the transaction is a high loan-to-value loan), none of the other provisions of the U3C apply to the transaction. See also the Kansas comment to subsection (11). Another "scope" change made during the 1999 legislative session removed the long-standing exclusion from the U3C of a second mortgage held by the same creditor that holds the first mortgage. Second mortgage loans are now subject to the U3C, regardless of who holds the first mortgage.

Subparagraph (b)(ii), excluding certain pension plan loans, is not part of the uniform act. Pension plan loans are also exempt from the general usury laws. See K.S.A. 16-207(g). Discretionary overdrafts that are covered by a financial institution without a prearranged agreement to create or allow overdrafts are not "consumer loans" for purposes of the U3C. See Administrative Interpretation No. 1003.

Subsection (18):

The definition of "credit" emphasizes the fact that the U3C does not cover cash transactions. Credit is extended either when one who owes a debt is allowed to defer payment of the obligation or when one is given the right to incur an obligation in the future and to defer its payment. A commitment by a creditor to advance funds on request, as in the case of a letter of credit, is an example of the latter case.

Subsection (19):

The definition of "credit card" includes both seller and lender credit cards. The term encompasses the varied arrangements under which creditors equip consumers with a card or other form of access that enables them to obtain credit from the issuing creditor or others. The current definition has been brought in line with that under Regulation Z, 12 C.F.R.§ 226.2(a)(15).

Subsection (20):

The U3C uses the term "creditor" as a short-hand way to refer inclusively to sellers, lenders and lessors. The current definition of "creditor" was taken from TILA 15 U.S.C.A. § 1602(f) and Regulation Z, 12 C.F.R.§ 226.2(a)(17), which includes the "more than four installments" language found in this subsection. Many provisions of the U3C apply directly to assignees (e.g., K.S.A. 16a-2-301, 16a-2-304 and 16a-3-404). In the case of a lender credit card, the bank that issued the card, and not the merchant that honors it, is the "creditor."

Subsection (21):

The definition of "earnings" is derived in part from TILA 15 U.S.C.A.§ 1672(a). The language is broad enough to include sums owed to independent contractors.

Subsection (22):

The definition of "finance charge" is designed to pick up all charges "incident to or as a condition of the extension of credit" (whatever the parties call them), if they are imposed by the creditor on the consumer. Finance charges may be charges that are paid over the life of the transaction (such as the stated interest rate) or may be "prepaid" at or before the closing of the transaction (such as "points," which are charges to reduce the stated interest rate). The calculation of the finance charge is governed by a regulation adopted by the administrator (K.A.R. 75-6-26) which, under K.S.A. 16a-6-117, generally tracks the requirements of Regulation Z. Thus, the finance charge for a particular transaction under the U3C will generally be the same as that disclosed in the truth in lending disclosure statement that the creditor prepares for that transaction under Regulation Z (at least for those transactions that are subject to Regulation Z). One area of difference, however, is closing costs for real estate transactions that are not paid to an unrelated third party. Generally speaking, if a fee qualifies as a closing cost, it is excluded from the finance charge; if it fails to so qualify, it is normally included in the finance charge. Other than appraisal fees, the U3C limits closing costs in real estate transactions to fees that are paid to an unrelated third party. Regulation Z, on the other hand, allows closing costs to be paid to the creditor or a related party. See the Kansas comment to subsection (10) and Administrative Interpretation No. 1009. Thus, in a real estate transaction, the finance charge will be smaller under Regulation Z than under the U3C if there are closing costs (other than appraisal fees) that are payable to the creditor or a related party.

The definition of finance charge used in Regulation Z was amended in 1996 to deal specifically with charges imposed on the consumer by a third party. Generally, those charges must be included in the finance charge if the creditor requires the use of a third party as a condition of or an incident to the extension of credit (even if the consumer can choose the third party) or if the creditor retains a portion of the charge (but only to the extent of the portion retained). 12 C.F.R. § 226.4(a)(1). There are special rules for fees charged by a closing agent and fees charged by a mortgage broker. Closing agent fees must be included in the finance charge only if the creditor requires the particular services for which the consumer is charged, requires the charge to be imposed, or retains a portion of the charge (but only to the extent of the portion retained). 12 C.F.R. § 226.4(a)(2). Mortgage broker fees (whether paid by the consumer directly to the broker or indirectly through the creditor) must be included in the finance charge, even if the creditor does not require the use of a mortgage broker and even if the creditor does not retain any portion of the charge. 12 C.F.R. § 226.4(a)(3).

Charges imposed by financial institutions for covering discretionary overdrafts in the absence of a prearranged agreement to create or allow overdrafts are not "finance charges" for purposes of the U3C. See Administrative Interpretation No. 1003. This is consistent with the treatment of such charges under Regulation Z. See 12 C.F.R. § 226.4(c)(3) and the Official Staff Commentary to that section.

Subsection (23):

The definition of "first mortgage" conforms to the common understanding of that term and includes a mortgage that has a higher priority than any other mortgage or similar consensual lien on the real estate in question. The existence of a UCC fixture filing on personal property which is or becomes attached to the real estate would not preclude a mortgage from otherwise being a first mortgage, even if the fixture filing has priority under the UCC as to the fixture.

Subsection (24):

The definition of "goods," substantially conforms to that found in the UCC. Intangible property and commercial instruments are distinguished from "goods" both in the U3C and in the UCC. See K.S.A. 84-2-105(l) and 84-9-102(44).

Subsection (25):

Assignees take all rights conferred by the U3C on lenders. Various provisions of the U3C apply specifically to assignees. See also the Kansas comment to subsection (20).

Subsection (26):

As used in the U3C, "lender credit card" is limited to a card issued by a supervised lender (subsection (45)). The lender credit card arrangement is one under which the card issuer agrees to pay to third parties for purchases of goods and services by the cardholder. A bank credit card such as VISA or MasterCard is the most common example; however, licensed lenders (K.S.A. 16a-2-301) and other supervised financial organizations can also issue lender credit cards. See also the Kansas comments to subsections (19) and (27). "Credit card banks" are popular with retailers. Rather than issuing a seller credit card itself, the retailer establishes a bank that issues credit cards that can only be used at the retailer's stores. The cards issued by such a limited purpose entity are lender credit cards, and it is the special purpose entity, not the retailer, that is the creditor.

Subsection (27):

The distinction between loans and sales is basic to the applicability of the rate ceiling provisions (parts 2 and 4 of article 2), the licensing provisions (part 3 of article 2), and other provisions of the U3C. The traditional concept of a loan as an advance of money or a commitment to advance money is continued in paragraph (a). Under the U3C, forbearance of debt is characterized on the basis of the nature of the original debt. Thus, forbearance of debt arising from sales or leases is not a loan transaction for U3C purposes.

Seller credit cards, such as credit cards issued by retailers, are issued primarily for the purpose of enabling cardholders to purchase property or services from the card issuer or closely related persons such as franchisees. If seller credit card issuers allow their cardholders to obtain nominal cash advances pursuant to their credit cards, then such advances are loan transactions under paragraph (a)(ii), and if a finance charge exceeding 12% is imposed, the transaction becomes a supervised loan (see subsection (46)) and the licensing provisions of part 3 of article 2 apply.

There are companies which will contract to exchange cash to consumers for personal living expenses in exchange for a security interest in the consumer's potential settlement, judgment or verdict resulting from a personal injury claim. Such contracts may not require the consumer to repay the cash advance if the consumer does not receive a successful settlement, judgment or verdict in the civil case; however, if the consumer is successful then the consumer is obligated to repay the principal amount plus a finance

charge. These contracts to advance plaintiffs funds are similar to the loan receipt transactions in the insurance industry which have been held to constitute loans even though the obligation to repay is contingent. See Hiebert v. Millers' Mutual Insurance Association of Illinois, 212 Kan. 249, 510 P.2d 1203 (1973). The Kansas Supreme Court has held agreements to advance realtors cash for living expenses pending repayment from future anticipated commissions are not the sale of a business receivable discounted for commercial purposes, but rather the agreements constitute consumer loans. See Decision Point, Inc. v. Reece & Nichols Realtors, Inc., 282 Kan. 381, 144 P.3d 706 (2006).

Subsection (28):

The definition of "loan-to-value ratio" is critical in determining whether and to what extent the U3C regulates certain mortgage loans. The U3C was amended during the 1999 legislative session to extend many of the U3C's protections to these high loan-to-value loans. The key factor in determining whether the U3C applies is the loan-to-value ratio. If the unpaid principal balance of all loans secured by a first mortgage or a subordinate mortgage on the real estate in question exceeds the real estate's appraised value (subsection (6)), then the transaction is governed by the entire U3C (except for its interest rate ceilings in the case of a first mortgage loan). Of course, if a loan is made at a time when the loan-to-value ratio is less than 100% but that ratio later exceeds 100% because subsequent second mortgage loans are made or the value of the real estate declines, the existing loan is not viewed as a high loan-to-value loan. When dealing with an open end mortgage loan (such as a home equity line of credit), the loan-to-value ratio should be determined by reference to the total amount of the line of credit rather than the amount that has been advanced as of any particular date.

Subsection (29):

"Merchandise certificate" primarily means the kind of scrip used by merchants to facilitate the purchase on credit of a number of relatively small items so that a separate contract or agreement is not required for each item purchased; it does not include a trading stamp redeemable only at a stamp redemption center.

Subsection (30):

The definition of "official fees" is derived from TILA 15 U.S.C.A. § 1605.

Subsection (31):

The definition of "open end credit" is intended to cover both revolving charge accounts offered by retailers and lines of credit under bank credit cards, overdraft protection plans and the like. The term should be contrasted with closed end installment contracts where the amount financed and the total finance charge can normally be calculated in advance.

The treatment of a transaction in which a seller credit card issuer allows a cardholder to make purchases and add them to an account payable at a fixed time after billing with no right to defer payment further and with a charge imposed for late payment will depend on the way in which the creditor deals with late payments. The ordinary 30-day "open account," for example, in which the consumer gets a bill at the end of the month and is expected to pay in full within 30 days, with no finance charge imposed, is not "open end credit" within the definition of this subsection. As long as any late charge is a "true" late charge, the transaction is not a "consumer credit sale" for purposes of the U3C because there is neither a finance charge nor the privilege of paying in installments. See subsection (14). On the other hand, if the late charge is in reality a disguised finance charge, then the transaction is a consumer credit sale involving open end credit and the entire U3C applies to it. The test is whether the charge is made for actual unanticipated late payment or other delinquency. For example, assume an oil company extends 30-day credit with no right to defer payment further and imposes a charge for late payment, but does not require surrender of the credit card if full payment is not made when billed. Instead, the consumer is permitted to continue to have purchases or other debts charged to the account in the

ordinary course of business after imposition of the charge. In this case the transaction is a consumer credit sale made under open end credit and the entire U3C applies to it. Each case must be decided on its own facts.

Subsection (32):

The term "organization" includes virtually any legal entity except a natural person.

Subsection (33):

The term "person" is all-inclusive. Compare the definition of "organization" in subsection (32).

Subsection (34):

The term "person related to" finds use where the question is the relationship between a lender and a seller, lessor or other creditor.

Subsection (35):

The definition of "prepaid finance charge" is based on Regulation Z, 12 C.F.R.§ 226.2(a)(23). Common examples of prepaid finance charges include buyer's points, service fees, loan fees, finder's fees, loan guarantee insurance premiums and credit investigation fees. Additional guidance can be found in Administrative Interpretation No. 1009. Classification of items as prepaid finance charges is significant because the U3C imposes separate caps on the amount of prepaid finance charges that may be imposed in connection with a consumer credit transaction. Generally, the cap for non-real estate transactions is 2% of the amount financed or $100 (whichever if less), and the cap for real estate transactions (including those relating to certain manufactured homes) is 8% of the amount financed, although the amount payable to the lender or a related party may not exceed 5% of the amount financed. See K.S.A. 16a-2-201(3) and 16a-2-401(6). The amount of prepaid finance charges is calculated in accordance with TILA and Regulation Z. See K.A.R. 75-6-26. Thus, the prepaid finance charges for a particular transaction under the U3C will generally be the same as that disclosed in the truth in lending disclosure statement that the creditor prepares for that transaction under Regulation Z. See, however, the Kansas comments to subsections (10) and (22) as they relate to differences in closing costs and finance charges for real estate transactions under Regulation Z and the U3C.

Subsection (36):

The term "presumption" means a rebuttable presumption. See K.S.A. 60-414 on the effect of presumptions.

Subsection (37):

The definition of "principal" was added by legislation adopted in 1993 that prohibited use of the precomputed method of determining finance charges on transactions originated on or after January 1, 1994. However, legislation adopted in 1998 and 1999 reinstated the permissibility of precomputed finance charges for closed end consumer credit sales. K.S.A. 16a-2-201.

Subsection (38):

The term "sale of goods" is derived from TILA 16 U.S.C.A. § 103(g). It includes sales disguised as leases. See, e.g., Gulf Homes, Inc. v. Gonzales, 676 P.2d 635 (Ariz. App. 1983), holding that a lease/purchase option agreement for a mobile home was in reality a sales transaction subject to the state retail installment sales act. For a discussion of the special issues relating to so-called "rent-to-own" contracts, see the Kansas comment to subsection (16).

Subsection (39):

The term "sale of an interest in land" includes lease-option arrangements and is not limited to situations where the option price is nominal.

Subsection (40):

The term "sale of services" underscores the fact that the U3C applies to more than goods or real estate. For example, it covers installment contracts to provide dance lessons or "health salon" activities, or even the sale of legal services. See Ault v. General Property Management Co., 683 P.2d 988 (Okla. App. 1984). See also subsection (43). The KCPA also applies to the sale of services.

Subsection (41):

The definition of "second mortgage" refers to any mortgage or similar consensual lien on real estate other than a first mortgage.

Subsection (42):

With respect to the definition of "seller," see the Kansas comment to the definition of "lender" in subsection (25).

Subsection (43):

The U3C makes no exclusion for services furnished by members of professions— physicians, dentists, attorneys and the like. See also subsection (40). On the other hand, the definition of "consumer credit sale" in subsection (14) excludes the usual arrangement that professional people use in selling their services, since they usually do not enter into installment contracts with their patients or clients and do not impose finance charges. However, the U3C does apply if the professional agrees with his or her client to accept payment for services on an installment basis (with or without provision for a finance charge).

Subsection (44):

This subsection defines the class of lenders that may engage in the business of making supervised loans or taking assignments of such loans for collection without first being licensed under the U3C by the administrator (K.S.A. 16a-2-301). If a lender of this class is subject to supervision by an official or agency other than the administrator, the powers of examination, investigation and enforcement under the U3C may be exercised by that official or agency (K.S.A. 16a-6-105). This class of lenders typically includes persons authorized to make loans and receive deposits or their equivalent, such as banks, savings and loan associations and credit unions.

Subsection (45):

The term "supervised lender" includes any lender authorized to make loans with annual percentage rates in excess of 12%, including supervised financial organizations (such as banks).

Subsection (46):

The term "supervised loan" is defined according to the annual percentage rate. Although all persons making consumer loans are regulated by the U3C, those making loans with an annual percentage rate in excess of 12% must either be specifically licensed by the administrator or be supervised financial organizations.

Subsection (47):

The definition of "written agreement" is not part of the official text of the U3C; it was added to the Kansas U3C in 1984. The term is used primarily in the definitions of "consumer credit sale" and "creditor," which require a written agreement for certain installment contracts which do not impose a finance charge. Under this definition, the writing merely must be sufficient to be "evidence of" the agreement, it need not contain all the terms of the contract. However, a mere confirmatory letter is not sufficient under this subsection unless it is signed by the person against whom the agreement contained in the letter is enforced.

Subsection (48):

The definition of "written administrative interpretation" was added by legislation adopted in 1992. That legislation, among other things, insulates creditors from liability for penalties where they have relied in good faith on the administrator's official interpretations of the U3C. See K.S.A. 16a-5-201(9) and 16a-6-104(4).

Attorney General's Opinions:

- Interest charges; usury. 79-252.
- Finance charge for consumer loans; supervised lenders. 79-286.
- "Supervised financial organization". 80-80.
- Supervised lender; examination of national banks. 80-94.
- Interest and charges; business and agricultural loans. 81-200.
- Finance charges; additional charges not included therein. 81-209.
- Kansas liquor control act; cereal malt beverages; retail sales involving electronic fund transfers. 81-266.
- Consumer loans; finance charge; exemption of adjustable rate loans from maximum finance charge limits. 82-128.
- Consumer credit transactions; prohibition on prepayment penalties; preemption as to national banks. 83-132.
- Consumer loans; maximum finance charges; loans secured by mortgage on real estate; charging of nonrefundable origination fee. 84-2.
- Definitions; supervised lender; supervised financial organization. 84-11.
- Attorney fees; national direct student loans. 86-113.
- Property and liability insurance. 87-47.
- Consumer credit insurance; amount of insurance. 88-13.
- Cable television company; late payment charges; "interest" and "finance charge". 88-30.
- Fair credit reporting act—permissible uses of credit reports. 88-89.
- Sale of intoxicating liquors on credit prohibited. 88-137.
- Investment certificates of investment companies' restrictions on investments. 88-166.
- Consumer credit transaction; blanket single interest insurance programs. 89-54.
- Interest rates applicable to certain real estate mortgages; loan agreements applying consumer credit code (UCCC) rates. 97-99.
- Casino and its employees, contractors and legal affiliates are prohibited from loaning money or extending credit to casino patrons. 2011-19.

K.S.A. 16a-1-303. (UCCC) Residential mortgage loan originator; definitions.

Other definitions appearing in this act

(1) ''Residential mortgage loan originator'' means an individual:

(a) Who engages in residential mortgage loan origination on behalf of a single supervised lender;

(b) whose conduct of residential mortgage loan origination is the responsibility of the licensed supervised lender;

(c) 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

(d) 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 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.

(2) "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.

(a) For purposes of this subsection, the term ''clerical or support duties'' may include subsequent to the receipt of an application:

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

(ii) 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.

(b) 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 residential mortgage loan originator.

(3) "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.

(4) "Residential mortgage loan" means any loan or contract for deed primarily for personal, family or household use that is secured by a mortgage, deed of trust or other equivalent consensual security interest on a dwelling, as defined in section 103(v) of the truth in lending act, 15 U.S.C. § 1602(v), or residential real estate located in this state upon which a dwelling is constructed or intended to be constructed, including the renewal or refinancing of any such loan.

(5) "Registrant" means any individual who holds a valid registration to engage in residential mortgage loan origination in this state.

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

History: L. 1973, ch. 85, § 13; L. 2009, ch. 29 § 15; July 1.

KANSAS COMMENT, 2010:

1. In 2009 the Kansas legislature amended this U3C section to adopt the definitions from the federal mandated Title V of P.L. 110-289, the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 ("SAFE Act").
2. The licensing exemption for mortgage loan processors and underwriters only applies to employees of a licensee. There is no licensing exemption for independent contractors who engage in mortgage loan processing or underwriting on behalf of a licensee.

Article 2 – FINANCE CHARGES AND RELATED PROVISIONS

Part 1

GENERAL PROVISIONS

K.S.A. 16a-2-101. (UCCC) Short title.

This article shall be known and may be cited as revised uniform consumer credit code—finance charges and related provisions.

History: L. 1973, ch. 85, § 14; Jan. 1, 1974.

K.S.A. 16a-2-102. (UCCC) Scope.

Part 2 of this article applies to consumer credit sales. Parts 3 and 4 apply to consumer loans, including loans made by supervised lenders. Part 5 applies to other charges and modifications with respect to consumer credit transactions. Part 6 applies to other credit transactions.

History: L. 1973, ch. 85, § 15; Jan. 1, 1974.

KANSAS COMMENT, 2000:

The U3C continues the distinction between loans and credit sales in consumer transactions, and sets separate finance charge rate ceilings for each. Part 2 of this article sets ceilings for consumer credit sales, including sales pursuant to seller credit cards (see K.S.A. 16a-2-201 and 16a-2-202); part 4 sets ceilings for consumer loans, including loans pursuant to lender credit cards (see K.S.A. 16a-2-401 and 16a-2-402). Part 5 regulates charges other than "finance charges." While this section refers to "part 6," that part of the uniform act was omitted from the U3C.

K.S.A. 16a-2-103. Computation of finance charges.

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

(6) (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 been shipped, delivered, furnished or otherwise made available to or for the benefit of the consumer or has 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 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 uniform consumer credit code.

History: L. 1993, ch. 200, § 1; L. 1999, ch. 107, § 9; L. 2005, ch. 144, § 8; July 1.

KANSAS COMMENT, 2010:

1. This section was added to the U3C by legislation adopted in 1993 and was substantially rewritten by legislation adopted in 1999. Except for certain precomputed closed end consumers credit sales (K.S.A. 16a-2-201(4)), the finance charge on all consumer credit transactions must be computed in accordance with the actuarial method (K.S.A. 16a-1-301(1)). In making that computation, the creditor must generally use the so-called "365/365" method under which the contract rate of the finance charge is divided by 365 and then multiplied by the actual number of days in the relevant period. If the consumer agrees in writing, however, the creditor may use the so-called "360/360" method under which the contract rate of the finance charge is divided by 360 and then multiplied by the number of assumed days in the relevant period. In that regard, every month is assumed to have 30 days. Thus, for example, if payments are received on December 31 and January 31, the creditor would calculate the finance charge for the period between the payments by dividing the contract rate of finance charge by 360 and multiplying it by 30 (because January is assumed to have 30 days, the extra day is ignored). Similarly, if payments are received on January 31 and February 28, the creditor would still divide the contract rate of finance charge by 360 and multiply it by 30 (because February is assumed to have 30 days, two extra days are added). On the other hand, however, if payments are received on January 31 and February 27, the creditor would divide the contract rate of finance charge by 360 and multiply it by 27. Creditors may ignore the effect of a leap year in computing the finance charge.
2. Subsection (3) of this section states that when computing monthly interest on a consumer loan secured by a first or second lien real estate mortgage, computation is in a 30 day month and a 360 day year. The monthly interest is always to be computed based on scheduled due dates, regardless of the actual date the payment was received by the creditor.
3. Creditors may not under any circumstance compute the finance charge on any consumer credit transaction by using the so-called "365/360" method under which the contract rate of the finance charge is divided by 360 and multiplied by the actual number of days in the relevant period. That method results in a higher effective rate of finance charge and is often viewed as inappropriate in the consumer credit context.
4. Subsection (5) of this section prohibits the accrual of interest or other periodic finance charges except to the extent that the creditor has disbursed the proceeds of the transaction to or for the benefit of the consumer. An exception is made for loans (other than cash advances) under lender credit cards, on the theory that there may be a delay between the time the consumer uses the card (and receives the related goods or services) and the time the lender settles the transaction with the merchant.

K.S.A. 16a-2-104. (UCCC) Payment credit date.

(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 uniform consumer credit code.

History: L. 1999, ch. 107, § 4; July 1.

KANSAS COMMENT, 2010:

1. This section, which was added by legislation adopted in 1999, is based on Regulation Z, 12 C.F.R. § 226.10. That provision requires prompt crediting of payments for open end accounts, and this section extends that requirement for all consumer credit transactions.
2. Subsection (2) of this section also follows Regulation Z's model and allows a creditor to establish reasonable requirements for payments such as sending them to a specific address or establishing a reasonable "cut-off" hour for payments. For additional guidance, see Administrative Interpretation No. 1010.

Part 2

CONSUMER CREDIT SALES: MAXIMUM FINANCE CHARGES

K.S.A. 16a-2-201. Finance charge for closed end consumer credit sales.

(1) This section applies only to a 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.

(c) 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.

(e) 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 uniform consumer credit code.

History: L. 1973, ch. 85, § 16; L. 1980, ch. 77, § 1; L. 1981, ch. 94, § 1; L. 1982, ch. 93, § 1; L. 1983, ch. 79, § 1; L. 1985, ch. 82, § 1; L. 1988, ch. 85, § 3; L. 1988, ch. 86, § 1; L. 1988, ch. 87, § 1; L. 1993, ch. 200, § 6; L. 1995, ch. 54, § 1; L. 1997, ch. 90, § 1; L. 1998, ch. 107, § 1; L. 1999, ch. 107, § 10; L. 2000, ch. 28, § 1; July 1.

KANSAS COMMENT, 2010:

1. Subsection (2) of this section allows a seller in a closed end consumer credit sale to charge a finance charge at any rate agreed to by the parties. Subsection (6) makes it clear that this section does not apply to a "sale of an interest in land," even if the parties contract into the U3C.
2. While subsection (2) of this section allows the parties to agree to any rate of finance charge, subsection (3) limits the amount of prepaid finance charges in closed end transactions. For all closed end consumer credit sales (other than those relating to certain manufactured homes), the maximum amount of prepaid finance charges is 2% of the amount financed or $100, whichever is less. Legislation adopted in 2000 provides that, for manufactured homes described in subsection (3)(a), the maximum amount of prepaid finance charges is 5% of the amount financed. However, in order to charge the 5% fee, the fee must be used to "buy-down" the interest rate that would have applied had the fee not been charged. Subsection 3(b) does not apply to a consumer credit sale secured by a security interest in a "manufactured home" as described in subsection 3(a). Note that, in all cases, any prepaid finance charge must be included in the annual percentage rate calculation for disclosure purposes under the TILA.
3. Subsections (4) and (5) were added by legislation adopted in 1998 and 1999 to address certain issues relating to precomputed contracts. The legislation adopted in 1998 and 1999 allows precomputed contracts for closed end consumer credit sales and addresses various issues (such as the rebate required upon prepayment) relating to the use of precomputed contracts. Note, however, that precomputed contracts may not be used for consumer loans.

K.S.A. 16a-2-202. Finance charge for consumer credit sales pursuant to open end credit.

(1) 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) 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;

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

(3) If the billing cycle is monthly, the charges may not exceed 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) For any period in which a finance charge is due, the parties may agree 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 uniform consumer credit code.

History: L. 1973, ch. 85, § 17; L. 1980, ch. 77, § 2; L. 1981, ch. 94, § 2; L. 1982, ch. 93, § 2; L. 1983, ch. 79, § 2; L. 1985, ch. 82, § 2; L. 1988, ch. 85, § 4; L. 1988, ch. 86, § 2; L. 1997, ch. 90, § 2; L. 1999, ch. 107, § 11; July 1.

KANSAS COMMENT, 2010:

1. This section applies to all open end consumer credit sales, including sales pursuant to seller credit cards, and allows the parties to agree to any rate of finance charge. Subsection (5) makes it clear that this section does not apply to a "sale of an interest in land," even if the parties contract into the U3C.

2. Under subsection (2) a credit seller is given two options in determining the balance on which the finance charge will be imposed. The TILA requires the creditor to disclose and explain the method used. See Regulation Z, 12 C.F.R.§§ 226.6(a)(3) and 226.7(e). The average daily balance ("ADB") method authorized by subsection (2)(a) is a method by which the finance charge is computed on the sum of the amount of the actual daily balances each day during the billing cycle divided by the number of days in the billing cycle. In practice, there are several methods of computing the average daily balance, and each produces a different outstanding balance for the billing cycle. In most methods, payments are credited on the date of receipt; early payments or payments in excess of the minimum payment due result in smaller finance charges. The main variable is whether the creditor includes or excludes current transactions, that is, charges or purchases incurred during the current cycle. This section permits the use of any of the standard ADB methods currently in use. It also permits the creditor to offer a "free ride," or grace period during which current charges may be paid without incurring any additional finance charges.

   There are also three common non-ADB methods of computing the outstanding balance, but not all of them are permitted by this section. The "closing balance" method, also known as the "ending balance" method, is authorized by subsection (2)(b). Under this method, finance charges are characteristically computed on the balance in the account as of the end of the current billing cycle. Credit is given for all payments and other credits during the cycle, but the closing balance may also include all purchases made during the current cycle even through they were never billed before.

   Subsection (2)(b) also permits the so-called "adjusted balance" method. Under this method, finance charges are based on the ending balance, including credit for payments and other credits during the current cycle, but without adding the current purchases. However, the so-called "previous balance method" is prohibited by this section. Under this method, the finance charge is computed on the outstanding balance at the beginning of the billing cycle, without adjustment for payments or other credits received during the cycle, and before adding charges incurred during the cycle.

3. Subsection (4) permits the parties to agree to a minimum finance charge for any period in which a finance charge would otherwise be due. Thus, for example, the parties could agree that a $1.00 finance charge will be due if the normal finance charge calculation results in any finance charge (such as 5¢) for the period in question.

Part 3

CONSUMER LOANS: SUPERVISED LENDERS

K.S.A. 16a-2-301. (UCCC) Authority to make supervised loans; residential mortgage loan origination; registration required.

(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, such person shall not engage in the business of:

(a) Making supervised loans;

(b) taking assignments of and directly or indirectly, including through the use of servicing contracts or otherwise, 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

(c) 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.

History: L. 1973, ch. 85, § 18; L. 1980, ch. 76, § 6; L. 1985, ch. 83, § 1; L. 1988, ch. 85, § 5; L. 2009, ch. 29, § 16; July 1.

KANSAS COMMENT, 2010:

1. Supervised lenders include supervised financial organizations (see K.S.A. 16a-1-301(44)). Because supervised financial organizations are already subject to supervision by other agencies, the U3C does not require them to obtain a license in order to make supervised loans. Moreover, under the doctrine of federal preemption, federally-chartered supervised financial organizations cannot be required to obtain a license from the administrator for any purpose. For a general discussion of the preemption doctrine, see Fidelity Federal Savings & Loan Ass'n v. de la Cuesta, 458 U.S. 141, 102 S.Ct. 3014, 73 L.Ed.2d 664 (1982). In Tokarz v. Frontier Federal Savings & Loan Ass'n, 656 P.2d 1089 (Wash. App. 1983), the court held that federal savings and loan associations were exempt from state consumer protection laws. The same rule has been applied to federal credit unions. See Brown v. Austin Area Teachers Federal Credit Union, 588 S.W.2d 629 (Tex. Civ. App. 1979).

   In an effort to keep a level playing field for state-chartered financial institutions, Congress extended "most favored lender" protection to all federally-insured, state-chartered financial institutions as a part of the interest rate deregulation legislation it adopted in the early 1980s. See 12 U.S.C.A. § 1785(g) (for federally-insured credit unions) and 12 U.S.C.A.§ 1831d (for other federally-insured depository institutions). Thus, state-chartered supervised financial organizations that are federally-insured may make supervised loans in Kansas without first obtaining a supervised lender's license. See May 4, 1987 letter from Rita M. D'Agostino to Jim Maag, distributed by the Kansas Banker's Association as Legislative Bulletin 14-87. See also Kan. A.G. Op. 81-158 and Kan. A.G. Op. 81-210.

2. Supervised financial organizations may generally "export" to Kansas the interest rates and related charges permitted by their home states as a matter of federal law and they do not need to obtain a supervised lender's license to make supervised loans in Kansas.

3. Legislation adopted in 2009 clarifies that a person taking assignment of supervised loans but using independent contractors to either collect on such loans or to enforce the assignees' rights arising from such loans is required to have a supervised lender license. See also Independent Financial, Inc. v. Wanna, 39 Kan.App.2d 733, 186 P.3d 196 (2008). If an unlicensed assignee not previously engaged in Kansas is in the business of making collections or enforcing rights under the paper as assigned undertakes collection or enforcement of rights, subsections (1)(b) and (c) give the assignee a three-month grace period in which to operate before obtaining a license.

Attorney General's Opinions:

- Finance charge for consumer loans; supervised lenders. 79-286.
- Supervised financial organization. 80-80.
- Supervised lenders; examination of national banks. 80-94.
- Supervised lender fees. 80-236.
- Definitions; supervised lender; supervised financial organization. 84-11.
- Debt collection. 2012-11.

K.S.A. 16a-2-302. (UCCC) License to make supervised loans; registration for residential mortgage loan originator fees.

(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 in the manner prescribed by the administrator and 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, and amendments thereto. The license year shall be the calendar year. Each license shall be nonrefundable and nonassignable, and shall remain in force until 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.

(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.

(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 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, 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) 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

(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. 2017 Supp. 16a-2-303a, and amendments thereto.

(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) 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.

History: L. 1973, ch. 85, § 19; L. 1976, ch. 98, § 1; L. 1981, ch. 95, § 1; L. 1999, ch. 107, § 12; L. 1999, ch. 166, § 9; L. 2000, ch. 27, § 2; L. 2001, ch. 5, § 57; L. 2005, ch. 144, § 9; L. 2009, ch. 29, § 17; L. 2011, ch. 53 § 5; July 1.

KANSAS COMMENT, 2010:

1. This section adopts a test of "financial responsibility, character and fitness." Bonding and maintaining a minimum net worth are important parts of "financial responsibility." Additional guidance on these requirements can be found in K.A.R. 75-6-31.
2. If increased competition should cause the development of undesirable credit practices, those practices are subject to controls by the administrator's powers to revoke or suspend a license (K.S.A. 16a-2-303), and by the other powers of the administrator (article 6) as well as the provisions on remedies and penalties available to aggrieved consumers (article 5).
3. Under subsections (5), (6) and (7), licensees may be required to obtain a license for each place of business and may do business only at licensed locations. See K.A.R. 75-6-30. A "place of business" includes any location in Kansas where the licensee places an automated loan machine. K.A.R. 75-6-30(c). A lender credit card issuer does not conduct business within the meaning of this section at the place where a third person honors the card. This rule, however, does not apply to supervised financial organizations. Their authority to open new offices at which they may receive deposits and make loans is found not in the U3C but in the statutes otherwise governing those organizations.
4. Annual fees are required of all licensees and all persons required to file notification. See K.S.A. 16a-6-201 through K.S.A. 16a-6-203. This includes all persons making consumer credit sales, consumer leases or consumer loans and persons taking assignments of and undertaking collection of payments from or enforcement of rights against debtors arising from such sales, leases or loans. Supervised financial organizations are exempt from these requirements.

Attorney General's Opinions:

- Supervised financial organization. 80-80.
- Supervised lender fees. 80-236.
- Investment certificates of investment companies; standards of operation; permissible loans. 81-239.
- Authority of legislature to transfer money from special revenue funds into state general fund. 2002-45.

K.S.A. 16a-2-303. (UCCC) Denial, revocation or suspension of license; disciplinary proceedings.

(1) The administrator may deny, revoke or suspend the license of a supervised lender if the administrator finds that:

(a) The applicant or licensee has repeatedly or willfully violated the provisions of K.S.A. 16a-1-101 through 16a-9-102 and amendments thereto or any rule and regulation, 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;

(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) the applicant, licensee, members thereof if a copartnership or association, or officers and directors thereof if 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;

(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) 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;

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

(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) 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) 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) 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) 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.

History: L. 1973, ch. 85, § 20; L. 1988, ch. 356, § 47; L. 1999, ch. 107, § 13; L. 2005, ch. 144, § 10; L. 2009, ch. 29, § 18; July 1.

KANSAS COMMENT, 2010:

This section provides the procedural framework under which a supervised lender license may be denied, revoked, suspended or reinstated. It should be read in conjunction with part 4 of Article 6 of the U3C, particularly K.S.A. 16a-6-410. If the administrator finds repeated or willful violations of the U3C or related regulatory requirements, the licensee's license may be denied, revoked or suspended.

K.S.A. 16a-2-303a. Denial, revocation or suspension of registration of residential mortgage loan originator.

(1) The administrator may deny, revoke or suspend the registration of a residential mortgage loan originator if the administrator finds that:

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

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

(c) the applicant or registrant has been convicted of any crime involving fraud, dishonesty or deceit, except that no registration shall be granted to any loan originator who:

(i) Has had a mortgage loan originator license or registration revoked in any governmental jurisdiction; or

(ii) has been convicted of, pled guilty or nolo contendere to, a felony in a domestic, foreign or military court:

(A) During the seven-year period preceding the date of the application for licensing and registration; or

(B) at any time preceding such date of application, if such felony involved an act of fraud, dishonesty, deceit, a breach of trust or money laundering;

(d) the applicant or registrant has been the subject of any disciplinary action by this or any other state or federal agency;

(e) a final judgment has been entered against the applicant or registrant 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 registered;

(f) the applicant or registrant has engaged in deceptive business practices;

(g) facts or conditions exist which would clearly have justified the administrator in refusing to grant a registration had these facts or conditions been known to exist at the time the application for the registration was made;

(h) the applicant or registrant has not completed all requirements for registration or renewal, including successfully passing a standardized examination and completing all pre-licensing or continuing education requirements;

(i) the administrator is unable to determine that the financial responsibility, character and fitness of the applicant or registrant are such as to warrant belief that the applicant's or registrant's residential mortgage loan origination activity will be operated honestly and fairly within the purposes of this act.

(2) None of the following actions shall deprive the administrator of any jurisdiction or right to institute or proceed with any disciplinary proceeding against such registration, to render a decision suspending, revoking or refusing to renew such registration, 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 registration issued under this act by operation of law;

(c) the registrant's failure to renew any registration issued under this act; or

(d) the registrant's voluntary surrender of any registration issued under this act.

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

History: L. 2009, ch. 29, § 2; July 1.

KANSAS COMMENT, 2010:

This section provides the procedural framework under which a mortgage loan originator license may be denied, revoked, suspended or reinstated. It should be read in conjunction with part 4 of Article 6 of the U3C, particularly K.S.A. 16a-6-410. If the administrator finds repeated or willful violations of the U3C or related regulatory requirements, the licensee's license may be denied, revoked or suspended.

K.S.A. 16a-2-304. Records; annual reports; maintenance of records; security of records; preservation of records.

(1) Every licensee and any assignee or servicer of a consumer credit transaction and every person required to file notification 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 is complying with the provisions of K.S.A. 16a-1-101 through 16a-9-102, and amendments thereto. The record keeping system of a licensee, assignee, servicer or person required to file notification shall be sufficient if the licensee, assignee, servicer or any person required to file notification 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 shall provide the administrator with the name, address, telephone number, 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 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 or person required to file notification 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 records required to be retained may be maintained and preserved by noneraseable, 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, assignee or person required to file notification 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) 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.

(5) 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) No person required to be licensed or file notification 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.

History: L. 1973, ch. 85, § 21; L. 1980, ch. 76, § 7; L. 1998, ch. 106, § 2; L. 2005, ch. 144, § 11; L. 2009, ch. 29, § 19; July 1.

KANSAS COMMENT, 2010:

Licensees are required to file annual reports in a form prescribed by the administrator. This allows the administrator to compile statistics to aid in the discharge of the administrator's duties and to provide the legislature with information necessary for a proper evaluation of the effectiveness of the U3C.

Attorney General's Opinions:

- Supervised lenders; examination of national banks. 80-94.

K.S.A. 16a-2-307. (UCCC) Restrictions on interest in land as security.

With respect to a consumer loan in which the finance charge exceeds 12% and the amount financed is $3,000 or less, a lender may not contract for an interest in land as security. A security interest taken in violation of this section is void.

History: L. 1973, ch. 85, § 24; L. 1999, ch. 107, § 14; July 1.

KANSAS COMMENT, 2000:

Under this section, no supervised loan with respect to which the amount financed is $3,000 or less may include a security interest in land. The purpose of this section is to deny the lender in a relatively small loan transaction the great leverage that results from a security interest in land. This section forbids transactions such as the second mortgage on a consumer's home taken as "back-up" collateral for a high-rate consolidation loan. This is the only limit on direct lender collateral under the U3C, except for the blanket prohibition against wage assignments in K.S.A. 16a-3-305. Much greater restrictions on

taking security are imposed on consumer credit sellers and lessors. See the Kansas comment to K.S.A. 16a-3-301.

K.S.A. 16a-2-308. (UCCC) Regular schedule of payments; maximum loan term.

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.

History: L. 1973, ch. 85, § 25; L. 1977, ch. 71, § 1; July 1.

KANSAS COMMENT, 2010:

Under this section, all closed end supervised installment loans of $1,000 or less must be repayable in substantially equal installments at equal periodic intervals (normally one month), except where irregularities are appropriate to meet the debtor's needs with respect to seasonal or irregular income. In addition, limits are imposed on the aggregate term of such loans depending upon the amount financed.

K.S.A. 16a-2-309. Conduct of business; other than making loans.

A licensee may conduct the business of making loans under K.S.A. 16a-1-101 through 16a-9-102 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, that the other business is of such nature that such conduct tends to conceal evasion of such portion of this act or of the rules and regulations made thereunder and shall order such licensee in writing to desist from such conduct.

History: L. 1973, ch. 85, § 26; L. 1998, ch. 106, § 3; Apr. 23.

KANSAS COMMENT, 2000:

This section allows a licensed lender to make supervised loans through a separate office located in a retail store unless the administrator finds that the arrangement would tend to conceal evasion of the U3C. An example of an operation which might be shut down by the administrator under this section is a loan office in a dealer's place of business to which credit buyers are referred in order to insulate the lender from defenses of the consumer. See K.S.A. 16a-3-405.

K.S.A. 16a-2-310. Prohibited acts by persons licensed or registered under act.

(1) No person required to be licensed or registered 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 or a lender, material facts, terms or conditions of a transaction to which the person required to be licensed or registered 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;

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

(j) 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;

(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 ofthe property or engage in any activity that would constitute a violation of K.S.A. 58-2344, and amendments thereto; or

(m) 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.

History: L. 2009, ch. 29, § 3; July 1.

Part 4

CONSUMER LOANS: MAXIMUM FINANCE CHARGES

K.S.A. 16a-2-401. Finance charge for consumer loan; loan secured by mortgage or interest in manufactured home; prepaid finance charges.

(1) For any consumer loan incurred pursuant to 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). 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 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).

(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) 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) 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 an amount not to exceed the lesser of 2% of the amount financed or $100 may be charged. Prepaid finance charges permitted under this subsection are in addition to finance charges permitted under subsection (1), (2), (3) and (4), 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) 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), 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), 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.

(c) 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) For any period in which a finance charge is due on a consumer loan pursuant to 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) This section does not apply to a payday loan governed by K.S.A. 16a-2-404, and amendments thereto.

History: L. 1973, ch. 85, § 27; L. 1974, ch. 91, § 1; L. 1975, ch. 126, § 1; L. 1980, ch. 76, § 9; L. 1980, ch. 77, § 3; L. 1981, ch. 94, § 3; L. 1982, ch. 94, § 1; L. 1983, ch. 79, § 3; L. 1985, ch. 82, § 3; L. 1986, ch. 90, § 1; L. 1988, ch. 85, § 6; L. 1988, ch. 86, § 3; L. 1988, ch. 87, § 2; L. 1993, ch. 200, § 7; L. 1995, ch. 54, § 2; L. 1999, ch. 107, § 15; L. 2000, ch. 27, § 3; L. 2000, ch. 159, § 1; July 1.

Revisor's Note: Section was also amended by L. 2000, ch. 28, § 2, but that version was repealed by L. 2000, ch. 159, § 14.

KANSAS COMMENT, 2010:

1. Subsection (1) of this section allows the parties to agree to any periodic rate of finance charge on an open end consumer credit loan (other than one secured by a first or second mortgage). Subsection (10) of this section allows the parties to agree on a minimum finance charge for any period during which a finance charge would otherwise be due in an open end consumer loan.

2. Subsection (2) of this section establishes the following periodic rate ceilings for a closed end consumer loan (other than one secured by a first or second mortgage):

   (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.

   Legislation adopted in 2000 provides that these rate ceilings apply to the unpaid balance of the loan, and are not based on the original principal amount of the loan. Thus a promissory note for a loan subject to this subsection may have two different interest rates, with one rate applying to the portion of the unpaid principal balance of the loan which exceeds $860 at any given time and the other rate applying to the portion of the unpaid principal balance which is equal to or less than $860 at such time.

3. As mentioned above, mortgage loans are not governed by the provisions of subsections (1) or (2) of this section. The rate of finance charge for first mortgage loans (even if they are otherwise subject to all or part of the U3C because they are high-rate or high loan-to-value mortgages) is governed by K.S.A. 16-207. Of course, the parties to a first mortgage loan can always agree to make the transaction subject to the U3C. In that event, subsection (4) limits the maximum rate of periodic finance charge to 18% per annum.

   Under subsection (3), the maximum rate of periodic finance charge on second mortgage loans is 18% per annum. However, the parties to a second mortgage loan can agree in writing to "opt out" of the U3C's rate ceilings and instead use the general usury limit authorized by K.S.A. 16-207(b). Note, however, that the parties to a second mortgage loan may only "opt out" of the U3C's rate ceilings. All other provisions of the U3C (including its limits on prepaid finance charges) would continue to apply to the transaction.

   Subsections (3), (4) and (6)(a) were amended by legislation adopted in 2000 to address permissible finance charges on consumer loans secured by certain manufactured homes. Subsection (3), as amended in 2000, provides that a lender may charge a periodic finance charge not to exceed 18% on any consumer loan secured by a qualifying manufactured home. A specific rate authority (e.g., subsections (3) or (4) in the case of loans secured by manufactured homes) should control over a more general or non-explicit rate authority (e.g., subsections (1) or (2)). Subsection (6)(a), as amended in 2000, does not require that the prepaid finance charge in a loan secured by a manufactured home be used to "buy down" the interest rate. Compare this to K.S.A. 16a-2-201(3), also amended by legislation in 2000, which requires the maximum 5% prepaid finance charge in a credit sale of a manufactured home be used to buy down the interest rate that would otherwise apply.

   Under subsection (4), the parties to a "consumer" loan secured by a qualifying manufactured home in which the amount financed exceeds $25,000 may agree to "opt in" to the U3C and, in so doing, may agree on a periodic rate not to exceed 18% (as well as prepaid finance charges permitted under subsection (6))— rather than being limited to the 15% usury rate found in K.S.A. 16-207(a) for unsecured or personal property loans not governed by the U3C.

4. While federal law generally subjects national banks to the usury limitations of the states in which they are located, see 12 U.S.C.A.§ 85, national banks may "export" the interest rates and related charges permitted in their home state and are not bound by the interest rate limitations of the state of the consumer's residence. For example, a national bank located in South Dakota is not bound by the limits imposed by this section in the rates it charges its Kansas credit cardholders. See Marquette National Bank v. First of Omaha Corp., 439 U.S. 299, 99 S.Ct. 540, 58 L.Ed.2d 534 (1978). This same treatment has been expanded beyond the pure interest rate to include items such as late payment fees, returned check fees, over limit fees and the like. See Smiley v. Citibank (South Dakota), N.A., 116 S.Ct. 1730 (1996).

5. Subsection (6) deals with prepaid finance charges. Any prepaid finance charge would ordinarily need to be included in the calculation to determine whether the rate of finance charge on a transaction exceeds the limits prescribed by this section. Under the special rule of subsection (6), however, this result is changed. Note, however, that any prepaid finance charges still must be included in the annual percentage rate calculation for disclosure purposes under the TILA. As a result, it would be possible for a loan contract to disclose an annual percentage rate for purposes of the TILA that is greater than the stated rate allowed by this section, and yet not be in violation of this section. Moreover subsection (6) makes it clear that prepaid finance charges are earned at the time the loan is made. Thus, if a loan is prepaid no refund of any portion of the prepaid finance charges needs to be made, unless the parties have provided for a refund in a signed writing.

   The maximum amount of prepaid finance charges depends on whether or not the transaction is a mortgage loan (including a loan secured by a qualifying manufactured home). Subsection (a) permits lenders who make loans secured by real estate or certain manufactured homes to impose prepaid finance charges of up to 8% of the amount financed. However, the total of all prepaid finance charges payable to the lender or any related person cannot exceed 5% of the amount financed. Two of the largest and most common prepaid finance charges in mortgage loans are "points" (or origination fees) and mortgage broker fees. As noted in the Kansas Comment to subsection (4), first mortgage loans that are subject to the U3C because their loan-to-value ratios exceed 100% remain subject to the interest rate limitations of K.S.A. 16-207. Under subsection (8) of this section, however, the U3C's limits on prepaid finance charges continue to apply to such loans. Similarly, if the parties to a second mortgage loan "opt out" of the U3C's rate ceilings under subsection (3), the U3C's limits on prepaid finance charges continue to apply to the transaction. Subsection (6)(b) permits lenders in loans not secured by real estate or certain manufactured homes to impose nonrefundable prepaid finance charges of up to 2% of the amount financed or $100, whichever is less.

   Prepaid finance charges permitted under subsection (6) are expressed as a percentage of the "amount financed" of the loan. "Amount financed" is defined in K.S.A. 16a-1-301(4) as "the net amount of credit provided to the consumer or on the consumer's behalf." This definition — and the accompanying Kansas regulation, K.A.R. 75-6-26 — tracks the Regulation Z treatment of "amount financed." See Regulation Z, 12 C.F.R. § 226.18(b). This brings up a noteworthy point:

   First, the "amount financed" is usually the principal amount of the loan minus the amount of any prepaid finance charges. (There are some minor exceptions to this general rule under Regulation Z.) This means that, when a prepaid finance charge is imposed, the "amount financed" will be less than the principal amount of the loan. Accordingly, a lender desiring to charge the maximum prepaid finance charge that can be paid to the lender itself under subsection (6)(a), that is 5%, would need to multiply that percentage (5%) by the amount financed, and not by the principal amount of the loan. To illustrate, if the principal amount of the loan is $100 and the prepaid finance charge is $4.76, then the amount financed would be $95.24. ($100 - $4.76 = $95.24.) This prepaid finance charge approximately equals the 5% limit under subsection (6)(a). ($4.76 / $95.24 = 5%, rounding issues aside.) Accordingly, in most situations, the maximum prepaid finance charge under

subsection (6)(a) payable to the lender itself, when expressed as a percentage of the principal amount of the loan, is 4.7619% (.05 / 1.05 = .047619). This analysis assumes the entire prepaid finance charge is payable only to the lender, with no prepaid finance charge payable to a third party (e.g., a mortgage loan broker). If a prepaid finance charge is also payable to a third party (let's say $2 on a $100 principal amount loan), then the 4.7619% multiplier would need to be multiplied by the principal amount of the loan minus the third-party prepaid finance charge (in this example, $98). Similarly, in most cases the maximum prepaid finance charge under subsection (6)(a) payable to the lender and any third parties, again when expressed as a percentage of the principal amount of the loan, would be approximately 7.4% (.08 / 1.08 = .074070).

6. Subsection (9) of this section was added by legislation adopted in 1999 and is directed at the practice known as "loan flipping" — quick, repeated refinancings of a consumer loan that are often accompanied by significant prepaid finance charges. Under this provision, if a loan is refinanced within the first 12 months by the same lender or a related party, then the lender (or the related party) may not receive prepaid finance charges that exceed the specified limits based on the additional amount financed in the subsequent loan. In that regard, the additional amount financed is determined by subtracting the unpaid principal balance of the old loan and the closing costs for the new loan that are not included in the prepaid finance charges for the new loan from the amount financed for the new loan.

7. Subsection (11) of this section applies if the parties to a contract for deed to real estate "opt in" to the U3C and subject the transaction to the 18% limit on periodic finance charges and the 8%/5% limit on prepaid finance charges that apply to first mortgage loans.

8. In a nutshell, the Kansas maximum interest rate or finance charge structure as of July 1, 2000, is as follows:

   (a) Open end consumer loans not secured by a first or second mortgage (or a qualifying manufactured home) — the rate agreed to by the parties, plus prepaid finance charges of 2% of the amount financed or $100, whichever is less (K.S.A. 16a-2-401(1) and (6)(b));

   (b) closed end consumer loans not secured by a first or second mortgage (or a qualifying manufactured home)—36% on the unpaid principal balance which is $860 or less, and 21% on the unpaid principal balance which exceeds $860, plus prepaid finance charges of 2% of the amount financed or $100, whichever is less (K.S.A. 16a-2-401(2) and (6)(b));

   (c) "consumer" loans (not secured by an interest in land) in which the amount financed exceeds $25,000 — 15%, with no specific limit on prepaid finance charges (K.S.A. 16-207(a); not covered by the U3C);

   (d) open end consumer credit sales — the rate agreed to by the parties (K.S.A. 16a-2-202(1));

   (e) closed end consumer credit sales — the rate agreed to by the parties, plus prepaid finance charges of 2% of the amount financed or $100, whichever is less; however, in the case of a closed end credit sale of a qualifying manufactured home, the seller may charge prepaid finance charges of 5% of the amount financed provided that they are used to buy-down the interest rate (K.S.A. 16a-2-201(2) and (3));

   (f) "consumer" credit sales (other than a contract for deed) in which the amount financed exceeds $25,000 — 15%, with no specific limit on prepaid finance charges (K.S.A. 16-207(a); not covered by the U3C);

   (g) consumer loans secured by a first mortgage and contracts for deed having a fixed rate, term and amortization schedule — 1 1/2% above current rate for federal home loan mortgage corporation conventional mortgages, with no specific limit on prepaid finance charges (K.S.A. 16-207(b); rate not covered by the U3C regardless of the rate or loan-to-value ratio,

but prepaid finance charges are subject to the U3C's limits if the loan-to-value ratio exceeds 100%);

(h) consumer loans secured by a subordinate mortgage having a fixed rate, term and amortization schedule — 18% plus prepaid finance charges of 8% of the amount financed (with a 5% of the amount financed limit on prepaid finance charges paid to the lender or a related party) (K.S.A. 16a-2-401(3) and (6)(a));

(i) consumer loans secured by a first or second mortgage and contracts for deed that permit adjustment of the rate, term or amortization schedule — the rate agreed to by the parties, subject to the prepaid finance charge limitations (K.S.A. 16-207(h) and K.S.A. 16a-2-401(6));

(j) non-consumer first mortgage loans and contracts for deed that permit adjustment of the rate, term or amortization schedule — the rate agreed to by the parties, with no specific limit on prepaid finance charges (K.S.A. 16-207(h) and K.S.A. 16a-2-401(7));

(k) consumer loans secured by qualifying manufactured homes — 18% plus prepaid finance charges of 8% of the amount financed (with a 5% of the amount financed limit on prepaid finance charges paid to the lender or a related party) (K.S.A 16a-2-401(3), (4) and (6)(a));

(l) insurance premium financing — $12 per $100 (approximately 21.50%) plus a flat $10 (K.S.A. 40-2610; not covered by the U3C);

(m) pawnbroker transactions — 10% per month (120% per annum) on transactions of $5,000 or less only (K.S.A. 16-719; not covered by the U3C);

(n) business and agricultural loans — the rate agreed to by the parties, with no specific limit on prepaid finance charges (K.S.A. 16-207(f); not covered by the U3C);

(o) pension plan loans to an individual participant or family member— the rate agreed to by the parties, with no specific limit on prepaid finance charges (K.S.A. 16-207(g) and K.S.A. 16a-1-301(17)(b)(ii); not covered by the U3C);

(p) broker-dealer advances to purchase or carry securities —1 1/2% above the broker-dealer's most recent commercial loan or 10%, whichever is higher (K.S.A. 16-214; not covered by the U3C);

(q) delinquent accounts which do not otherwise provide for interest and are not covered by the U3C — 10% (K.S.A. 16-201).

Note that whenever "no specific limit on prepaid finance charges" is used in the foregoing discussion, it is not meant to indicate that prepaid finance charges are prohibited. Rather, it is intended to indicate that there is no allowance for prepaid finance charges that are separate and apart from the general limit on finance charges, and that any prepaid finance charges must be included in determining if the applicable rate ceiling has been exceeded.

Attorney General's Opinions:

- Interest and charges; usury. 79-252.
- Finance charge for consumer loans; supervised lenders. 79-286.
- Supervised lenders; examination of national banks. 80-94.
- Interest and charges; extension of most favored lender doctrine to state banks. 81-158.
- Finance charges; additional charges not included therein. 81-209.
- Consumer loans; finance charge; exemption of adjustable rate loans from maximum finance charge limits. 82-128.
- Consumer loans; finance charge; effect of amendments passed in same legislative session. 82-153.

- Consumer loans; finance charge; exception of adjustable rate loans from maximum finance charge limits. 82-227.
- Consumer loans; maximum finance charges; loans secured by mortgage on real estate; charging of nonrefundable origination fee. 84-2.
- Definitions; supervised lender; supervised financial organization. 84-11.
- Disclosure; discounts for cash purchases. 86-115.
- Interest rates applicable to certain real estate mortgages; loan agreements applying consumer credit code (UCCC) rates. 97-99.

K.S.A. 16a-2-402. (UCCC) Consumer loans pursuant to open end credit; allowable charges per billing cycle.

(1) This section applies only to consumer loans pursuant to 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;

(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 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."

History: L. 1973, ch. 85, § 28; L. 1999, ch. 107, § 16; July 1.

KANSAS COMMENT, 2000:

The actual rate ceilings for open end consumer loans are set forth in K.S.A. 16a-2-401. This section establishes rules for determining the amount of the unpaid balance against which the finance charge rates will be applied. The various methods of computing the unpaid balance, and the effect of these rules, are explained in Kansas comment 2 to K.S.A. 16a-2-202.

K.S.A. 16a-2-403. Prohibiting surcharge on credit or debit cards.

No seller or lessor in any sales or lease transaction or any credit or debit card issuer may impose a surcharge on a card holder 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.

History: L. 1986, ch. 90, § 2; L. 1999, ch. 107, § 17; L. 2010, ch. 64, § 1; July 1.

KANSAS COMMENT, 2010:

1. This section, which is not part of the uniform act, prohibits surcharges for the use of credit cards in sales and lease transactions. The concept of a "surcharge" assumes the existence of a regular price, or norm against which the surcharge can be measured. Presumably, any extra charge which increases the regular price to a credit card customer would be a surcharge. This is the definition used in the TILA; the term "regular price" is defined in TILA, 15 U.S.C.A. § 1601(x) as the tag or posted price.

   Under this section, as under the TILA, surcharges are distinguished from discounts and, discounts for using cash are permitted. See TILA, 15 U.S.C.A. § 1666f; Kan. A.G. Op. No. 86-115. As a practical matter, there is no difference between posting a price for gasoline, for example, of $1.00 per gallon and offering a discount of 4 cents to cash purchasers, and posting a price of 96 cents per gallon and imposing a surcharge of 4 cents to credit card purchasers. Either way, the cash purchaser pays 96 cents and the credit card purchaser pays a dollar. Yet under this section, one practice is legal and the other is not. Abuse or manipulation of this rule might be a deceptive trade practice under the KCPA.

2. Under 15 U.S.C.A. § 1666f, discounts offered for inducing payment by cash instead of credit card are not to be considered finance charges for purposes of state usury laws. This means that such discounts need not be figured into the calculations for purposes of determining whether a creditor exceeds the rate limits imposed by the U3C. TILA 15 U.S.C.A. § 1666f requires that discounts be offered to all prospective buyers and that their availability be disclosed clearly and conspicuously; compliance with this rule exempts such discounts from the finance charge disclosure provisions of the TILA.

Attorney General's Opinions:

- Disclosure; discounts for cash purchases. 86-115.

K.S.A. 16a-2-404. Payday loans; finance charges; rights and duties.

(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) 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 (e) of subsection (1) of K.S.A. 16a-2-501, 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) 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) 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) 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 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) 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) 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) 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) 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) This section shall be supplemental to and a part of the uniform consumer credit code.

History: L. 1993, ch. 75, § 1; L. 1999, ch. 107, § 20; L. 2001, ch. 50, § 1; L. 2004, ch. 29, § 1; L. 2005, ch. 144, § 12; July 1.

KANSAS COMMENT, 2010:

1. This section is not part of the uniform act. These loans take many forms, with some involving the up-front exchange of the consumer's personal check (which may or may not be post-dated) for a discounted amount of cash. The administrator has also found certain arrangements for the purchase of discount coupons for merchandise from a particular catalog and certain internet service contracts to be disguised payday loans requiring supervised loan licensure.
2. Subsection (1) sets special high-limit rate ceilings for payday loans. Several requirements must be met to take advantage of the special rate ceilings. First, the creditor must be a supervised lender. Second, the loan must have a "short term" — which is defined as a minimum term of seven days and a maximum term of less than 30 days. See subsection (2). Third, the parties must anticipate that the loan will be repaid in a single payment. Fourth, the cash advance cannot exceed $500. If all of these requirements are met, then the lender may charge the special rates authorized by this section. This statute must be read in conjunction with federal laws that impose additional restrictions with respect to rates, terms, and required disclosures on loans to military personnel and their dependents. The federal law and implementing regulations preempt state law. See, for example, Section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Talent Amendment), 10 U.S.C.A. § 987, regulations that implement section 670 from the Department of Defense, found at 32 C.F.R. Part 232, and the Servicemembers Civil Relief Act, 50 U.S.C.A. § 501 et seq.
3. Creditors should remember that their ability to impose the special rates authorized by this section does not exempt them from the other provisions of the U3C or the disclosure requirements of the TILA. As a result, the special rates authorized by this section will need to be converted into rather high annual percentage rates for pre-transaction disclosure to the consumer.
4. Other than one return check charge for a personal check given by the consumer in exchange for cash, subsection (5) prohibits other charges of any type from being imposed in connection with a payday loan. This may include, but is not limited to, insurance charges, charges for cashing a check

representing the loan proceeds, collection costs, court costs, service of process fees, and/or attorneys' fees.

5. Subsection (5) permits the creditor to contract for interest if the loan is not repaid at maturity.
6. Subsection (6) prohibits the practice of repaying one payday loan with the proceeds of another payday loan from the same lender or a related interest.

K.S.A. 16a-2-405. Payday loans to military borrowers; restrictions.

(a) Any person who makes a loan under the provisions of K.S.A. 16a-2-404, and amendments thereto, shall:

(1) Not garnish any wages or salary paid to a military borrower for service in the armed forces.

(2) Defer all collection activity against a military borrower who has been deployed to a combat or combat support posting for the duration of such posting.

(3) Not contact any person in the military chain of command of a military borrower in an attempt to collect such loan.

(4) Honor all terms of any repayment agreement between the person making such loan and:

(A) The military borrower; or

(B) any military counselor or third party credit counselor negotiating on behalf of the military borrower.

(5) Not make any loan to any military borrower whenever the military base commander has declared such person's place of business off limits to military personnel.

(b) For the purposes of this section, "military borrower" means any of the following that have been called to active duty:

(1) Any member of the armed forces of the United States;

(2) any member of the national guard; or

(3) any member of the armed forces reserves.

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

History: L. 2005, ch. 144, § 22; July 1.

KANSAS COMMENT, 2010:

The military provisions added to the Code assist in providing extra safeguards under state law to military personnel. This section, as well as K.S.A. 16a-2-404 must be read in conjunction with federal laws that impose additional restrictions with respect to rates, terms, and required disclosures on loans to military personnel and their dependents. The federal law and implementing regulations preempt state law. See, for example, Section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Talent Amendment), 10 U.S.C.A. § 987, regulations that implement section 670 from the Department of Defense, found at 32 C.F.R. Part 232, and the Servicemembers Civil Relief Act, 50 U.S.C.A. § 501 et seq.

Part 5

CONSUMER CREDIT TRANSACTIONS: OTHER CHARGES AND MODIFICATIONS

K.S.A. 16a-2-501. (UCCC) Additional charges.

(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 permitted under K.S.A. 16a-2-502, and amendments thereto, and service charges for insufficient checks 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 this subsection:

(i) For the purposes of this subsection, "insufficient check" means any check, order or draft 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 upon presentation, provided that any check, order or draft which 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.

(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.

(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 does not pay the amount of the insufficient check 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 to draw interest at the contract rate applicable to the preexisting indebtedness.

(v) Notwithstanding the provisions of subparagraph (iii), if an insufficient check has been given to a creditor under a lender credit card, the creditor may charge a service charge for the insufficient check 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 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.

(3) With respect to a consumer loan or a consumer credit sale in either case pursuant to 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, subject to the following limitations:

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

(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.

History: L. 1973, ch. 85, § 29; L. 1987, ch. 80, § 1; L. 1988, ch. 88, § 1; L. 1988, ch. 89, § 1; L. 1988, ch. 87, § 3; L. 1990, ch. 209, § 2; L. 1991, ch. 72, § 1; L. 1996, ch. 174, § 1; L. 1999, ch. 107, § 18; L. 2004, ch. 32, § 1; July 1.

KANSAS COMMENT, 2010:

1. There are two categories of charges a creditor is permitted to make at the beginning of a credit transaction:

   (1) finance charges (K.S.A. 16a-1-301(22)), within the limits established by parts 2 and 4 of this article, and

   (2) additional charges as enumerated in this section.

   The additional charges specified in this section may be imposed in a consumer credit transaction without having to be included in the finance charge for rate ceiling or disclosure purposes. In general, the charges designated as additional charges fall roughly into two categories:

   (1) those closely related to the extension of credit but providing valuable subsidiary benefits to the consumer (e.g., the annual fee for a credit card or line of credit, or the premium for credit life, health, or property insurance), and

(2) those ultimately payable to third parties with no portion of the charge returnable to the creditor by commission or otherwise (e.g., taxes, or filing fees for perfecting security interests).

Paragraph (d) of subsection (1) provides the administrator with the flexibility needed to deal with new kinds of charges as new credit transactions evolve.

"Closing costs" as additional charges are permitted. K.A.R. 75-6-9. See also the Kansas comment to K.S.A. 16a-1-301(10).

The administrator has issued an administrative interpretation under subsection (1)(d) concerning so-called guaranteed auto protection or "GAP" products. See Administrative Interpretation No. 1004. GAP products are designed to provide assurance that there will be no deficiency balance against a consumer in the event that the consumer's financed vehicle experiences a total loss and the consumer's physical damage insurance is not sufficient to pay the debt in full. The administrative interpretation sets forth detailed limitations on the circumstances under which GAP products may be sold, detailed requirements concerning the substantive provisions of the GAP contract and detailed actuarial reporting requirements. GAP contracts and other debt cancellation products are also subject to Regulation Z. The treatment of these products is modeled on the familiar rules for excluding the cost of insurance from the finance charge. Thus, in order to be excluded from the finance charge, the product must not be required by the creditor (and that fact must be disclosed in writing), the fee for the initial term of the coverage must be disclosed, and the consumer must sign or initial a written request for the coverage after receiving these disclosures. See Regulation Z, 12 C.F.R. § 226.4(d)(3).

2. Subsection (1)(e) is not part of the uniform act. It permits a charge to be imposed on dishonored checks offered in payment of pre-existing indebtedness. This rule would apply primarily to checks offered in payment of installment or credit card obligations, and not to bad checks given to merchants for payment in full of goods or services. This charge is conceptually different from the other charges permitted by this section in that it is not a "front-end" charge, or a charge imposed at the beginning of a credit transaction, but instead is more in the nature of a delinquency charge or penalty. Like the other charges permitted in this and the immediately following section, the insufficient check fee may be imposed only if it is provided for in the consumer credit contract. If a charge greater than $10 but not to exceed $30 is imposed, the specific amount must be included in the contract.

   K.S.A. 60-2610 creates treble damage civil liability for worthless checks under the circumstances and procedures spelled out in that section. However, because of the comprehensive nature of the U3C with respect to consumer credit transactions, and because of the rule of this section mandating that any charges other than finance charges be specifically authorized by this section (or elsewhere in the U3C), the liability created by K.S.A. 60-2610 would not apply to consumer credit transactions. The rule of K.S.A. 16a-1-104, providing against implicit repeal of any part of the U3C, supports this conclusion. See also Kan. A.G. Op. No. 90-93 construing the various bad check statutes in Kansas.

3. The TILA requires that charges or premiums for insurance be included in the "finance charge" for the purpose of disclosing the annual percentage rate unless certain strict requirements as to disclosure and voluntariness are met. See Regulation Z 12 C.F.R. § 226.4(d). The tests specified in subsection (2) of this section are not quite identical, but it seems clear that any creditor who meets the tests of Regulation Z will also satisfy the tests of subsection (2). See also Kan. A.G. Op. No. 89-54 comparing the provisions of the U3C and Regulation Z as they relate to single interest insurance programs. The effect of subsection (2) is to require that charges or premiums for insurance be included in the finance charge for ceiling purposes as well unless the stated conditions are satisfied. In that regard the Federal Reserve has interpreted Regulation Z as not requiring the creditor to obtain a specific written indication of the consumer's desire to purchase insurance in connection with post-

loan sales of credit insurance. See Official Staff Commentary to Regulation Z, 12 C.F.R. § 226.4(b)(7) and (8). The administrator has construed subsection (2)(b) in a similar fashion. See Administrative Interpretation No. 1005.

Attorney General's Opinions:

- Finance charges; additional charges not included therein. 81-209.
- Property insurance; damage to property unrelated to credit transaction. 86-42.
- Consumer credit insurance; property and liability insurance. 87-3.
- Consumer credit transaction; blanket single interest insurance programs. 89-54.
- Worthless checks; statutory service charge; preexisting indebtedness; notice; refusal of payment. 90-93.

K.S.A. 16a-2-502. (UCCC) Delinquency charges.

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

(3) A delinquency charge may be collected only once on an installment however long it remains in default. A delinquency charge may be collected at the time it accrues 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.

(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), the parties to a lender credit card agreement may contract for a delinquency charge 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 payment.

(7) Notwithstanding subsections (1), (2), (4), (5) and (6), no delinquency charge 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 on an earlier installment may not have been paid in full.

History: L. 1973, ch. 85, § 30; L. 1975, ch. 127, § 3; L. 1988, ch. 85, § 7; L. 1988, ch. 86, § 4; L. 1988, ch. 87, § 4; L. 1992, ch. 46, § 1; L. 1993, ch. 200, § 8; L. 1994, ch. 39, § 1; L. 1996, ch. 166, § 4; L. 1999, ch. 107, § 19; July 1.

KANSAS COMMENT, 2010:

1. This section permits creditors to impose delinquency charges for late installments, as set forth therein. In order for a delinquency charge to be imposed, however, it must be provided for by the underlying consumer credit contract. Subsection (1) follows the model of the uniform act and sets the maximum delinquency charge by reference to a percentage of the unpaid amount of an installment with a specific dollar cap — 5% of the unpaid amount of the installment, but not more than $25.00. Note that the 5% limit is only applied to the unpaid amount of the installment, not to the entire installment. Thus, if the consumer makes $950 of a $1,000 installment on time, the maximum delinquency charge under subsection (1) is $2.50 ($50 x 5% = $2.50). Thus, only if the unpaid amount of the installment is $500 or more does the $25 cap come into play. In the alternative, per subsection (2), the creditor may contract for a flat delinquency charge of up to $5 for installments of $25 and less and a delinquency charge of up to $10 on installments in excess of $25.

2. Subsections (3), (4) and (5) are aimed at the abusive practice known as "pyramiding," or the imposition of multiple delinquency charges stemming from a single delayed payment. If a consumer missed the installment due in January, for example, but then paid the installment due in February on time, the creditor might try to apply the February payment to the missed January installment. This would create a delinquency for February as well as for January, and indeed for all remaining installments under the contract if the debtor continued to make subsequent payments on time but did not make up the January payment. Subsection (3) is intended to limit the creditor to a single delinquency charge (for the missed January payment), and attempts to prevent the creditor from "pyramiding," or collecting delinquency charges for the later months. The F.T.C. Credit Practices Rule, 16 C.F.R. § 444.4, contains a similar rule.

   Subsection (4) addresses a different sort of pyramiding. Under the law of some states, if the consumer's payments were due on the first of the month and the January payment of $100 was not made until the 15th, the creditor could assess a late payment of $5, and then allocate the $100 payment received on February 1st as follows: $5 to the delinquency charge for January, and $95 to the February payment. This would cause the February payment to be delinquent as well, and the creditor could then impose another delinquency charge and allocate the March payment in a similar fashion. Following this pattern, if the consumer made each of the remaining $100 payments on time for the balance of the contract, the consumer would incur a delinquency charge for each month because the creditor could allocate current payments to unpaid delinquency charges in past periods. Subsection (4) meets this problem by compelling the creditor to apply the full $100 payment received on February 1 to the payment due that month, and so on for the remaining payments. Hence, the creditor could collect the delinquency charge only for January if all other payments were made on time. Subsection (5) codifies the long-standing position of the administrator previously set forth in the administrative regulations.

3. Subsections (6) and (7) were added by legislation adopted in 1999 and provide special rules for lender credit cards. Under these special rules, the normal 10-day grace period and the normal limits on delinquency charges do not apply. Thus, a creditor under a lender credit card may contract for a delinquency charge of any amount and may impose it if an installment is not paid in full on the first business day following the scheduled due date. In 2009, TILA, 15 U.S.C. § 1601 et seq. was

amended to include the "Credit Cardholders Bill of Rights Act of 2009." The Credit Cardholders Bill of Rights Act of 2009 states that a payment received by the creditor by 5 p.m. on the due date, shall be considered timely payment.

K.S.A. 16a-2-504. (UCCC) Finance charge on refinancing.

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. For the purpose of determining the finance charge permitted, the amount financed resulting from the refinancing shall be comprised of the total of the unpaid balance and the accrued charges on the date of the refinancing.

History: L. 1973, ch. 85, § 32; L. 1993, ch. 200, § 9; Jan. 1, 1994.

KANSAS COMMENT, 2010:

This section provides the method of determining the amount financed on which the finance charge is based when a consumer credit transaction is refinanced, and sets the ceiling for the charge. The amount financed for the new transaction is equal to the unpaid balance of the old transaction plus accrued charges at the date of refinancing. See K.S.A. 16a-2-401(9) limitations on prepaid finance charges if refinancing.

K.S.A. 16a-2-505. (UCCC) Finance charge on consolidation.

(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 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 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 a consumer loan and the amount of the finance charge is governed by the provisions on finance charge 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.

History: L. 1973, ch. 85, § 33; L. 1993, ch. 200, § 10; Jan. 1, 1994.

KANSAS COMMENT, 2000:

1. This section permits the consolidation of balances arising from different transactions between the same consumer and creditor. The unpaid balance of the amount financed on the old transaction (together with any accrued charges) on the date of the consolidation is simply added to the amount financed with respect to the later transaction. The consolidated total is then payable on one schedule of payments. This usually means that the maturity of the first transaction will be extended.
2. If a series of secured credit sales by the same seller is consolidated, the seller must also comply with the rules for allocating payments in cross-collateral transactions. See K.S.A. 16a-3-302 and 16a-3-303.

K.S.A. 16a-2-506. (UCCC) Advances to perform covenants of consumer.

(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. Within a reasonable time after advancing any sums, he 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 the rate stated to the consumer pursuant to law in a disclosure statement, except that with respect to 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 credit (section 16a-2-202) or for consumer loans (subsection (1) or (2) of section 16a-2-401), whichever is appropriate.

History: L. 1973, ch. 85, § 34; Jan. 1, 1974.

KANSAS COMMENT, 2010:

Under this section, and if the agreement so provides, in some instances the creditor may add to the debt sums paid or advanced for the performance of duties on behalf of the consumer. Before doing so, however, the creditor must give prior notice to the consumer and must also disclose the details of the transaction to the consumer after the amount has been added. If the original transaction was made pursuant to open end credit, the creditor may add the amount of the advance to the unpaid balance of the account. In other cases the creditor may impose a finance charge on the additional amounts paid or advanced at a rate not in excess of the rate disclosed to the consumer for the original transaction. Normally the creditor would compute this charge for the remaining period of the agreement, and increase the amount of the consumer's remaining payments accordingly.

K.S.A. 16a-2-507. (UCCC) Recovery of collection costs and attorney fees.

With respect to a consumer credit transaction, the agreement may provide for the payment by the debtor of reasonable costs of collection, including, but not limited to, court costs, attorney fees and collection agency fees, except that such costs of collection:

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

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

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

A provision in violation of this section is unenforceable.

History: L. 1973, ch. 85, § 35; L. 1994, ch. 276, § 1; July 1.

KANSAS COMMENT, 2010:

1. The U3C not only places limitations on the amount that a creditor may charge a consumer for credit at the time the agreement is entered into (parts 2 and 4 of article 2), but also on the amount that the creditor may charge a defaulting consumer for collecting the debt. See also K.S.A. 16a-3-402.
2. This section permits the payment by the debtor of the reasonable costs of collection, including attorneys' fees or collection agency fees. However, there are significant limits on the creditor's ability to recover such costs. First, fees paid to an in-house attorney or collection agent on a salary may not be recovered. Second, the creditor may not recover both attorneys' fees and collection agency fees. Finally, the costs of collection may not exceed 15% of the unpaid debt after default. Note that the 15% limit is based on the amount of the "debt" — not on the unpaid "principal" balance. Thus, the creditor should be allowed to include other items in the computation such as unpaid delinquency charges, unpaid insurance premiums and any amounts that the creditor has advanced under K.S.A. 16a-2-506.
3. It is important to note that K.S.A. 16a-2-507, like many of the other post-transaction provisions of the U3C providing for costs or fees, is not self-executing. The costs of collection (including court costs, attorneys' fees or collection agency fees) are recoverable from the consumer only if the underlying agreement so provides. In Credit Union One of Kansas v. Stamm, 254 Kan. 367, 867 P.2d 285 (1994), the court held that a contract provision in a consumer credit transaction authorizing

the creditor to recover attorney fees to the extent authorized by law, did not violate the prohibition in K.S.A. 16a-2-507 (overruling Halloran v. North Plaza State Bank, 17 Kan.App.2d 840, 844 P.2d 764 (1993)). Compare the disclosure required after default under K.S.A. 16a-5-110.

Attorney General's Opinions:

- Attorney fees; national direct student loans. 86-113.

K.S.A. 16a-2-508. (UCCC) Conversion to open end credit.

The parties may agree to add the unpaid balance of a consumer credit transaction not made pursuant to open end credit to the consumer's open end credit account with the creditor. The unpaid balance so added is an amount equal to the amount financed determined according to the provisions on finance charge on refinancing (section 16a-2-504).

History: L. 1973, ch. 85, § 36; Jan. 1, 1974.

KANSAS COMMENT, 2000:

The parties may agree to add a closed end consumer loan or consumer credit sale to an open end account. This section provides that the old loan or sale is treated as being refinanced at the time of the conversion and the unpaid balance resulting from the refinancing (K.S.A. 16a-2-504) is added to the open end account.

K.S.A. 16a-2-509. (UCCC) Right to prepay.

The consumer may prepay in full the unpaid balance of a consumer credit transaction at any time without penalty.

History: L. 1973, ch. 85, § 37; L. 1993, ch. 200, § 11; Jan. 1, 1994.

KANSAS COMMENT, 2010:

This section does not apply to a first mortgage loan unless otherwise governed by the U3C. See K.S.A. 16a-1-301(17)(b). Nor does this section give the consumer a right to make a partial prepayment without the consent of the creditor.

Attorney General's Opinions:

- Interest and charges; usury. 79-252.
- Consumer credit transactions; prohibition on prepayment penalties; preemption as to national banks. 83-132.

K.S.A. 16a-2-510. (UCCC) Prepayment; minimum charges; judgments; rebate.

(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 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, 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 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 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.

History: L. 1973, ch. 85, § 38; L. 1974, ch. 90, § 2; L. 1982, ch. 93, § 4; L. 1988, ch. 85, § 8; L. 1988, ch. 86, § 5; L. 1993, ch. 200, § 12; L. 1999, ch. 107, § 21; July 1.

KANSAS COMMENT, 2010:

1. Subsection (1) permits the creditor to collect or retain specified minimum charges upon prepayment of any closed end consumer credit transaction if the minimum charge is contracted for and if the finance charge earned at the time of prepayment is less than the minimum charge. The permitted minimum charges are those for which the TILA requires no annual percentage rate disclosure. See Regulation Z, 12 C.F.R. § 226.18, fn 42.
2. The actuarial method has been mandated in all consumer credit transactions (other than precomputed closed end credit sales under K.S.A. 16a-2-201(5), which itself requires rebates to be calculated under the actuarial method).

Attorney General's Opinions:

- Interest and charges; usury. 79-252.

Article 3 – REGULATION OF AGREEMENTS AND PRACTICES

Part 1

GENERAL PROVISIONS

K.S.A. 16a-3-101. (UCCC) Short title.

This article shall be known and may be cited as revised uniform consumer credit code—regulation of agreements and practices.

History: L. 1973, ch. 85, § 39; Jan. 1, 1974.

KANSAS COMMENT, 2000:

The U3C recognizes that a basic issue in the regulation of consumer credit is adequate protection of consumers from creditor practices and agreements that are abusive or have a potential for abuse. In addition to the notice and disclosure requirements found in part 2 of this article, many restrictions on creditor practices are also included in this article. Many provisions limit the actual, substantive terms creditors may include in their agreements. These include limitations on collateral in consumer sales and leases, prohibition of certain abusive practices such as balloon payments and referral sales, and abolition of the holder in due course doctrine in most consumer transactions. In addition, many limitations on creditor remedies are found in article 5 of the U3C.

K.S.A. 16a-3-102. (UCCC) Scope.

Parts 2, 3, and 4 of this article apply, respectively, to disclosure, limitations on agreements and practices, and limitations on consumer's liability with respect to consumer credit transactions.

History: L. 1973, ch. 85, § 40; Jan. 1, 1974.

KANSAS COMMENT, 2000:

See the Kansas comment to the preceding section.

Part 2

DISCLOSURE

K.S.A. 16a-3-201. (UCCC) Consumer leases.

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, and amendments thereto.

History: L. 1973, ch. 85, § 41; L. 1992, ch. 46, § 2; July 1.

KANSAS COMMENT, 2010:

1. The U3C covers only those leases which exceed four months in duration. See the Kansas comment to K.S.A. 16a-1-301(16). Note that potential liability at the end of the lease term is limited by K.S.A. 16a-3-401; see the Kansas comment to that section.
2. In 1976, Congress added the Consumer Leasing Act (CLA) to the TILA, 15 U.S.C.A. § 1667 et seq. The CLA contains its own requirements for disclosure in consumer leasing transactions, and inconsistent state law is preempted. See Federal Reserve Board Regulation M, 12 C.F.R. Part 213. As had earlier been done for consumer credit sales and loans, the administrator has adopted a regulation that incorporates the federal disclosure requirements for leases by reference. See K.A.R. 75-6-26. See also the Kansas comment to K.S.A. 16a-3-401.

K.S.A. 16a-3-202. (UCCC) Notice to consumer.

A written agreement which requires or provides for the signature of the consumer and which evidences a consumer credit transaction other than one pursuant to open end credit shall contain a clear, conspicuous, and printed notice to the consumer that he should not sign the agreement before reading it, and that he is entitled to a copy of the agreement and to prepay the unpaid balance at any time without penalty. The following notice if clearly and conspicuously printed complies with this section:

> 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.

History: L. 1973, ch. 85, § 42; Jan. 1, 1974.

KANSAS COMMENT, 2010:

The disclosures required in this section are intended to give the consumer some important information about closed end credit agreements or consumer leases. As to the definition of "conspicuous," see K.S.A. 16a-1-301(12).

K.S.A. 16a-3-203. (UCCC) Notice of assignment.

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 reasonable proof that the assignment has been made and unless he does so the consumer may pay the original creditor.

History: L. 1973, ch. 85, § 43; Jan. 1, 1974.

KANSAS COMMENT, 2010:

The consumer is protected in paying the original creditor until he or she receives notice of an assignment. This section is derived from the UCC, K.S.A. 84-9-406. The assignee should also be mindful of the potential for an affirmative duty to give certain notices with respect to refunds of premiums on consumer credit insurance. See the Kansas comment to K.S.A. 16a-4-108(3).

K.S.A. 16a-3-203a. Receipt of payment by assignor.

If 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.

History: L. 1996, ch. 166, § 1; July 1.

KANSAS COMMENT, 2010:

The Kansas Comment, 2000 in the K.S.A. bound volume is no longer valid.

K.S.A. 16a-3-204. (UCCC) Change in terms of open end credit accounts.

(1) If a creditor makes a change in the terms of an 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 credit account whether or not the change is authorized by prior agreement. Except as provided in subsection (3), the lender 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.

History: L. 1973, ch. 85, § 44; L. 1980, ch. 77, § 4; L. 1981, ch. 94, § 4; L. 1982, ch. 93, § 5; L. 1983, ch. 79, § 4; L. 1985, ch. 82, § 4; L. 1987, ch. 81, § 1; L. 1993, ch. 49, § 1; July 1.

KANSAS COMMENT, 2010:

In 2009, the Credit Cardholders Bill of Rights Act of 2009 was added to TILA 15 U.S.C. § 1601 et seq. Such Act preempts this provision to the extent it requires all creditors to provide at least 45 days notice to the consumer prior to the effective date of a rate increase. The notice must completely and conspicuously describe the changes in the APR and describe how the increase will apply to an existing balance. If the customer disapproves of the change he or she may avoid any liability predicated on it

(a) with respect to future transactions, by refraining from making further purchases or loans under the revolving account, and

(b) with respect to the balance in the account at the time of the notice of change, by paying it in full before the change takes effect.

K.S.A. 16a-3-205. (UCCC) Receipts; statements of account; evidence of payment.

(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 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 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 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.

History: L. 1973, ch. 85; § 45; L. 2005, ch. 144, § 13; July 1.

KANSAS COMMENT, 2000:

1. Subsection (1) assures consumers of receipts for payments made in currency but imposes no duty on creditors to give receipts for payments made by check, money order, or the like. Sending periodic statements for open end credit accounts (Regulation Z § 226.7) showing payments made relieves the creditor of any further duty to send receipts. A creditor may also comply with this section by sending periodic statements showing payments in closed end transactions.
2. Subsection (2) allows consumers to obtain a statement of account in closed end transactions. The consumer's receipt of periodic statements serves this need in open end credit accounts.

3. Subsection (3) allows the consumer to obtain evidence of satisfaction upon payment in full of closed end credit obligations. Again, this requirement is unnecessary in open end credit owing to the creditor's duty to reflect payments in periodic statements.

K.S.A. 16a-3-206. (UCCC) Compliance with rules and regulations; truth in lending.

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, and amendments thereto.

History: L. 1973, ch. 85, § 46; L. 1981, ch. 93, § 6; L. 1987, ch. 80, § 2; July 1.

KANSAS COMMENT, 2010:

The disclosure requirements of the TILA (15 U.S.C.A. § 1601 et seq.) are incorporated by reference pursuant to rules and regulations adopted by the administrator under K.S.A. 16a-6-117 and this section. See K.A.R. 75-6-26. The purpose is to obtain dual administrative enforcement of the TILA. See K.S.A. 16a-5-203(6). The U3C does contain a few disclosure requirements that go beyond federal law. See K.S.A. 16a-3-202, 16a-2-404(4), and 16a-3-207.

Attorney General's Opinions:

- Arrests; citations; procedures and penalties; appearance bonds; use of credit cards. 82-165

K.S.A. 16a-3-207. Consumer loans secured by certain real estate mortgages; appraisals and notice.

(1) The provisions of this section apply only to a consumer loan which is secured by a first mortgage or a second mortgage on the consumer's principal residence. The provisions of this section do not apply to a lender who is a supervised financial organization.

(2) Before making a loan subject to this section, a lender shall obtain the appraised value of the real estate to be encumbered. The appraisal evidencing the appraised value shall be retained by the lender and preserved in accordance with the recordkeeping requirements set forth in K.S.A. 16a-2-304, and amendments thereto.

(3) If, based upon the appraisal, the loan to value ratio of the loan exceeds 100%, then the lender shall deliver to the consumer:

(a) A free copy of the appraisal; and

(b) a written notice regarding high loan-to-value mortgages and the availability of consumer credit counseling. The administrator may adopt rules and regulations regarding the form of the notice to be delivered to the consumer and the names, addresses and telephone numbers of selected consumer credit counseling providers.

(4) The notice referred to in subsection (3) shall be given to the consumer not less than three days before the loan is made. The notice must be retained by the lender and preserved in accordance with the record-keeping requirements set forth in K.S.A. 16a-2-304, and amendments thereto.

(5) If, within three days after receiving the notice, the consumer elects not to enter into the loan transaction, then the lender must promptly refund to the consumer any application fees or other amounts paid by the consumer to the lender. However, the lender is not required to refund any bona fide out-of-pocket costs incurred by the lender before the consumer elected not to enter into the loan transaction, provided that such costs were paid or are payable to a person or persons not related to the lender. Notwithstanding the provisions of this subsection, a bona fide appraisal fee paid or payable to a person related to the lender need not be refunded to the consumer.

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

History: L. 1999, ch. 107, § 1; L. 2000, ch. 64, § 2; July 1.

KANSAS COMMENT, 2010:

1. This section requires a lender to obtain the appraised value of the real estate covered by a first or second mortgage loan on the consumer's principal residence. See also K.S.A. 16a-1-301(6) for additional guidance on acceptable appraisals.
2. If the loan-to-value ratio (K.S.A. 16a-1-301(28)) of a proposed loan exceeds 100%, then the lender must give the consumer a free copy of the appraisal and a notice regarding high loan-to-value mortgages. Guidance on the form of the notice can be found in Administrative Interpretation No. 1008. The notice must be given to the consumer at least 3 days before the loan is made. During the 3-day "cooling off" period, the consumer may decide not to close the loan and receive a full refund of all application fees and other charges (other than any actual out-of-pocket fees paid by the lender to an unrelated third party).

K.S.A. 16a-3-208. Advertising; prohibited conduct.

(1) A supervised lender shall not, directly or indirectly, make a false, misleading or deceptive advertisement regarding loans or the availability of loans.

(2) A supervised lender shall not advertise any size of 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.

History: L. 1999, ch. 107, § 2; July 1.

KANSAS COMMENT, 2010:

This type of deceptive advertisement prohibited by this section may violate the KCPA and expose the lender to penalties under both statutes.

K.S.A. 16a-3-209. Calendar days used for computing time.

(a) Unless otherwise specifically stated, for the purposes of K.S.A. 16a-1-101 through 16a-9-102, 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.

History: L. 2009, ch. 29. § 1; July 1.

Part 3

LIMITATIONS ON AGREEMENTS AND PRACTICES

K.S.A. 16a-3-301. (UCCC) Security in sales or leases.

(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) 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 arising from the lease.

(3) A security interest taken in violation of this section is void.

History: L. 1973, ch. 85, § 47; L. 1981, ch. 93, § 7; L. 1999, ch. 107, § 22; July 1.

KANSAS COMMENT, 2010:

1. This section limits sellers and lessors with respect to the manner in which they may secure the obligation arising from a consumer credit sale (K.S.A. 16a-1-301(14)) or consumer lease (K.S.A. 16a-1-301(16)). Additional restrictions on collateral are found in the F.T.C. Credit Practices Rule, 16 C.F.R. Part 444, and Federal Reserve Board Regulation AA, 12 C.F.R. Part 227, which prohibit lenders and retail installment sellers of goods or services from receiving from any consumer an obligation which constitutes or contains a non-possessory, non-purchase money security interest in most household goods. See also K.S.A. 84-9-204, which limits security interests in after-acquired consumer goods.

2. Sales of goods. Under this section, a seller may take a security interest in the goods sold but not in other goods or land of the buyer unless the goods sold become closely connected with the other goods or land in which the security interest is taken. For example, an appliance dealer may retain a security interest in a washing machine sold but may not take a security interest in other appliances of the buyer to secure the sale obligation unless the dealer complies with K.S.A. 16a-3-302. Except as provided in K.S.A. 16a-3-302, a seller of goods may take additional security for the sale obligation in other goods or land of the buyer only if the debt secured is substantial $900 in the case of security interest in goods, $3,000 in the case of a security interest in land — and then only if the other goods or land in which the additional security interest is taken are closely related to the goods sold, i.e.,

   (a) goods in which the goods sold are installed or to which they are annexed (accessions), or

   (b) land to which the goods are annexed (fixtures) or which is maintained, repaired, or improved by the goods sold.

   The F.T.C. Credit Practices Rule does not affect the ability of sellers of goods to take security interests in land in these limited circumstances. For example, a mobile home dealer could take a mortgage on the consumer's lot in the mobile home park. However, the F.T.C. Rule may affect the seller of accessions. If the goods into which the goods sold are installed or annexed are household goods, the seller could not take the larger item as collateral. For example, a seller of a new engine or sound system could take a security interest in the car into which these items are installed, but a seller of a new motor for a washing machine could not take the washing machine as collateral because that would create a non-possessory, non-purchase money security interest in household goods in violation of the F.T.C. Rule.

3. Sales of services. Under this section, the seller may not take a security interest in goods or land of the buyer to secure an obligation arising out of the sale of services unless the services are performed on the goods or are used to maintain, repair, or improve the land. Even then, as in cases involving sales of goods, the debt secured must be substantial — $900 in the case of a security interest in goods and $3,000 in the case of a security interest in land. Thus a seller of dancing lessons may not take a security interest in goods or land of the buyer, and a carpenter or painter may take a security interest in the buyer's residence only if the debt arising from these services is $3,000 or more. Under the F.T.C. Rule, the seller of services may not take a security interest in household goods even if the services are performed on household goods. Thus an appliance repairman who repairs a consumer's washing machine may not take a security interest in that washing machine to secure the repair bill.

4. Sales of land. The seller can retain a security interest only in the land sold and not in other goods or land of the buyer. It should be noted, however, that this section applies only to consumer credit sales of land which are within the scope of the U3C. Most land sales are excluded from the coverage of the U3C. See the Kansas comment to K.S.A. 16a-1-301(14). See also K.S.A. 16a-2-307, which contains additional restrictions on taking land as security in certain supervised loans.

5. Consumer leases. A lessor may not secure the lease obligation by taking a security interest in property of the lessee. The lease itself, of course, serves as a form of security with respect to the leased property.

Attorney General's Opinions:

- Consumer credit insurance; property and liability insurance. 87-3.
- Property and liability insurance. 87-47.

K.S.A. 16a-3-302. (UCCC) Cross-collateral.

(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 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 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.

History: L. 1973, ch. 85, § 48; Jan. 1, 1974.

KANSAS COMMENT, 2010:

1. A seller who sells goods on credit to a buyer in more than one sale may secure the debts arising from each sale by a cross-collateral security interest in the other goods sold so long as the seller has an existing security interest in the other goods. K.S.A. 16a-3-303 specifies when a seller loses a security interest in goods in a cross-collateral situation.
2. Cross-collateral clauses are most commonly used by sellers of furniture and appliances, and their use of these clauses may be affected by the F.T.C. Credit Practices Rule, 16 C.F.R. Part 444, which prohibits the taking of non-possessory, non-purchase money security interests in most household goods. See the Kansas comment to K.S.A. 16a-3-301. Under the F.T.C. Rule, cross-collateral clauses that attempt to make household goods serve as security for all current and future loans are invalid. However, the F.T.C. Rule does not prohibit retention of a security interest in household goods upon refinancing or consolidation of an original purchase money transaction. Thus, cross-collateral clauses are permitted to the extent that they allow a creditor to retain a security interest in refinancing or consolidating a prior transaction in which the security interest arose. As a result, household goods which secure the prior loan may continue to secure a refinanced or consolidated loan, but clauses that go beyond refinancing or consolidation of purchase money transactions violate the F.T.C. Rule if they include household goods.

3. In cases not involving household goods, subsection (1) allows cross-collateral to be taken either for separate debts or for consolidated debts, but subsection (2) limits the rate of the finance charge that a seller may charge in the separate debt case to that chargeable had the debts been consolidated pursuant to K.S.A. 16a-2-505(1).

K.S.A. 16a-3-303. (UCCC) Debt secured by cross-collateral.

(1) If debts arising from two or more consumer credit sales, other than sales pursuant to 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 terminate as the debts originally incurred with respect to each item is paid.

(2) Payments received by the seller upon an 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.

History: L. 1973, ch. 85, § 49; L. 1981, ch. 93, § 8; July 1.

KANSAS COMMENT, 2010:

1. When a seller consolidates debts arising from multiple sales and secures the consolidated debt by security interests in the goods sold in those sales, or when a seller secures separate debts by cross-collateral (K.S.A. 16a-3-302), this section prevents the seller from retaining a security interest in all of the goods until the buyer's entire debt is paid. The basis of this section is that a security interest in goods terminates when the debt incurred in the purchase of those goods is paid. For the purpose of determining when this debt is paid, subsection (1) first allocates the buyer's payments to the debts first incurred. Thus, if the seller consolidates debts of $100, $200, and $300 arising from sales made in that order, the security interest in the goods purchased pursuant to the $100 sale terminates when $100 of the consolidated debt is paid. If the seller does not consolidate these debts but secures them by cross-collateral, all of the buyer's payments must be allocated to the $100 debt until it is paid off, and so forth. Subsection (2) applies this first-payments-against-first-debts rule to open end credit accounts.
2. Subsection (3) applies to the case in which the buyer purchases a $750 TV in one department at 9:30 a.m. and a $150 printer in another department at 10:00 a.m. Subsequently, the debts are consolidated. This subsection relieves the seller of having to keep records of the exact hour a sale is made.

3. This section applies only to credit sales; nothing in the U3C prohibits lenders from taking cross-collateral and applying the payments in any way they choose. However, In re Gibson, 16 B.R. 257 (Bankr. D. Kan. 1981), the court applied the first-payments-against-first-debts rule of this section by analogy to a cross-collateralized loan. Contrary to the rule of this section, however, the court also ruled that after the first item was paid off the lien was not extinguished; instead, it merely became non-purchase money and continued to secure debts attributable to other items.

   Under the F.T.C. Credit Practices Rule, if the item paid off was household goods, any continuing non-possessory, non-purchase money security interest would be invalid. See the discussion of the F.T.C. Rule in the Kansas comments to K.S.A. 16a-3-301 and 16a-3-302.

K.S.A. 16a-3-304. (UCCC) Use of multiple agreements.

(1) A creditor may not 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).

(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).

History: L. 1973, ch. 85, § 50; L. 1977, ch. 71, § 2; L. 1999, ch. 107, § 23; L. 2005, ch. 144, § 14; July 1.

KANSAS COMMENT, 2000:

Originally, the graduated rate ceiling structure of the U3C allowed a creditor to charge higher rates on smaller balances. However, given the general lifting of the U3C's rate ceilings, this concern now only applies to closed end, non-real estate secured consumer loans and payday loans. See K.S.A. 16a-2-401(2) and K.S.A. 16a-2-404. In order to achieve maximum rates on those transactions, a creditor might arbitrarily divide a transaction into two or more agreements so that the amount financed under each is within the range on which the highest rate can be charged. By doing so, the creditor violates this section and subsection (2) makes the excess amount of finance charge provided for an excess charge for purposes of the provisions on remedies by consumers and the administrator. For example, a licensed lender violates this section by manipulating the transaction by directing a consumer seeking a $1,200 loan to sign one note for $600 and the consumer's spouse to sign another note for $600 in order to charge the highest rate permitted by K.S.A. 16a-2-401(2). On the other hand, the lender would not violate this section if one spouse borrowed $600 at one time and the other spouse on a voluntary separate loan application borrowed $600 at some other time.302.

K.S.A. 16a-3-305. (UCCC) No assignment of earnings.

(1) A creditor may not 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 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 secured by an assignment of earnings.

History: L. 1973, ch. 85, § 51; Jan. 1, 1974.

KANSAS COMMENT, 2010:

The U3C recognizes the potential for hardship to a consumer and his or her dependents that could result from a disruption of the steady flow of family income. Just as K.S.A. 60-730 prevents a creditor from attaching unpaid earnings of a debtor before obtaining a judgment, this provision precludes a creditor from reaching the debtor's earnings pursuant to an irrevocable wage assignment obtained from the debtor. The purpose of both limitations is to afford the debtor an opportunity to have the debt determined by a court before the debtor's unpaid earnings are taken by a creditor. This provision prohibits a creditor from taking either an assignment of earnings as payment or as security for payment for a debt or a sale of earnings in payment of the price or rental. Under K.S.A. 16a-1-301(21), the definition of "earnings" includes periodic payments under pension, retirement, or disability programs; thus this section also prohibits assignments of these entitlements.

A revocable payroll deduction authorization in favor of a creditor, as frequently used by credit unions, is authorized by this section. The F.T.C. Credit Practices Rule, 16 C.F.R. Part 444, prohibits irrevocable assignments of earnings, but permits certain irrevocable payroll deduction plans. Under this section, however, payroll deduction plans are permitted only if they are revocable. See also K.A.R. 75-6-23 requiring a separate form for authorizing a revocable payroll deduction that contains a clear and conspicuous notice to the debtor that the deduction may be revoked at any time and that must be worded so that the form may be used for revoking the deduction.

K.S.A. 16a-3-306. (UCCC) Authorization to confess judgment prohibited.

A consumer may not authorize any person to confess judgment on a claim arising out of a consumer credit transaction. An authorization in violation of this section is void.

History: L. 1973, ch. 85, § 52; Jan. 1, 1974.

KANSAS COMMENT, 2010:

This section does not prohibit the consumer from confessing judgment in connection with litigation. A similar prohibition is found in the F.T.C. Credit Practices Rule, 16 C.F.R. Part 444.

K.S.A. 16a-3-307. (UCCC) Certain negotiable instruments prohibited.

With respect to a consumer credit sale or consumer lease, the creditor may not take a negotiable instrument other than a currently dated check as evidence of the obligation of the buyer or lessee.

History: L. 1973, ch. 85, § 53; L. 1981, ch. 93, § 9; July 1.

KANSAS COMMENT, 2000:

This section, together with K.S.A. 16a-3-403, 16a-3-404, and 16a-3-405, states a major tenet of the U3C, that the holder in due course doctrine should be abrogated in consumer cases and that the assignee of any note or installment contract arising from a consumer credit sale or lease should be subject to any defenses and claims that the buyer had against the original seller or lessor arising out of the sale or lease. Whatever beneficial effects holder in due course doctrine may have in promoting the currency of paper is greatly outweighed by the harshness of its consequences in denying consumers the right to raise valid defenses arising out of consumer credit transactions. The first step in abolition of the doctrine is the prohibition found in this section against the use of negotiable instruments in consumer credit sales and consumer leases. The F.T.C. Holder in Due Course Regulations, 16 C.F.R. Part 433, also effectively abolishes the holder in due course doctrine in consumer credit sales and leases by requiring a printed legend on consumer contracts which renders the paper non-negotiable. See the Kansas comments to K.S.A. 16a-3-404 and 16a-3-405.

K.S.A. 16a-3-308. (UCCC) Balloon payments.

With respect to a consumer credit transaction, 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, the consumer has 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 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.

History: L. 1973, ch. 85, § 54; L. 1981, ch. 93, § 10; L. 1991, ch. 73, § 1; L. 2002, ch. 125, § 1; L. 2009, ch. 29, § 20; July 1.

KANSAS COMMENT, 2010:

Balloon payments can be used to induce a buyer or borrower to enter into a burdensome contract by offering invitingly small installment payments until the end of the contract when the buyer or borrower is confronted with a balloon payment too large to pay. See also K.S.A. 16a-2-308, prohibiting balloon payments in certain small supervised loans. This section meets the threat of misuse of balloon payments by giving the consumer the right to compel refinancing of the amount of the balloon payment at the time it is due without penalty and under terms no less favorable than those of the original transaction. Under the refinancing, the size of the installment payments may not exceed the average scheduled payments (excluding the balloon payment) and the rate of finance charge may not exceed that under the original agreement. If the balloon payment was agreed to by the parties to accommodate the consumer because of his seasonal or irregular income expectations, the abuse at which this section is aimed is not present and the section does not apply.

Attorney General's Opinions:

- Interest and charges; usury. 79-252.
- Limitations on consumers' liability; balloon payments; denial of right to refinance. 82-143.

K.S.A. 16a-3-308a. Loans secured by mortgages on consumer's principal residence; negative amortization and balloon payments prohibited.

(1) A loan subject to this section may not provide for the negative amortization of principal or a balloon payment. A loan payment is not a balloon payment if the amount of the payment is less than twice the amount of any other payment.

(2) Subsection (1) applies to a consumer loan which is secured by a first mortgage or a second mortgage on the consumer's principal residence and with respect to which

(a) the loan-to-value ratio exceeds 100% at the time the loan is made or

(b) the annual percentage rate exceeds the code mortgage rate.

Notwithstanding the foregoing, subsection (1) does not apply to a loan pursuant to open end credit; a purchase-money loan incurred to acquire or construct the consumer's principal residence; or a reverse mortgage transaction.

(3) The creditor must disburse the proceeds of a consumer loan secured by a first mortgage or a second mortgage 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.

(4) No person shall record a mortgage if moneys are not available for disbursal to the mortgagor upon the expiration of all applicable rescission, cooling-off or other waiting periods required by law unless, before that recording, the person 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.

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

History: L. 1999, ch. 107, § 3; L. 2005, ch. 144, § 15; L. 2006, ch. 67, § 1; July 1.

KANSAS COMMENT, 2010:

1. Subsections (1) and (2) prohibit negative amortization or balloon payments on loans secured by a first or second mortgage on the consumer's principal residence if the loan-to-value ratio (K.S.A. 16a-1-301(28)) of the loan exceeds 100% or the annual percentage rate on the loan exceeds the code mortgage rate (K.S.A. 16a-1-301(11)). These restrictions do not apply to open end consumer loans (such as a home equity line of credit), purchase money loans used to acquire or build the residence, or to reverse mortgages. This provision is based on Regulation Z, 12 C.F.R. § 226.32(d), but expands the limitations of that provision.
2. Subsection (3) of this section requires the lender to disburse the proceeds of a first or second mortgage loan as soon as all conditions are satisfied. There is an exception for situations (such as a line of credit or a construction loan) where the parties agree to a different disbursement schedule.

K.S.A. 16a-3-309. (UCCC) Referral sales.

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.

History: L. 1974, ch. 85, § 55; Jan. 1, 1974.

KANSAS COMMENT, 2000:

1. The typical sale scheme which would be barred by this section is one in which the seller, before closing the sale, offers to reduce the price by $25 for every name of a person the buyer supplies who will agree to buy from the seller. The seller may be able to make an inflated price much more palatable to a buyer by convincing the buyer that the referral plan will greatly reduce the amount the buyer will actually have to pay. The buyer may not realize until later that the friends whose names were provided are not as gullible and that the buyer will be required to pay the original balance of the contract price.
2. The evil this section is aimed at is the raising of expectations in a buyer of benefits to accrue from events which are to occur in the future. This provision has no effect on a seller's agreement to reduce at the time of the sale the price of an item in exchange for the buyer's giving the seller a list of prospective purchasers or assisting in other ways if the price reduction is not contingent on whether the purchasers do in fact buy or on whether other events occur in the future.
3. The misuse of the referral sale scheme has been so pervasive in some segments of seller credit that this provision, in an effort to halt these practices, not only makes agreements in violation of this section unenforceable but also allows the buyer to retain the goods sold or the benefit of services rendered with no obligation to pay for them. Alternatively, the buyer may rescind the agreement, return the goods, and recover any payment.
4. The KCPA contains a similar prohibition. K.S.A. 50-626(b)(1)(E). As a result, a seller who engages in an unlawful referral scheme may be subject to liability or penalties under both the U3C and the KCPA.

Part 4

LIMITATIONS ON CONSUMER'S LIABILITY

K.S.A. 16a-3-401. (UCCC) Restriction on liability in consumer lease.

The obligation of a lessee upon expiration of a consumer lease may not exceed twice the average payment allocable to a monthly period under the lease. This limitation does not apply to charges for damages to the leased property or for other default.

History: L. 1973, ch. 85, § 56; L. 1981, ch. 93, § 11; July 1.

KANSAS COMMENT, 2010:

1. This section is designed to protect consumer lessees against abuses associated with what are sometimes described as "open end" or "net" leases. Under "open end" or "net" leases, the parties contract that at the expiration of the lease the article leased, usually an automobile, will have a certain depreciated value and will be sold. If it brings less than the agreed depreciated value, the lessee is liable for the difference; if it brings more, the lessee is entitled to the surplus. Under such an agreement, the lessee will have no understanding of how much the lease might cost unless the lessee can accurately predict what the second hand market will be at the expiration of the lease. Moreover, if the lessor sets an unrealistically high depreciated value the contingent liability of the lessee will increase accordingly, and the seller can offer deceptively low rental payments to a gullible customer.
2. Under this section the liability, contingent or otherwise, of the lessee at the end of the term of the lease is limited to twice the average monthly rental payment. This limitation not only avoids the possibility of a large contingent liability on the part of the lessee at the end of the term but also gives the lessee a basis for comprehending how much the lease will actually cost. The CLA creates a set of rebuttable presumptions concerning the residual value of the leased property which in most cases will protect the consumer from having a residual liability greater than three times the average monthly payment under the lease. In this regard, this section offers greater protection since it absolutely prohibits residual charges greater than twice the average monthly payment. The CLA also permits the lessee to obtain (at his or her own expense) a neutral appraisal by an independent third party agreed to by both parties, and provides that any such appraisal is final and binding on the parties. Kansas lessees could, of course, make use of this provision if they wished.
3. This section does not limit the charges the lessor may impose for damage to the leased property or for default. The CLA, however, limits default and other similar charges to amounts which are reasonable in light of the anticipated or actual harm caused by the default or delinquency. See TILA 15 U.S.C.A. § 1667b. This federal limitation prohibits lessors from imposing unreasonably large default or other similar charges.
4. Because of the special problems associated with the open end lease, the CLA requires that the disclosures given to the consumer lessee at the beginning of the lease include disclosure of the fact that the consumer will be liable for the fair market differential on termination, if the consumer will in fact be so liable, as well as a statement of the fair market value of the property at the inception of the lease.

K.S.A. 16a-3-402. (UCCC) Limitation on default charges.

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. A provision in violation of this section is unenforceable.

History: L. 1973, ch. 85, § 57; Jan. 1, 1974.

KANSAS COMMENT, 2010:

The U3C limits the credit-related charges a creditor may impose on a consumer not only at the outset of the contract but also at the default stage. Except for delinquency charges (K.S.A. 16a-2-502), collection costs and attorneys' fees (K.S.A. 16a-2-507), and expenses arising from realizing on collateral authorized by the UCC (K.S.A. 84-9-615), the creditor may impose no collection or default charges on a consumer.

Attorney General's Opinions:

- Savings and loan association code; examinations; acceptance of examinations made by the Federal Savings and Loan Insurance Corporation. 83-113.
- Consumer credit transactions; prohibition on prepayment penalties; preemption as to national banks. 83-132.
- Attorney fees; national direct student loans. 86-113.

K.S.A. 16a-3-403. (UCCC) Credit card issuer subject to defenses.

(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 be in writing but may be sent to either the seller (or 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.

History: L. 1973, ch. 85, § 58; L. 1981, ch. 93, § 12; July 1.

KANSAS COMMENT, 2010:

1. Subsection (1) makes it clear that the issuer of a seller credit card is subject to all claims and defenses of the buyer against the seller arising out of the sale, even where the seller of goods or services is not the issuer of the card but a franchisee who honors the card. Some credit card issuers (e.g., the major retail chains) are themselves the sellers or lessors of products or services, and their liability as sellers or lessors is in no way affected by their status as credit card issuers. When the card issuer allows others to sell products while operating under the issuer's name (e.g., oil distributors), the card issuer should be liable to the full amount of the credit extended in the sale as the financier of the transaction. In addition, the card issuer in these cases may also be the manufacturer or processor of a defective product sold pursuant to its credit card by the franchised dealer. In such cases, their liability under other law as manufacturer or processor is not affected by this section.
2. The provisions of subsections (2) and (3), insulating lender credit card issuers from underlying claims and defenses except in home solicitation sales, vary from the uniform act and have been overridden by the TILA. Under TILA 15 U.S.C.A. § 1666i, the liability of issuers of seller credit cards is basically the same as in this section. With respect to lender credit cards, however, the TILA makes the issuer subject to all claims (other than tort claims) and defenses arising out of any transaction in which the card was used as a method of payment. There are three limitations on this liability: First, the cardholder must make a good faith attempt to resolve the dispute with the person who honored the card; second, the amount of the transaction must exceed $50; and third, the transaction must have occurred within the debtor's state or within 100 miles of the debtor's residence. The rationale of these limitations is to make card issuers subject to claims and defenses in those transactions in which the credit card is more likely to be used as a true credit device (transactions over $50) and in which the great volume of credit card use takes place (within the consumer's state or within 100 miles of his residence). Liability is also limited to the amount of credit outstanding at the time the cardholder first notifies the issuer or person honoring the card of the claim or defense. This parallels the liability of assignees and "all in the family" lenders under K.S.A. 16a-3-404 and 16a-3-405. Under Regulation Z, 12 C.F.R. § 226.12(c), the cardholder may withhold payment for

the property or services in dispute, and the card issuer is prohibited from making an adverse credit report until the dispute is settled.

K.S.A. 16a-3-404. (UCCC) Assignee subject to defenses; application of payments received by assignee; limitation of actions; assignee may require seller or lessor to repurchase obligation; joinder of parties; procedure.

(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 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 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 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.

History: L. 1973, ch. 85, § 59; L. 1975, ch. 127, § 1; L. 1976, ch. 145, § 40; L. 1981, ch. 93, § 13; July 1.

KANSAS COMMENT, 2010:

1. This section does away with the holder in due course doctrine under which the assignee of consumer paper could enforce the obligation irrespective of legitimate claims or defenses which the consumer may have had against the dealer. The doctrine is codified in the UCC (K.S.A. 84-3-305 and 84-9-403) so that the U3C will supersede the UCC rule, at least with respect to consumer credit transactions (see K.S.A. 84-9-201). The third party financier will be subject to claims and defenses whether the holder in due course of a negotiable instrument issued in violation of K.S.A. 16a-3-307, or an assignee claiming under a "cut-off clause" or "waiver of defenses clause" which in the past had been used as a contractual substitute for negotiability. The policy justifications for this section are to protect the consumer from the harshness of the holder in due course doctrine as well as to encourage financial institutions taking assignments of consumer paper to use discretion in dealing with sellers and lessors whose transactions give rise to an unusual percentage of consumer complaints. See also the Kansas comment to K.S.A. 16a-3-307.
2. Except for the consumer's right to rescind a contract held by a third party subject to a defense, the rights of the consumer under this section are basically defensive. That is, the consumer-buyer is prohibited from suing the third party financier for return of any down payment of installments already paid before the assignee receives notice of the defense. The consumer-buyer may assert a claim or defense only as a defense to or set-off against claims by the third party financier. In addition, the consumer can assert a claim or defense against the assignee only to the extent of the amount still owing to the assignee at the time the assignee gets written notice of the claim or defense. For example, if a consumer purchases a used car from a dealer and signs a $700 installment contract

which is then assigned to a bank or finance company, and if the consumer has already made four monthly installments of $30 each before discovering that the car is a lemon, the consumer can defend against a claim for the balance due by the bank or finance company but the consumer can neither obtain a refund from the financier of $120 nor subject the financier to any open ended claim for personal injury arising from defects in the car. (See, however, the Eachen case discussed in note 4, infra.) The third party financier is subject only to claims and defenses against the seller arising out of the sale, e.g., a claim for breach of warranty. For example, in Perry v. Goff Motors, Inc., 12 Kan. App. 2d 139, 736 P.2d 949 (1987), the court held that the assignee was subject to the buyer's claim that the sale of a car was fraudulent and void because it violated the Kansas motor vehicle laws. In addition, the buyer must make a good faith effort to obtain reasonable satisfaction from the seller before asserting the claim or defense against the assignee. The terms "good faith effort" and "reasonable satisfaction" are deliberately not defined; their meaning will depend upon the facts of a given case.

In Rosemond v. Campbell, 343 S.E.2d 641 (S.C. App. 1986), the court held that the U3C permitted the consumer to assert any claim available against the seller, including a fraud claim, offensively in a suit against the assignee. The South Carolina legislature, however, had amended the U3C to remove the language "as a matter of defense to or setoff against" found in subsection (2)(d) of this section. In Kansas, the consumer would have to wait until the assignee sued and then raise the claim as a defense.

3. Subsection (3) provides FIFO ground rules for determining what amount is owing to the assignee at the time notice of the defense is given. Subsection (5) provides for mandatory recourse by the financier against the dealer after assertion of a defense by the consumer, although non-recourse paper is still effective if the consumer has no excuse for the default. The theory of this subsection is that the ultimate risk should be shifted to the merchant in cases where the merchant's misconduct (breach of warranty, fraud, etc.) gave rise to the consumer defense. Third party practice — intervention, joinder or impleader — is also expressly authorized by this subsection wherever appropriate. Subsection (4) sets forth a short one-year statute of limitation for suits brought under this section.

4. This section should be read together with the F.T.C. Holder in Due Course Regulations, 16 C.F.R. Part 433, which require that all consumer paper contain a legend in ten point, bold face type expressly stating that the holder of the paper is subject to all claims and defenses which the consumer debtor could assert against the seller or lessor of the goods or services in the underlying transaction. The F.T.C. Regulations do not create any substantive rights in the consumer; they merely preserve against the assignee all state law rights the consumer already had against the seller or lessor. The purpose of the F.T.C. Regulations, like the purpose of this section, is to abolish the holder in due course doctrine in consumer transactions. Under the F.T.C. Regulations, the debtor's recovery is limited to a refund of amounts already paid, although the F.T.C. Regulations do not prohibit a greater recovery if state law allows it. In Eachen v. Scott Housing Systems, Inc., 630 F.Supp. 162 (M.D. Ala. 1986), the court ruled that the F.T.C. Regulations permitted the consumer to sue the assignee for breach of warranty, notwithstanding that state law limited liability to cases of defense or setoff. Liability was limited to a refund of amounts paid.

5. This section deals only with the assignee's derivative liability for claims and defenses arising out of the underlying contract. Neither this section nor the F.T.C. Regulations limit rights the consumer may have directly against the third party financier for the financier's own actions, either under the KCPA or similar statute or under developing concepts of lender liability.

K.S.A. 16a-3-405. (UCCC) Lender subject to defenses arising from sales and leases.

(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 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 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 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).

History: L. 1973, ch. 85, § 60; L. 1975, ch. 127, § 2; L. 1981, ch. 93, § 14; July 1.

KANSAS COMMENT, 2000:

1. This section extends the U3C's policy of preserving consumer claims and defenses to direct loan cases in those situations in which the relationship between the seller or lessor and the lender justifies allowing the consumer to raise claims or defenses against the lender. In order to preclude financiers from circumventing K.S.A. 16a-3-404 by shaping the transaction as a "direct loan" where it is really more like a purchase of dealer paper, this section sets forth five guidelines to test whether a true direct loan is involved. If it is, the consumer has no right to raise against the lender any claims or defenses against the seller whose product or service the consumer bought with the proceeds of the loan. Disguised dealer paper -- sometimes called an "all in the family" loan -- remains subject to the consumer's claims and defenses as if the transaction involved the assignment of an installment sales contract.
2. As indicated under subsection (1), any one of the following elements will subject the "direct lender" to claims and defenses of the consumer against the seller arising from the sale:
   (a) knowledge by the lender that the seller arranged for the extension of credit for a fee;
   (b) a close personal or corporate relationship between seller and lender (see the definition of "person related to" in K.S.A. 16a-1-301(34));
   (c) dealer guarantee of the loan;
   (d) use of the lender's "direct loan" forms by a dealer who has significantly participated in their preparation; and
   (e) the lender's conditioning of the loan upon the consumer's use of the proceeds to purchase from a particular seller.

With respect to this last element, the lender's making the proceeds check payable to a particular dealer does not in itself make the transaction an "all in the family" loan. Similarly, under subsection (5) any participation by the lender in the sales transaction solely to insure perfection of a security interest, such as notation of the lender's lien on a certificate of title, does not in itself make a "direct loan" subject to the buyer's claims and defenses against the seller.

3. Subsections (2) and (3) of this section parallel those found in K.S.A. 16a-3-404. See the Kansas comments to that section. Nothing in this section limits the rights of an "all in the family" lender to recover from the seller after being subjected to a consumer's claims or defenses under this section.

4. As with liability of assignees for claims and defenses under K.S.A. 16a-3-404, the liability of direct lenders may be affected by the F.T.C. Holder in Due Course Regulations, 16 C.F.R. Part 433. The F.T.C. Regulations require all consumer contracts which arise out of certain direct loans to contain a legend in ten point, bold face type expressly stating that the lender or other holder of the paper is subject to claims and defenses which the consumer debtor could assert against the seller or lessor of the goods or services obtained with the proceeds of the loan. The direct loans which are subject to the F.T.C. Regulations arise in two circumstances:

   (a) those in which the seller or lessor refers consumers to the lender, and

   (b) those in which the seller or lessor is affiliated with the lender by common control, contract or business arrangement.

   As in the case of assignees, liability is limited to refund of the amounts already paid by the consumer. See Kansas comment 5 to K.S.A. 16a-3-404. Because of the differences in definitions, the U3C and the F.T.C. Regulations will each reach some direct loans not covered by the other, but many "all in the family" lenders will be subject to both provisions.

5. As in the case of the assignee's liability under K.S.A. 16a-3-404, this section deals only with the "all in the family" lender's derivative liability for claims and defenses arising out of the underlying sale or lease contract. Neither this section nor the F.T.C. Regulations limit rights the consumer may have directly against the lender for the lender's own actions, either under the KCPA or similar statute or under developing concepts of lender liability.

Article 4 – INSURANCE

Part 1

INSURANCE IN GENERAL

K.S.A. 16a-4-101. (UCCC) Short title.

This article shall be known and may be cited as revised uniform consumer credit code—insurance.

History: L. 1973, ch. 85, § 61; Jan. 1, 1974.

KANSAS COMMENT, 2010:

A number of provisions of this article are derived from the NAIC model act, prepared by the national association of insurance commissioners "to provide for the regulation of credit life insurance and credit accident and health insurance."

K.S.A. 16a-4-102. (UCCC) Scope.

(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.

History: L. 1973, ch. 85, § 62; Jan. 1, 1974.

KANSAS COMMENT, 2000:

In general, this article applies to nearly all forms of insurance provided in connection with a consumer credit transaction. See the Kansas comment to the next section. Lenders engaged in premium financing are exempted from the U3C by K.S.A. 16a-1-202(5); premium financing is controlled by the Kansas insurance premium financing act (K.S.A. 40-2601 et seq). For example, rate ceilings on insurance premium finance transactions will continue to be governed by K.S.A. 40-2610 rather than by the ceilings established for other consumer credit transactions covered by the U3C. By subsection (2), however, a single provision of this article is made applicable to lenders engaged in insurance premiums financing; the borrower must be forewarned of cancellation of the financed insurance by the lender (see K.S.A. 16a-4-304). Nothing else in this article affects the practices of a lender in that business.

Attorney General's Opinions:

- Consumer credit insurance; property and liability insurance. 87-3.

K.S.A. 16a-4-103. (UCCC) Definition: "Consumer credit insurance."

In this act "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:

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

(b) insurance 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) insurance indemnifying the creditor against loss due to the consumer's default.

History: L. 1973, ch. 85, § 63; L. 1982, ch. 95, § 1; July 1.

KANSAS COMMENT, 2010:

1. The usual forms of consumer credit insurance provide benefits conditioned on the death or disability of the consumer, the contracts being described as credit life insurance and credit accident and health insurance. The insured event might also be loss of earnings in other ways, as by the loss of employment. A type of insurance not embraced in the term "consumer credit insurance" is that procured by a creditor to guard against the uncollectibility of an account. Insurance of this type, although historically and properly called "credit insurance," is conditioned on the nonpayment of debt, and does not serve any interest of consumers of the insured person. This is true also of insurance indemnifying the creditor against loss due to nonfiling of instruments. By contrast, the benefit of consumer credit insurance runs to consumers as well as creditors; any payment made to the creditor by the insurer under the policy satisfies the consumer's obligation to the extent of the payment.
2. The definition of "consumer credit insurance" excludes insurance related to long-term credit, following a similar but broader exclusion from the scope of the NAIC model act.

K.S.A. 16a-4-104. (UCCC) Creditor's provision of and charge for insurance; excess amount of charge.

(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).

History: L. 1973, ch. 85, § 64; Jan. 1, 1974.

KANSAS COMMENT, 2010:

1. Subsection (1) broadly authorizes creditors to contract for and receive payments for providing insurance covering the whole range of transactions within the scope of this article. See K.S.A. 16a-4-102. A creditor may provide insurance without making a charge in addition to the finance charge and, in that event, is not required to disclose any amount as a charge for insurance. If, however, the creditor requires insurance in connection with a consumer credit sale, consumer lease, or consumer loan, the fact that the cost of providing it is buried in an increased finance charge, giving the insurance for "free," will not necessarily exclude the creditor from restrictions under any other law.
2. Limitations are placed on the making of an additional or separate charge for insurance in K.S.A. 16a-2-501, and the authorization of this section is subject to that provision. In addition, such a charge must be limited as provided in K.S.A. 16a-4-107.

Attorney General's Opinions:

- Consumer credit insurance; property and liability insurance. 87-3.

K.S.A. 16a-4-105. (UCCC) Conditions applying to insurance to be provided by creditor.

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) 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.

History: L. 1973, ch. 85, § 65; Jan. 1, 1974.

KANSAS COMMENT, 2010:

Unlike the NAIC model act, the U3C does not require that any specific information about the insurance coverage be disclosed to the consumer. This section requires only that the creditor deliver to the consumer at an early date the credit insurance policy, or a certificate if a group policy is involved. The TILA, however, does require special credit insurance disclosures that the creditor must give in order to exclude the insurance costs from the finance charge. See Regulation Z, 12 C.F.R. § 226.4(d). A similar approach is followed by the U3C. See K.S.A. 16a-2-501(2). In addition, more detailed disclosures concerning insurance are required by administrative regulation. See K.A.R. 40-5-103(c).

Attorney General's Opinions:

- Consumer credit insurance; property and liability insurance. 87-3.

K.S.A. 16a-4-106. (UCCC) Unconscionability.

(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, neither the amount nor the term of the insurance nor the amount of a charge therefor is unconscionable.

History: L. 1973, ch. 85, § 66; Jan. 1, 1974.

KANSAS COMMENT, 2010:

1. It may be shown that an agreement about insurance, like any other term of a consumer credit contract, is unconscionable, and the effects of such a showing are those specified in K.S.A. 16a-5-108 and 16a-6-111. This section lists only some of the factors to be considered for unconscionability, and indicates that a balancing of benefits, needs, and costs is required. In general, the creditor's need for insurance protection and the debtor's potential benefit are more patent in connection with extensions of credit that are substantial as to amount and time; the expense of providing exceptional coverage is suspect in relation to relatively small extensions of credit. The relation between the credit terms and the insurance terms must be taken into account in applying this section.
2. One aspect of credit insurance that has produced widespread complaints is the phenomenon of "reverse competition." In most credit insurance, the creditor keeps a portion of the premium as a commission. The effect of this practice is to encourage creditors to seek out insurers who charge the highest rates for the same coverage. This reverses the normal market forces, and prices are driven to their highest, rather than lowest, levels. Creditors seldom advise consumers who buy credit insurance that the same coverage is often available at a lower price. In *Browder v. Hanley Dawson Cadillac Co.*, 379 N.E.2d 1206 (Ill. App. 1978), the court held that failure to disclose the availability of cheaper, but comparable, credit insurance constituted an unfair or deceptive practice trade under the Illinois consumer deceptive practices act by concealing, suppressing, or omitting a material fact. To the same effect is Matter of Dickson, 432 F.Supp. 752 (W.D.N.Car. 1977). Failing to disclose the availability of cheaper insurance may be a violation of K.S.A. 40-2403 et seq. It could also be a factor in making a determination of unconscionability under this act.

Attorney General's Opinions:

- Consumer credit insurance; property and liability insurance. 87-3.
- Consumer credit transaction; blanket single interest insurance programs. 89-54.

K.S.A. 16a-4-107. (UCCC) Maximum charge by creditor for insurance.

(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 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 credit (section 16a-2-202).

History: L. 1973, ch. 85, § 67; Jan. 1, 1974.

KANSAS COMMENT, 2000:

1. Subsection (1) generally limits the creditor's charge to the debtor for insurance to the premiums to be charged by the insurer. Subsection (2) authorizes convenient methods of calculating charges in open end credit transactions that might not be permitted if subsection (1) were applied inflexibly. See the Kansas comment to K.S.A. 16a-2-202 for an explanation of the various methods of determining the unpaid balance in open end credit accounts.
2. As noted in the Kansas comment to the previous section, creditors often keep a portion of the premiums as a commission. It has been argued that this practice violates the rule of this section because the amount charged to the consumer, which includes the commission, exceeds the premium actually received by the insurer. The cases to date have not accepted this argument. *See Tew v. Dixieland Finance, Inc*., 527 So.2d 665 (Miss. 1988); *Spears v. Colonial Bank of Alabama*, 514 So.2d 814 (Ala. 1987).

Attorney General's Opinions:

- Consumer credit insurance; amount of insurance. 88-13.

K.S.A. 16a-4-108. (UCCC) Refund or credit required; amount.

(1) Upon prepayment in full of a consumer credit sale or consumer loan by the proceeds of consumer credit insurance, the consumer or his 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), 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 any separate charge made to him 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) 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.

History: L. 1973, ch. 85, § 68; Jan. 1, 1974.

KANSAS COMMENT, 2000:

1. Subsection (1) concerns a premium for consumer credit insurance, or any part of it, that is not treated by the insurer as earned, even though the insurer has paid benefits for which the premium charge was made. If the premium was the subject of a separate charge to the debtor, a refund must be made. Making the refund is not practicable, however, and is not required, if the charge has been computed on the debtor's outstanding balances. Subsection (2)(a) recognizes that the insurer may, upon performance of its obligation, properly treat the premium as earned.
2. Subsection (2)(c) permits a creditor to derive from consumer credit insurance gains and advantages such as dividends and refunds resulting from favorable mortality or morbidity experience with respect to insured debtors, and is predicated on the following conclusions: (1) Although the gains and advantages may be large to the creditor, they are relatively insignificant to each insured debtor and the calculating, clerical, and mailing costs of returning them to insured debtors would be unreasonably disproportionate to the amounts involved, and (2) the requirement of this article that premiums for consumer credit insurance be reasonable in relation to benefits (K.S.A. 16a-4-203), if properly enforced by the insurance commissioner, will preclude the possibility of the use of consumer credit insurance as a device by creditors for concealing hidden charges from debtors.
3. Subsection (3) requires the creditor (subject to the exceptions provided by subsection (2)) to make a refund, or cause a refund to be made, if the insurance is not provided as contemplated or if it terminates prior to its expected term because of prepayment or other reasons. As a result of apparent deficiencies in the efforts of creditors (particularly assignees), the administrator has issued an

administrative interpretation to facilitate the refunds required by subsection (3). See Administrative Interpretation No. 1002.

4. Subsection (4) commits to the insurance commissioner the responsibility for approval of methods and formulas for computing refunds or credits that are required by the circumstances stated in subsection (3).

K.S.A. 16a-4-109. (UCCC) Existing insurance; choice of insurer; notice of option.

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.

History: L. 1973, ch. 85, § 69; L. 1988, ch. 153, § 2; July 1.

KANSAS COMMENT, 2000:

This section is directed against the practice of "tying" the grant of credit to the purchase of insurance from a particular insurer, through a particular agent, or the like. This practice is also prohibited by the NAIC model act. This section also requires the creditor to provide the consumer with written notice of his or her option under this section.

Attorney General's Opinions:

- Consumer credit insurance; property and liability insurance. 87-3.

K.S.A. 16a-4-110. (UCCC) Charge for insurance in connection with a refinancing or consolidation; duplicate charges.

(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 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.

History: L. 1973, ch. 85, § 70; L. 1993, ch. 200, § 13; Jan. 1, 1994.

KANSAS COMMENT, 2000:

A separate charge for insurance written in connection with a refinancing or a consolidation is permitted only if it has been agreed to by the debtor and bears an appropriate relation to the premium (K.S.A. 16a-4-107). No new charge may be made for coverage to which the debtor is already entitled. Actual termination of existing insurance is not required. Subsection (1)(b) recognizes that augmenting existing insurance coverage for a new separate charge is appropriate, but that "pyramiding" charges is not. Subsection (2) explicitly prohibits pyramiding.

K.S.A. 16a-4-111. (UCCC) Cooperation between administrator and commissioner of insurance.

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 shall advise the commissioner of insurance of the circumstances.

History: L. 1973, ch. 85, § 71; Jan. 1, 1974.

KANSAS COMMENT, 2000:

Coordination of activities of creditors and insurers is essential to the provision of insurance related to consumer credit transactions. Accordingly, the public interest requires that officials charged with supervising credit practices and those concerned with related insurance practices coordinate their efforts. This section directs them to consult and work together in promoting compliance with this article with efficiency and economy. Compare the administrator's obligation to consult with and assist the authorities charged with supervision of supervised financial organizations under K.S.A. 16a-6-105.

K.S.A. 16a-4-112. (UCCC) Administrative action of commissioner of insurance.

(1) To the extent that the commissioner's responsibility under this article requires, the commissioner of insurance shall issue rules with respect to 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 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 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.

History: L. 1973, ch. 85, § 72; L. 1999, ch. 107, § 25; July 1.

KANSAS COMMENT, 2000:

Since Kansas never enacted the NAIC model act, subsection (1) is necessary to give the insurance commissioner the powers and duties needed to carry out the provisions of article 4. In addition, part 4 of article 6 sets forth administrative procedures to govern actions taken by the insurance commissioner under this section. See the Kansas comment to K.S.A. 16a-6-401.

Attorney General's Opinions:

- Consumer credit insurance; property and liability insurance. 87-3.

Part 2

CONSUMER CREDIT INSURANCE

K.S.A. 16a-4-201. (UCCC) Term of insurance.

(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) 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 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) 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) 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.

History: L. 1973, ch. 85, § 73; Jan. 1, 1974.

KANSAS COMMENT, 2000:

1. The term of consumer credit insurance provided by a creditor should normally be the same as the term of the debt.
2. Subsection (1) permits postponement of the effective date of consumer credit insurance coverage until after the debt is incurred:
   (a) Under the preamble to subsection (1), when the debtor delays the application for the insurance coverage does not then become effective at least until the debtor applies for the insurance;
   (b) under subsection (1)(a), when the insurer requires the debtor to furnish evidence of insurability satisfactory to the insurer and the debtor does not furnish the evidence "until more than 30 days after the term would otherwise commence" -- coverage does not then become effective until the insurer determines the evidence of insurability to be satisfactory;
   (c) under subsection (1)(b), when the creditor newly provides insurance with respect to debt previously created -- coverage does not then become effective at least until the effective date of the policy.
3. However, under subsection (1), if evidence of insurability satisfactory to the insurer is required, and is furnished within "30 days after the term would otherwise commence," coverage becomes effective when the term of insurance would otherwise commence, e.g., the life of a debtor who, less than 30 days after becoming obligated to a creditor, furnishes evidence of insurability satisfactory to the insurer under a group policy insuring the lives of the creditor's debtors furnishing such evidence and who then dies is insured under the policy.
4. Subsection (2) specifies the circumstances when the term of consumer credit insurance need not extend to the due date of the last scheduled installment of the debt.
5. Subsection (3) limits, subject to the stated exceptions, the term of consumer credit insurance to 15 days after the scheduled due date of the last installment of the debt.

K.S.A. 16a-4-202. (UCCC) Amount of insurance.

(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 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.

History: L. 1973, ch. 85, § 74; L. 1988, ch. 85, § 9; July 1.

KANSAS COMMENT, 2010:

1. Subsection (1) provides generally applicable limitations on the amounts of consumer credit insurance and benefits.
2. Subsection (2) provides more flexible limitations on the amounts of consumer credit insurance benefits necessary in connection with open end credit accounts and credit commitments.
3. Limitations of this kind are essential to the effectiveness of the requirement of K.S.A. 16a-4-203(2) that premium rates be reasonable in relation to the benefits provided by consumer credit insurance.

Attorney General's Opinions:

- Consumer credit insurance; property and liability insurance. 87-3.
- Property and liability insurance. 87-47.
- Consumer credit insurance; amount of insurance. 88-13.

K.S.A. 16a-4-203. (UCCC) Filing and approval of rates and forms.

(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 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) days, or has earlier been approved by him; 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) days after the filing of any form or schedule, he 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 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 shall approve them if

(a) they 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.

History: L. 1973, ch. 85, § 75; Jan. 1, 1974.

KANSAS COMMENT, 2010:

1. This section gives the Kansas insurance commissioner the power to regulate credit life, accident and health insurance premium rates. See K.A.R. 40-5-107.
2. Subsection (3) facilitates insuring, as a group, the debtors of a creditor operating across state lines.

Attorney General's Opinions:

- Consumer credit insurance; amount of insurance. 88-13.

Part 3

PROPERTY AND LIABILITY INSURANCE

K.S.A. 16a-4-301. (UCCC) Property insurance.

(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 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.

History: L. 1973, ch. 85, § 76; L. 1999, ch. 107, § 24; July 1.

KANSAS COMMENT, 2000:

1. The restrictions on property insurance imposed by subsection (1) are similar to those provided by retail installment sales acts in a number of states and basically track with the old Kansas sales finance act.
2. Subsection (2) permits reasonable flexibility so that the expiration of the term of property insurance need not coincide exactly with the scheduled maturity of the debt.
3. Subsection (3) prohibits a separate charge for property insurance when either the amount of debt or the value of the property to be insured is relatively small. Open end credit is exempted from this limitation.

Attorney General's Opinions:

- Property insurance; damage to property unrelated to credit transaction. 86-42.
- Consumer credit insurance; property and liability insurance. 87-3.
- Property and liability insurance.87-47.

K.S.A. 16a-4-302. (UCCC) Insurance on creditor's interest only.

If a creditor contracts for or receives a separate charge for insurance against loss of or damage to property, the risk of loss or damage not willfully caused by the consumer is on the consumer only to the extent of any deficiency in the effective coverage of the insurance, even though the insurance covers only the interest of the creditor.

History: L. 1973, ch. 85, § 77; Jan. 1, 1974.

KANSAS COMMENT, 2000:

This section prohibits a separate charge to the consumer for property insurance covering the creditor's interest in property unless the consumer also receives the benefit of the insurance to the extent he does not willfully cause the loss or damage, risk of which is insured. "Single interest" property insurance for which the creditor makes a separate charge to the consumer may not provide for subrogation of the insurer to the rights of the creditor as to any loss or damage not willfully caused by the consumer. See also K.S.A. 16a-2-501(2).

Attorney General's Opinions:

- Consumer credit transaction; blanket single interest insurance programs. 89-54

K.S.A. 16a-4-303. (UCCC) Liability insurance.

A creditor may not contract for or receive a separate charge for insurance against liability unless the insurance covers a substantial risk of liability arising out of the ownership or use of property related to the credit transaction.

History: L. 1973, ch. 85, § 78; Jan. 1, 1974.

KANSAS COMMENT, 2000:

This section imposes restrictions with respect to liability insurance comparable to those imposed with respect to property insurance by subsection (1) of K.S.A. 16a-4-301.

K.S.A. 16a-4-304. (UCCC) Cancellation by creditor.

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 not take effect until written notice is delivered to the consumer or mailed to him at his address as stated by him. The notice shall state that the policy may be cancelled on a date not less than ten (10) days after the notice is delivered, or, if the notice is mailed, not less than thirteen (13) days after it is mailed.

History: L. 1973, ch. 85, § 79; Jan. 1, 1974.

KANSAS COMMENT, 2000:

This section requires advance written notice, by either the creditor or the insurer, of the prospective cancellation of property or liability insurance provided in connection with a consumer credit transaction. This section also applies to premium finance loans. See K.S.A. 16a-4-102(2).

Article 5 – REMEDIES AND PENALTIES

Part 1

LIMITATIONS ON CREDITORS' REMEDIES

K.S.A. 16a-5-101. (UCCC) Short title.

This article shall be known and may be cited as revised uniform consumer credit code—remedies and penalties.

History: L. 1973, ch. 85, § 80; Jan. 1, 1974.

K.S.A. 16a-5-102. (UCCC) Scope.

This part applies to actions or other proceedings to enforce rights arising from consumer credit transactions and, in addition, to extortionate extensions of credit (section 16a-5-107).

History: L. 1973, ch. 85, § 81; Jan. 1, 1974.

KANSAS COMMENT, 2000:

K.S.A. 16a-1-201 states the territorial applicability of the U3C, and K.S.A. 16a-1-109 provides for the applicability of the U3C by written agreement. These sections should be consulted in determining the applicability of remedies and penalties in this article.

K.S.A. 16a-5-103. (UCCC) Restrictions on deficiency judgments.

(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 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 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 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 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 (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 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.

History: L. 1973, ch. 85, § 82; L. 2005, ch. 144, § 16; July 1.

KANSAS COMMENT, 2010:

1. Where there has been a default with respect to a secured consumer credit transaction, the rights of the creditor and consumer are controlled by part 6 (Default) of UCC article 9 (K.S.A. 84-9-601, et seq.), except to the extent that such rights are changed by the U3C (see K.S.A. 84-9-201). Under the UCC, the creditor has the right to take possession of the collateral on default and may proceed without judicial process. K.S.A. 84-9-609. The creditor may then sell, lease or otherwise dispose of the collateral in public or private proceedings, and may buy at the foreclosure sale. The consumer is entitled to reasonable notification of the time and place of any public sale and reasonable notification of the time after which the collateral will be disposed of privately. K.S.A. 84-9-611. Proceeds are applied first to the expenses of repossession and disposition and then to satisfaction of the indebtedness. Any excess is paid to the consumer and the consumer is liable for any deficiency. K.S.A. 84-9-615. If the consumer has paid 60% of the cash price in the case of a sale or 60% of the principal in the case of a loan and, after default, has not signed a statement renouncing his or her

rights, the creditor must dispose of the collateral. If the creditor fails to dispose of the collateral within 90 days after repossession the consumer may recover under K.S.A. 84-9-625. In all other cases the creditor may retain the collateral in satisfaction of the debt, if the consumer does not object after receipt of notification of the creditor's intention to do so. K.S.A. 84-9-620 and K.S.A. 84-9-622. The consumer has a right to redeem the collateral at anytime before disposition of the collateral or satisfaction of the obligation, by tendering fulfillment of all obligations secured by the collateral as well as expenses of the creditor. K.S.A. 84-9-623.

2. The provisions of the UCC outlined above are modified to some extent by this section with respect to proceedings to enforce rights arising from consumer credit sales and consumer loans in which the lender is subject to claims and defenses arising from sales and leases, or so-called "all in the family" loans. See K.S.A. 16a-3-405. For both types of transactions, subsection (1) adopts the position of the line of cases under the UCC that directly or indirectly deny the creditor a deficiency if the creditor has not disposed of the collateral in good faith and in a commercially reasonable manner. See, e.g., Beneficial Finance Co. v. Reed, 212 N.W.2d 454 (Iowa 1973).

   Several Kansas cases have cited and discussed the rule of subsection (1); most, however, have found that the particular creditor disposed of the goods in a commercially reasonable manner and, therefore, was entitled to recover a deficiency. See, e.g., Kelley v. Commercial National Bank, 235 Kan. 45, 678 P.2d 620 (1984); Medling v. Wecoe Credit Union, 234 Kan. 852, 678 P.2d 1115 (1984). In Topeka Datsun Motor Co. v. Stratton, 12 Kan. App. 2d 95, 736 P.2d 82 (1987), the court held that failure to provide proper notice to the consumer under the UCC rules constituted failure to dispose of the collateral in a commercially reasonable manner and, as a result, the creditor was barred from recovering a deficiency under the rule of this subsection.

3. Under subsection (2), with respect to a consumer credit sale in which the cash price is $1,000 or less, a seller who repossesses or voluntarily accepts surrender of goods sold in which the creditor has a security interest may not obtain a deficiency judgment against the buyer if the proceeds on disposition of the goods are insufficient to pay the indebtedness and the expenses of the seller. The seller need not resell the goods unless the buyer has paid 60% of the cash price and, after default, has not signed a statement renouncing his or her rights in the collateral. In cases of sales of $1,000 or less, this section gives to the seller the option of either suing for the unpaid balance or repossessing, but the creditor may not do both. The UCC concept of "commercial unit" is borrowed, see K.S.A. 84-2-105(6), and is intended to preclude the argument that subsection (2) is inapplicable to a consumer credit sale of a stove, a refrigerator, a washer, a dryer, and a TV set for a total cash price of more than $1,000 when each of these "commercial units" does not separately cost more than $1,000.

4. The seller may have a security interest in collateral other than goods sold in the consumer credit sale. The U3C allows the seller to take a security interest in collateral other than goods sold in certain limited circumstances. See K.S.A. 16a-3-301 and 16a-3-302, and the Kansas comments to those sections. In those cases, if the cash price of the sale is $1,000 or less, the seller who repossesses or voluntarily accepts surrender of collateral may not obtain a deficiency judgment against the buyer. Subsection (3). The rights of the buyer with respect to compulsory disposition of collateral which was not the subject of the sale and recovery of any surplus on disposition are defined in the UCC. See K.S.A. 84-9-610 and 84-9-620.

5. Under subsection (4), if a lender makes a consumer loan in which the net proceeds paid to or for the benefit of the consumer are $1,000 or less to enable the consumer to purchase goods under circumstances where the lender is subject to claims and defenses arising from the sale of goods (K.S.A. 16a-3-405) and, pursuant to a security interest acquired in the goods, repossesses or voluntarily accepts surrender of the goods, the lender may not obtain a deficiency judgment against the consumer if the proceeds on disposition of the goods are insufficient to pay the indebtedness and

the expenses of the lender with respect to that loan. Whether the lender is subject to this restriction depends on whether the criteria for "all in the family" loans in K.S.A. 16a-3-405 are satisfied. The importance of these criteria is illustrated by Central Finance Co., Inc. v. Stevens, 221 Kan. 1, 558 P.2d 122 (1976), where a direct loan under $1,000 was used by the consumer to buy a car. The loan was not an "all in the family" loan and, as a result, the lender was not precluded by this section from recovering a deficiency. However, if, for example, a consumer borrowed $700 in a "direct loan" from a lender in corporate control of a dealer from whom the consumer purchased an item with the proceeds of the loan, the lender would be precluded from obtaining a deficiency against the consumer. See the definition of "person related to" in K.S.A. 16a-1-301(31).

6. Subsection (6) is designed to protect creditors against consumers who wrongfully damage collateral or who wrongfully refuse to surrender collateral. In addition to the right of the creditor to repossess the collateral, this subsection gives the creditor a right of action for damages for the loss of value of the collateral resulting from wrongful injury to the goods or, in the case of wrongful refusal to surrender the collateral, for any loss suffered by the creditor because of an inability to repossess.
7. Subsection (7) prohibits a creditor not entitled to a deficiency judgment under this section from achieving substantially the same result by first obtaining judgment for the debt and then levying on the collateral on execution.
8. It has been held that elimination of a deficiency judgment under this section is not an unconstitutional impairment of contract rights. See Sanco Enterprises, Inc. v. Christian, 495 P.2d 404 (Okla. Sup. Ct. 1972).

K.S.A. 16a-5-107. (UCCC) Extortionate extensions of credit.

(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%) 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).

History: L. 1973, ch. 85, § 83; Jan. 1, 1974.

KANSAS COMMENT, 2010:

1. This section is derived from 18 U.S.C. § 892, as added by title II of the TILA. It is intended to facilitate federal prosecutions with respect to making extortionate extensions of credit by providing one of the elements required for a prima facie case under the TILA provision referred to above, namely, that the repayment of the extension of credit would be unenforceable through civil judicial processes against the debtor. The federal rule sets the presumption of extortion at 45%, not at the 36% level used in this section. The uniform text of the U3C also uses 45%. Kansas' choice of 36%

should have no effect on federal prosecutions, however, since the prima facie rule of this section would obviously apply to any federal prosecution of a lender who charged over 45%.

2. The effect of this section on Kansas law is to render unenforceable consumer loans above 36% when the specified elements of violence or other criminal means are present. Nothing in this section makes an extortionate extension of credit, in and of itself, a criminal offense under Kansas law. On the other hand, threats or other acts of violence directed toward consumer borrowers may themselves constitute crimes independent of this section. See also K.S.A. 16a-5-301(1), which imposes criminal liability on supervised lenders who make loans above the rates permitted by the U3C.

K.S.A. 16a-5-108. (UCCC) Unconscionability; inducement by unconscionable conduct.

(1) With respect to a consumer credit transaction, if the trier of fact finds

(a) the agreement to have been unconscionable at the time it was made, or to have been induced by unconscionable conduct, the court may refuse to enforce the agreement, or

(b) any clause of the agreement to have been 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) 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) For the purpose of this section, a charge or practice expressly permitted by this act is not unconscionable.

History: L. 1973, ch. 85, § 84; Jan. 1, 1974.

KANSAS COMMENT, 2010:

1. Subsections (1) and (2) are derived in large part from the UCC. See K.S.A. 84-2-302. Contrary to the UCC, however, it is the trier of fact who determines whether a particular bargaining context or contract clause is unconscionable under the U3C. The trier of fact may be a judge or a jury. Under the KCPA, the determination of unconscionability is, as under the UCC, a matter of law for the court. See K.S.A. 50-627(b). The model act also followed the UCC and made the issue of unconscionability one of law; as a result, the Kansas provision is nonuniform in this respect. Pursuant to subsection (2), the consumer has a right to choose a judge or jury as the trier of fact with respect to unconscionability claims in a consumer credit contract case. Pursuant to K.S.A. 16a-1-107, a consumer may not waive or agree to forego rights granted pursuant to the U3C. Additionally, K.S.A. 60-238 and Section 5 of the Bill of Rights in the Kansas Constitution provides that a right to a jury trial may not be waived. Since the right to a jury trial may not be waived pursuant to the U3C, K.S.A. 60-238 and the Kansas Constitution, a waiver of jury trial provision should not be included in a contract subject to the U3C.

2. Subsection (1) provides, as does the UCC (see K.S.A. 84-2-302), that a court can refuse to enforce or can adjust an agreement or part of an agreement that was unconscionable on its face at the time it was made. However, many agreements are not in and of themselves unconscionable according to their terms, but they would never have been entered into by a consumer if unconscionable means had not been employed to induce the consumer to agree to the contract. It would be a frustration of the policy against unconscionable contracts for a creditor to be able to utilize unconscionable acts or practices to obtain such an agreement. Consequently, subsection (1) also gives the court the power to refuse to enforce an agreement if the trier of fact finds that it was induced by unconscionable conduct. Finally, subsection (1) includes provisions for a determination of unconscionability in a transaction that a consumer is led to believe will give rise to a consumer credit transaction so that, for example, a seller cannot bind the consumer to a short term sale contract payable in a lump sum on the assurance that the seller will secure financing for the consumer, and then inform the consumer that financing is unavailable and keep the down payment or goods traded in as a penalty for nonpayment.

3. In subsection (2), the omission of the adjective "commercial" found in the UCC (see K.S.A. 84-2-302) from the provision concerning the presentation of evidence as to the contract's "setting, purpose, and effect" is deliberate. Unlike the UCC, this section is concerned only with transactions involving consumers, and the relevant standard of conduct for purposes of this section is not that which might be acceptable as between knowledgeable merchants but rather that which measures acceptable conduct on the part of a business person toward a consumer.

4. This section is intended to make it possible for the courts to police contracts or clauses which are found to be unconscionable or induced by unconscionable conduct. The basic test is whether, in the light of the background and setting of the market, the needs of the particular trade or case, and the condition of the particular parties to the conduct or contract, the conduct involved is, or the contract or clauses involved are so one-sided, or the bargaining power of the parties so unbalanced, as to be unconscionable under the circumstances existing at the time of the making of the contract. The particular facts involved in each case are of utmost importance since certain contracts or contractual provisions may be unconscionable in some situations but not in others. Inequality of bargaining power might be termed "procedural unconscionability" while unfair clauses in the fine print of a contract might be called "substantive unconscionability."

   While this section does not contain a "laundry list" of factors to be considered in making the determination of unconscionability, the lists of factors provided in the KCPA, K.S.A. 50-627(b), and in the U3C in K.S.A. 16a-6-111, concerning the administrator's power to halt unconscionable conduct, may be looked to for guidance. Another useful and widely cited discussion can be found in Wille v. Southwestern Bell Tel. Co., 219 Kan. 755, 549 P.2d 903 (1976). See also the discussion in Paglia v. Elliott, 373 N.W.2d 121 (Iowa 1985), discussing the unconscionability provision of the Iowa U3C; and Besta v. Beneficial Loan Co. of Iowa, 855 F.2d 532 (8th Cir. 1988), holding that it was unconscionable under the Iowa U3C for a finance company to arrange to finance a loan over a six-year period without informing the debtor that a three-year loan would have been cheaper. The following pre-U3C cases may also provide useful guidance. Williams v. Walker-Thomas Furn. Co., 350 F.2d 445 (D.C. Cir. 1965); American Home Improvement, Inc. v. MacIver, 105 N.H. 435, 201 A.2d 886 (1964); Unico v. Owen, 50 N.J. 101, 232 A.2d 405 (1967); Henningsen v. Bloomfield Motors, Inc., 32 N.J. 358, 161 A.2d 69 (1960); Frostifresh Corp. v. Reynoso, 54 Misc.2d 119, 281 N.Y.S.2d 964 (Supp. Ct. App. Term. 2d Dept. 1967), rev'g in part 52 Misc.2d 26, 274 N.Y.S.2d 757 (Nassau Co., 1966); Steele v. J.I. Case Co., 197 Kan. 554, 419 P.2d 902 (1966).

5. Subsection (3) prohibits a finding that a charge or practice expressly permitted by the U3C is in itself unconscionable. However, even though a practice or charge is authorized by the U3C, the totality of a particular creditor's conduct may show that the practice or charge is part of unconscionable conduct. Therefore, in determining unconscionability, the creditor's total conduct,

including that part of the creditor's conduct which is in accordance with the provisions of the U3C, may be considered.

Attorney General's Opinions:

- Limitations on consumer's liability; balloon payments; denial of right to refinance. 82-143.

K.S.A. 16a-5-109. (UCCC) Default.

An agreement of the parties to a consumer credit transaction with respect to default on the part of the consumer is enforceable only to the extent that

(1) the consumer fails to make a payment as required by agreement; or

(2) the prospect of payment, performance, or realization of collateral is significantly impaired; the burden of establishing the prospect of significant impairment is on the creditor.

History: L. 1973, ch. 85, § 85; Jan. 1, 1974.

KANSAS COMMENT, 2010:

1. One of the vital terms of every consumer credit agreement is that which sets forth the criteria which will constitute default. By its nature "default" is not a term that is negotiated by the parties — it is generally controlled by the creditor. It is appropriate, therefore, that its content and implications be confined by the law so as to prevent abuse. This section is intended to accomplish that.
2. This section recognizes that there are two entirely distinct sets of circumstances which might constitute default on an installment obligation. The first and most common is the failure to pay an installment as required. A default of this type is susceptible of being cured by the consumer without impairing the continuing contractual relationship between the consumer and the creditor. See K.S.A. 16a-5-110. The second type of default relates to behavior of the consumer which endangers the prospect of a continuing relationship. It may be insolvency, illegal activity, or an impending removal of assets from the jurisdiction. There must, however, be circumstances present which significantly impair the relationship. Useful discussions of the types of factors and circumstances which constitute "significant impairment" can be found in Johnson County Auto Credit, Inc. v. Green, 277 Kan. 148, 83 P.2d 152 (2004); Prairie State Bank v. Hoefgen, 245 Kan. 236, 777 P.2d 811 (1989); and Medling v. Wecoe Credit Union, 234 Kan. 852, 678 P.2d 1115 (1984). The burden of proof is on the creditor to justify action on a claim of default of this type. This differs from the rule of UCC. See K.S.A. 84-1-208.
3. The "significant impairment" rule of subsection (2) prohibits so-called "insecurity clauses" under which default and acceleration can be called whenever the creditor in good faith feels "insecure." This also differs from the rule of UCC. See K.S.A. 84-1-208.
4. Under an administrative interpretation issued by the administrator, a demand or "call" feature may be included in non-real estate consumer loan agreements that are "interest only" — those in which the regularly scheduled payments are only of interest. See Administrative Interpretation No. 1001. This interpretation points out that calling for full payment in the middle of the regularly scheduled term (e.g., in the 30th month of a 48 month contract) would trigger the consumer's right to refinance the balloon payment under K.S.A. 16a-3-308.

Attorney General's Opinions:

- Definitions; supervised lender; supervised financial organization. 84-11.

K.S.A. 16a-5-110. (UCCC) Notice of consumer's right to cure.

(1) 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 as provided in subsection (6) of K.S.A. 16a-1-201 and amendments thereto.

(2) The notice shall be in writing and shall conspicuously state: 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, attorney fees and collection agency fees, as provided in K.S.A. 16a-2-507 and amendments thereto. A notice in substantially the following form complies with this section:

_____

(Name, address, and telephone number of creditor)

_____

(Account number, if any)

_____

(Brief description of credit transaction)

_____

(Date) is the LAST DAY FOR PAYMENT

_____

(Amount) is the AMOUNT NOW DUE

You are late in making your payment(s). If you pay the AMOUNT NOW DUE (above) by the LAST DAY FOR PAYMENT (above), you may continue with the contract as though you were not late. If you do not pay by this date, we may exercise our rights under the law. You may be obligated to pay reasonable costs of collection, including, but not limited to, court costs, attorney fees and collection agency fees, except that such costs of collection: (1) May not include costs that were incurred by a salaried employee of the creditor or its assignee; (2) may not include the recovery of both attorney fees and collection agency fees; and (3) shall not be in excess of 15% of the unpaid debt after default.

If you are late again in making your payments, we may exercise our rights without sending you another notice like this one. If you have questions, write or telephone the creditor promptly.

History: L. 1973, ch. 85, § 86; L. 1974, ch. 91, § 2; L. 1994, ch. 276, § 2; July 1.

KANSAS COMMENT, 2010:

1. This section must be read in conjunction with the preceding section (K.S.A. 16a-5-109 — default) and the following section (K.S.A. 16a-5-111— cure of default). K.S.A. 16a-5-109 delineates the legal criteria for default and recognizes that a default consisting of the failure to make a payment as required by the agreement is susceptible of being cured by the consumer without impairing the continuing contractual relationship between the consumer and the creditor. This section then provides for a notice which may be sent to the consumer in the case of a failure in payment. The notice may be given at any time after the payment is more than ten days late. This is the same point at which the creditor may be entitled to assess a delinquency charge under K.S.A. 16a-2-502. The notice is calculated to give the consumer enough information to understand the predicament and to encourage the consumer to take appropriate steps to alleviate it. For example, if a consumer misses an installment payment due on April 10, the creditor must wait until April 20, at which point the creditor may send the consumer a written notice indicating the default and the amount due. The "last day for payment" would be shown as May 10, the end of the cure period as provided in K.S.A. 16a-5-111. The notice must also mention the potential liability of the consumer for the collection agency fee or attorneys' fees of the creditor.

2. The notice must be correct. In Farmers State Bank v. Haflich, 10 Kan. App. 2d 333, 699 P.2d 533 (1985), the creditor violated this section by giving notice for the entire amount of the indebtedness rather than merely for past due installments. Note that K.S.A. 16a-5-111 provides that a default consisting of a failure to make a required payment may be cured by the consumer by making that payment before the expiration of the minimum period prescribed after written notice of the default, and that prior to that time the creditor may not proceed against goods that are collateral or accelerate the maturity of the unpaid debt. Repossession in the face of an improper notice, or before the cure period expires, entitles the consumer to damages for wrongful repossession and possibly for conversion. See Farmers State Bank v. Haflich, supra. This provision prevents the practice of some unscrupulous creditors who repossess collateral when a payment is only a day or two late. It also gives the average consumer the opportunity to rehabilitate an account, bring a billing error to the attention of, or present a breach of warranty claim to, the creditor, or negotiate a refinancing arrangement that may be required by a change in the consumer's financial circumstances.

3. The notice and right to cure provisions of this and the following sections apply only if the default is in the failure to make a required installment payment, and not to a default arising from significant impairment of the relationship under the previous section. This is because, unlike a late payment, a breakdown in the relationship between the consumer and the creditor which constitutes "significant impairment" cannot be cured. See Johnson County Auto Credit, Inc. v. Green, 277 Kan. 148, 83 P.2d 152 (2004); Prairie State Bank v. Hoefgen, 245 Kan. 236, 777 P.2d 811 (1989); Medling v. Wecoe Credit Union, 234 Kan. 852, 678 P.2d 1115 (1984). In addition, the cure provisions do not apply to a lump sum loan, i.e., a loan not "payable in installments." See First National Bank of Shawnee Mission v. Hundley, 12 Kan. App. 2d 487, 748 P.2d 903 (1988). In addition, it has been held that the debtor waives the right to cure default by filing a voluntary petition in bankruptcy. See In re Schwarting, 671 F.2d 1192 (8th Cir. 1982), construing the Iowa version of the uniform act.

K.S.A. 16a-5-111. (UCCC) Cure of default.

(1) This section applies to consumer credit transactions.

(2) Except as provided in subsection (3), 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. Cure restores the consumer to the consumer's rights under the agreement as though the defaults had not occurred.

(3) 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.

History: L. 1973, ch. 85, § 87; L. 1974, ch. 91, § 3; L. 2005, ch. 144, § 17; July 1.

KANSAS COMMENT, 2000:

1. As noted in the Kansas comment to the preceding section, the creditor must wait 20 days after sending the notice provided for in K.S.A. 16a-5-110; no acceleration of the unpaid balance or repossession of the collateral may take place until the 20-day grace period expires. If, before that time, the consumer pays the missing installment, plus any unpaid delinquency or other charges, the default has been "cured" and the consumer's prior status is restored.
2. This section imposes no limitation on the creditor's right to proceed against a consumer or goods that are collateral with respect to successive defaults on the same obligation. If the consumer misses another installment after once curing a default, subsection (3) makes it clear that the creditor can accelerate and repossess as permitted by the UCC. In addition, as noted in the Kansas comment to K.S.A. 16a-5-110, the right to cure applies only to defaults consisting of missed installment payments; there is no right to cure a default arising from an act constituting a significant impairment of the relationship.

K.S.A. 16a-5-112. (UCCC) Creditor's right to take possession after default.

Upon default by a consumer, unless the consumer voluntarily surrenders possession of 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.

History: L. 1973, ch. 85, § 88; Jan. 1, 1974.

KANSAS COMMENT, 2010:

1. Under the UCC, a secured creditor has the right to take possession of collateral without resorting to legal process if it can be done without a "breach of the peace." K.S.A. 84-9-609. This term is generally left to case law definition, but it raises delicate problems when it comes to repossessing furniture or other property that is within a home or apartment. The disputes that result from such a situation are rarely the type that get to the appellate courts for resolution. It is necessary, therefore, to make it clear that dwellings cannot be entered absent the consent of the occupants except under the supervision of the court. This section is subject to the limitations imposed by the preceding sections. That is, the creditor may not take possession of the collateral until after there has been a default (K.S.A. 16a-5-109) and the consumer has been given the notice and right to cure provided by K.S.A. 16a-5-110 and 16a-5-111.
2. If, instead of exercising self-help, the creditor opts to bring a replevin action under K.S.A. 60-1005 and 60-1006, the notice and hearing safeguards now found in those provisions will of course come into play. Here, too, however, the creditor may proceed in replevin only after default under K.S.A. 16a-5-109 and only after the notice and right to cure requirements to K.S.A. 16a-5-110 and 16a-5-111 have been satisfied.

Part 2

CONSUMERS' REMEDIES

K.S.A. 16a-5-201. (UCCC) Effect of violations on rights of parties.

(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 recover actual damages and in addition a right in an action other than 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 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 collection of payments or enforcement of rights arising from the debt. With respect

to violations arising from loans made pursuant to 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 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 collection of payments from or enforcement of rights against debtors arising from the debt. 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 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 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, 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, 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.

History: L. 1973, ch. 85, § 89; L. 1992, ch. 80, § 2; July 1.

KANSAS COMMENT, 2010:

1. Rights that are accompanied by inadequate remedies or no remedy at all and limitations on agreements and practices that do not provide for sufficient penalties or for any penalty at all are generally ineffective to accomplish the desired result. They become little more than exhortatory, easily ignored, and meaningless proclamations. In order to protect rights created and to deter provisions of agreements and practices proscribed by legislation, suitable remedies and penalties must exist. Since an aggrieved party is one of the persons best able to enforce violations of rights and limitations, this section sets forth a right of action in the consumer in the event of violation by the creditor of each section of the U3C that does not include its own provision for infraction and, better to deter such practices, even of some that do, as in the case of restrictions on land as security (K.S.A. 16a-2-307).
2. Subsection (1) lists eleven provisions of the U3C for the contravention of which actual damages and a penalty may be recovered. The formula used for the penalty is derived from TILA 15 U.S.C.A. § 1640, with a minimum and a maximum recovery. Within this range, a court may apportion penalties according to the seriousness of the offense and the overall circumstances of each violation. These civil penalties attach irrespective of the fact that the consumer has suffered no monetary damage. They are designed to encourage individual consumers to serve as their own "private attorneys general" in order that the U3C may be vigorously enforced. Thus, the penalties are designed not only to provide a deterrent to potential violators but also an incentive to consumers to bring an action when a violation has occurred. In Credit Union One of Kansas v. Stamm, 254 Kan. 367, 867 P.2d 285 (1994), the court held that a contract provision in a consumer credit transaction authorizing the creditor to recover attorney fees to the extent authorized by law, did not violate the prohibition in K.S.A. 16a-2-507 (overruling Halloran v. North Plaza State Bank, 17 Kan.App.2d 840, 844 P.2d 764 (1993)). Given its strong minimum civil penalty approach, subsection (1) also provides for a relatively short statute of limitations: one year after the last installment is due under a closed end contract and two years after the violation occurs under open end credit.
3. Subsection (2) describes the remedy available to the consumer when a loan with an annual percentage rate exceeding 12% is made by a person not authorized to make such a loan. The remedy is to void the transaction and allow the consumer to retain the proceeds.
4. Subsections (3) and (4) set forth the rights of the consumer with respect to excess charges by a creditor. The penalty is recovery of twice the amount of the excess charge (subsection (3)) as well as the $100 minimum civil penalty (subsection (4)) provided for in subsection (1). As in subsection

(1), a short statute of limitations is provided and attorneys or collection agencies are insulated from liability so long as they did not purchase the usurious obligation. An excess charge might arise when the consumer credit transaction expressly provides for a finance charge in excess of what is allowable under the U3C. It might also arise indirectly, as when the creditor improperly uses multiple agreements in violation of K.S.A. 16a-3-304.

5. Under subsection (5), except in cases where the obligation is expressly voided by the U3C (as, for example, in cases involving unlicensed loans under K.S.A. 16a-2-301, referral sales under K.S.A. 16a-3-309, or extortionate loans under K.S.A. 16a-5-107), the creditor may enforce an otherwise valid obligation even though the creditor has violated one of the provisions of the U3C. For example, a creditor suing to enforce an installment contract would, if the installment contract form included a negotiable note, simply face a counterclaim based on the civil penalties in subsection (1). See K.S.A. 16a-5-202.

6. Subsection (6) provides that if the creditor voluntarily notifies the consumer of the error and corrects the error within 15 days after discovering it, the creditor is not subject to a penalty. Such a provision encourages the autonomous correction of errors and violations. Voluntariness is considered to cease, however, either upon the commencement of an action against the creditor or upon the creditor's receipt of written notification from the consumer of the violation.

   Acts done or omitted in conformity with a written administrative interpretation of the administrator result in no liability under the U3C except for refund of an excess charge. See subsection (9) and K.S.A. 16a-6-104(4).

7. Subsection (8) directs the court to award to the consumer the costs of the action and to the consumer's attorneys their reasonable fees in any action where it is found that a creditor has violated the U3C. The direction to award attorney's fees should enable consumers to find attorneys to prosecute their cases, an essential element if the consumers' rights provided by the U3C are to be enforced, as an attorney is assured of adequate compensation. This subsection applies whether or not the particular violation is one of those enumerated in subsection (1). For example, in Topeka Datsun Motor Co. v. Stratton, 12 Kan. App. 2d 95, 736 P.2d 82 (1987), the court awarded attorney's fees in a case involving a failure to conduct a commercially reasonable resale in violation of K.S.A. 16a-5-103; and in Farmers State Bank v. Haflich, 10 Kan. App. 2d 333, 699 P.2d 553 (1985), an award was made in a case involving a violation of the notice and right to cure rules of K.S.A. 16a-5-110 and 16a-5-111. The court in both cases also held that an award of attorney's fees under this subsection is mandatory. Thus, the trial court has no discretion to refuse to consider the consumer's motion for attorney's fees.

8. The U3C provides for other remedies in addition to those set forth in this section. For example, the consumer has a defense to the enforcement of a transaction which violates K.S.A. 16a-5-107 on extortionate extensions of credit. K.S.A. 16a-5-108 gives a consumer a remedy in certain cases of unconscionability.

   In addition to the foregoing individual consumers' remedies, the U3C provides for actions by the administrator for the benefit of consumers. The administrator may issue cease and desist orders with respect to violations of the U3C or may bring civil actions to restrain violations of it. See K.S.A. 16a-6-108 and 16a-6-110. The administrator may also bring a civil action against a creditor to recover actual damages sustained and excess charges paid by one or more consumers who have a right to recover explicitly granted by the U3C, but not for penalties, and amounts recovered shall be paid to each consumer or set off against such consumer's obligation. K.S.A. 16a-6-113. K.S.A. 16a-6-111 provides for civil actions by the administrator for injunctions against a course of making unconscionable agreements or of fraudulent or unconscionable conduct.

Finally, in addition to the individual consumers' remedies and remedies of the administrator described above, the consumer may have other remedies based on general principles of law or equity, or based on the provisions of other applicable law such as the KCPA. See K.S.A. 16a-1-103 and 16a-6-115. Also, damages or penalties to which a consumer is entitled may be set off `against the consumer's obligation, and may be raised as a defense to an action on the obligation without regard to the time limitations prescribed by this section. See K.S.A. 16a-5-202.

Attorney General's Opinions:

- Recovery by the administrator. 80-122.

K.S.A. 16a-5-202. (UCCC) Refunds and penalties as setoff to obligation.

Refunds or penalties to which the consumer is entitled pursuant to this part may be set off against the consumer's obligation, and may be raised as a defense to a suit on the obligation without regard to the time limitations prescribed by this part.

History: L. 1973, ch. 85, § 90; Jan. 1, 1974.

KANSAS COMMENT, 2000:

As noted in the Kansas comment to the preceding section, this section permits a consumer to set off damages or penalties to which the consumer may be entitled against the consumer's obligation, without regard to the time limitations prescribed by other sections in this part. The policy of this section was stated in Valley View State Bank v. Caulfield, 11 Kan. App. 2d 601, 731 P.2d 316 (1987), as follows: "Without 16a-5-202, a creditor who had committed a violation could wait one year under the closed end contract, and two years under open end credit, and commence an action and not be concerned with any violations." 631 P.2d at 318. In Caulfield, the court also held that the term "obligation," as used in this section, refers only to the note or contract on which suit is brought, and not to prior notes which were consolidated or renewed into the current note. As a result, violations which had occurred in the prior notes and which were now time-barred could not be raised.

K.S.A. 16a-5-203. (UCCC) Civil liability for violation of disclosure provisions.

(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, and amendments thereto, 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, 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.

History: L. 1973, ch. 85, § 91; L. 1981, ch. 93, § 15; L. 1988, ch. 85, § 10; L. 1999, ch. 107, § 26; July 1.

KANSAS COMMENT, 2010:

1. This section is derived from TILA 15 U.S.C.A. § 1640. It is intended to allow fulfillment of the demand of that statute that under state law classes of credit transactions be subject to requirements substantially similar to those imposed by the TILA and that adequate provision for enforcement exist if the state wishes to apply for an exemption from the TILA with respect to federal truth in lending. Subsections (1) through (5), consequently, are modeled on the federal provisions. Subsection (6) precludes double liability if a creditor is sued both under this section and under the TILA.
2. The disclosure requirements of the TILA are incorporated into the U3C pursuant to K.S.A. 16a-3-206 and 16a-6-117 and K.A.R. 75-6-26.

Part 3

CRIMINAL PENALTIES

K.S.A. 16a-5-301. (UCCC) Intentional violations; penalties.

(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 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.

History: L. 1973, ch. 85, § 92; L. 1999, ch. 107, § 27; July 1.

KANSAS COMMENT, 2010:

Any intentional violation of any provision of the U3C or any rule, regulation or order issued under it is a criminal offense.

Article 6 – ADMINISTRATION

Part 1

POWERS AND FUNCTIONS OF ADMINISTRATOR

K.S.A. 16a-6-101. (UCCC) Short title.

This article shall be known and may be cited as revised uniform consumer credit code—administration.

History: L. 1973, ch. 85, § 94; Jan. 1, 1974.

KANSAS COMMENT, 2000:

In order to obtain the administration essential to the effectiveness of the U3C, all powers of administration are centralized in a single office, that of the deputy commissioner of the consumer and mortgage lending division of the Office of the State Bank Commissioner. See K.S.A. 16a-1- 301(2). The deputy commissioner is appointed by the bank commissioner under K.S.A. 75-3135.

The powers, duties, and other functions of the deputy commissioner, as administrator of the U3C, are spelled out by this part. See especially K.S.A. 16a-6-104. Note, however, that the Kansas commissioner of insurance also participates in the administration of article 4 of the U3C relating to credit insurance. See K.S.A. 16a-4-111 and K.S.A. 16a-4-112.

Attorney General's Opinions:

- Recovery by the administrator. 80-122.

K.S.A. 16a-6-102. (UCCC) Applicability.

This part applies to persons who in this state

(1) make or solicit consumer credit transactions; or

(2) directly collect payments from or enforce rights against consumers arising from consumer credit transactions, wherever they are made.

History: L. 1973, ch. 85, § 95; Jan. 1, 1974.

KANSAS COMMENT, 2010:

The Kansas Comment, 2000 in the K.S.A. bound volume is no longer valid.

K.S.A. 16a-6-104. (UCCC) Powers of administrator; reliance on rules and regulations; written administrative interpretations; nationwide mortgage licensing system and registry.

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, and amendments thereto, or commence proceedings on the administrator's own initiative;

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

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

(d) make studies appropriate to effectuate the purposes and policies of K.S.A. 16a-1-101 to 16a-9-102, inclusive, 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, 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 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, except licensees which 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, 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 and the administrator may control access to any documents and records of a licensee, registrant or person filing notification under examination;

(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 the proper county or district attorney, who may in the prosecutor's discretion, with or without such a reference, 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;

(k) if deemed necessary by the administrator, require fingerprinting of any applicant, licensee, 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 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 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) 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;

(q) 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) 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, 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, 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, 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.

History: L. 1973, ch. 85, § 97; L. 1976, ch. 98, § 2; L. 1981, ch. 93, § 17; L. 1992, ch. 80, § 3; L. 1999, ch. 107, § 28; L. 2005, ch. 144, § 18; L. 2009, ch. 29, § 21; July 1.

Revisor's Note: Office of consumer credit commissioner abolished and powers, duties and functions transferred to deputy commissioner for consumer and mortgage lending, see 75-1314 et seq.

KANSAS COMMENT, 2010:

1. The administrator is given broad power to make studies relative to the proper working of the U3C, to provide educational services for consumers, and to advise persons and groups as to their rights and obligations under the U3C. The various disclosure rules, rate limitations and other provisions of the U3C designed to protect the consumer cannot be fully effective unless consumers are aware of and understand their rights. Therefore, an essential part of the administrator's total responsibility is providing consumer education.
2. The administrator also is given the power to receive and act on consumer complaints. Those complaints can be expected to be an important basis for the invocation of the administrator's

investigatory powers (K.S.A. 16a-6-106). The ability to file a complaint in addition may be a significant adjunct to the consumer's private right of action for violations (K.S.A. 16a-5-201) or for unconscionability (K.S.A. 16a-5-108) and, in appropriate cases, even an alternative to it. Appropriate cases might involve situations where, in the context of a single case, a violation will be difficult to establish, where the complaint involves an untested provision of the U3C, or where the amount at stake individually is not sufficient under the circumstances to prompt private action to cure a violation. Since the administrator is not under a duty to act in any particular instance, the administrator retains the discretion to act only in those cases where it is believed desirable to do so pursuant to policy considerations established from time to time by the administrator. In acting, the administrator may seek voluntary compliance or invoke the remedies provided in this part.

3. A number of provisions in the U3C specifically direct the administrator to adopt rules and regulations as a more reasonable approach than providing long and complex statutory provisions that are likely to prove too inflexible in practice. In addition, the need may well arise for rules and regulations to carry out many other specific provisions of the U3C. Indeed, almost any provision may need to be the subject of an interpretive rule, and procedural rules will be required in many instances to satisfy the requirements of administrative procedure statutes. Subsections (1)(e) and (f) grant the administrator authority to adopt, amend, and repeal rules and regulations and to issue and revoke written administrative interpretations in these circumstances.
4. Under subsection (2), enforcement of the U3C is delegated in part to those governmental agencies which are already supervising various classes of creditors covered by the U3C.
5. Under subsection (4), a person who acts in accordance with rules and regulations or the written administrative interpretation of the administrator incurs no liability with respect to such conduct even if the rules and regulations, or interpretations are later declared to be invalid, except that if a rule relating to charges is declared invalid, any excess charge made under the supposed authority of the invalid rule and regulation or interpretation may be recovered by the administrator for the consumers. See also K.S.A. 16a-5-201(9).
6. Subsection (5) directs the administrator to establish the various fees required under the U3C. See e.g., K.S.A. 16a-2-302 and 16a-6-203 and the Kansas comments to those sections.

Attorney General's Opinions:

- Supervised lender fees. 80-236.
- Authority of legislature to transfer money from special revenue funds into state general fund. 2002-45.

K.S.A. 16a-6-105. (UCCC) Administrative powers with respect to supervised financial organizations.

(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 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, 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 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, 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.

History: L. 1973, ch. 85, § 98; L. 1980, ch. 76, § 10; L. 1992, ch. 46, § 3; L. 1999, ch. 107, § 29; July 1.

KANSAS COMMENT, 2000:

1. Supervised financial organizations are, by definition, subject to supervision by an official or agency of the United States or by an agency of Kansas or another state. See K.S.A. 16a-1-301(44). The powers of examination and investigation and administrative enforcement under the U3C are delegated to that official or agency rather than to the administrator, unless the administrator is also the supervising official or agency. All other powers of the administrator, including rule making and initiation of judicial action, may be exercised by the administrator with respect to supervised financial organizations.
2. Subsections (2) and (3) provide for exchange of information and for cooperation between the administrator under the U3C and the supervisory authorities of supervised financial institutions. Subsection (3) goes further and requires the administrator and the state agency having supervision over supervised financial organizations to consult with and assist each other in carrying out their duties under the U3C. Compare the administrator's obligation to consult with and assist the insurance commissioner under K.S.A. 16a-4-111.

K.S.A. 16a-6-106. (UCCC) Examination and investigatory powers; costs.

(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;

(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) 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) 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) 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 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) 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 consumer credit code if the activities had occurred in this state.

(6) 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) 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.

History: L. 1973, ch. 85, § 99; L. 1999, ch. 107, § 30; July 1.

KANSAS COMMENT, 2000:

1. This section was substantially rewritten by legislation adopted in 1999 and now gives the administrator very extensive investigative powers. The administrator is given authority to issue and enforce subpoenas in Kansas at the request of the consumer credit administrator of another state and is given the authority to examine out-of-state records.
2. Subsection (7) provides for recovery by the administrator of investigatory costs.

Attorney General's Opinions:

- Finance charges; additional charges not included therein. 81-209.

K.S.A. 16a-6-108. Enforcement of act; cease and desist orders; penalties; appeals.

(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, 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 or other person who knowingly violates this act or a rule and regulation, order or administrative interpretation of the administrator under this act, 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.

History: L. 1973, ch. 85, § 101; L. 1986, ch. 318, § 21; L. 1999, ch. 107, § 31; L. 2005, ch. 144, § 19; L. 2009, ch. 29, § 22; L. 2010, ch. 17, § 36; July 1.

KANSAS COMMENT, 2010:

The Kansas Comment, 2000 in the K.S.A. bound volume is no longer valid.

Attorney General's Opinions:

- Finance charges; additional charges not included therein. 81-209.

K.S.A. 16a-6-109. (UCCC) Assurance of discontinuance.

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.

History: L. 1973, ch. 85, § 102; Jan. 1, 1974.

KANSAS COMMENT, 2010:

This section provides a method for resolving controversies without formal proceedings that involve conduct which is alleged to contravene the provisions of the U3C. Considerable flexibility is granted to the administrator in formulating the terms of any assurance entered into. If the person giving an assurance fails to comply with its terms, the assurance is admissible as evidence, either in a proceeding before the administrator or in the courts, that the person giving the assurance actually engaged in the conduct specified therein.

K.S.A. 16a-6-110. (UCCC) Injunctions against violations of act.

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 and for other appropriate relief.

History: L. 1973, ch. 85, § 103; Jan. 1, 1974.

KANSAS COMMENT, 2010:

In an action under this section the administrator, in addition to relief appropriate under other law of this state, may seek relief under K.S.A. 16a-6-112 and 16a-6-113.

Attorney General's Opinions:

- Finance charges; additional charges not included therein. 81-209.

K.S.A. 16a-6-111. (UCCC) Injunctions against unconscionable agreements and fraudulent or unconscionable conduct.

(1) The administrator may bring a civil action to restrain a creditor or a person acting in his behalf from engaging in a course of

(a) making or enforcing unconscionable terms or provisions of consumer credit transactions;

(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

(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 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.

History: L. 1973, ch. 85, § 104; Jan. 1, 1974.

KANSAS COMMENT, 2010:

1. This section permits the administrator to bring suit to enjoin a person to whom this part applies from engaging in a course of conduct specified in subsections (1)(a) or (b). Those subsections cover two different areas of unconscionable conduct:

   (1) unconscionable contract terms, and

   (2) fraudulent or unconscionable conduct in inducing consumers to enter into consumer credit transactions.

   The former might be called "substantive unconscionability" and the latter "procedural unconscionability."

2. The purpose of this section is to afford the administrator a means of dealing with new patterns of fraudulent or unconscionable conduct unforeseen and, perhaps, unforeseeable at the writing of the U3C.
3. Subsection (3) lists a number of specific factors to be considered on the issue of unconscionability. The following are illustrative of individual transactions which, if engaged in by or on behalf of a creditor, would entitle the administrator to injunctive relief under this section:

   Under subsection (3)(a), a sale of goods to a low income consumer without expectation of payment but with the expectation of repossessing the goods sold and reselling them at a profit;

   Under subsection (3)(b), a sale of an English language encyclopedia set to a person who speaks only Spanish, or a sale of two expensive vacuum cleaners to two poor families sharing the same apartment and one carpet;

   Under subsection (3)(c), a home solicitation sale of a set of cookware or flatware for $375 in an area where a set of comparable quality is readily available on credit in stores for $125 or less;

   Under subsection (3)(e), a sale of goods on terms known by the seller to be disadvantageous to the consumer where the written agreement is in English, the consumer is literate only in Spanish, the transaction was negotiated orally in Spanish by the seller's salesman, and the written agreement was neither translated nor explained to the consumer.

   The criteria listed in subsection (3) to a large extent parallel those found in the KCPA (K.S.A. 50-627). Reference should be made to the comment under that provision for additional examples of conduct which could also violate this section. See also the Kansas comment to K.S.A. 16a-5-108.
4. Subsection (4) prohibits a finding that a charge or practice expressly permitted by the U3C is in itself unconscionable. However, even though a practice or charge is authorized by the U3C, the totality of a particular creditor's conduct may show that the practice or charge is part of an unconscionable course of conduct. Therefore, in determining unconscionability, the creditor's total conduct, including that part of the creditor's conduct which is in accordance with the provisions of the U3C, may be considered.
5. For cases illustrating the prior application of the doctrine of unconscionability in private actions, see the Kansas comment to K.S.A. 16a-5-108. The doctrine of unconscionability was applied in an action by a public official in State by *Lefkowitz v. ITM, Inc.*, 52 Misc.2d 39, 275 N.Y.S.2d 303 (Sup. Ct. 1966). See also *State v. Avco Financial Service*, 70 A.D.2d 859, 418 N.Y.S.2d 52 (1979), rev'd 50 N.Y.S.2d 383, 429 N.Y.S.2d 181, 406 N.E.2d 1075 (1980).

Attorney General's Opinions:

- Limitations on consumer's liability; balloon payments; denial of right to refinance. 82-143.

K.S.A. 16a-6-112. (UCCC) Temporary relief.

With respect to an action brought to enjoin violations of K.S.A. 16a-1-101 through 16a-9-102 (section 16a-6-110) or unconscionable agreements or fraudulent or unconscionable conduct (section 16a-6-111), the administrator may apply to 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.

History: L. 1973, ch. 85, § 105; Jan. 1, 1974.

KANSAS COMMENT, 2000:

This section permits the administrator to seek appropriate temporary relief in connection with actions brought pursuant to K.S.A. 16a-6-110 and 16a-6-111, and defines the circumstances under which such relief may be granted.

K.S.A. 16a-6-113. (UCCC) Civil actions by administrator.

(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 explicitly granted by the provisions of K.S.A. 16a-1-101 through 16a-9-102 to recover. The court shall order amounts recovered or recoverable under this subsection paid to each consumer or set off against his 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 action is pending and dismissed if the precedent action is dismissed with prejudice or results in a final judgment granting or denying the claim asserted in the precedent action.

(2) The administrator may bring a civil action against a creditor or a person acting in his 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). Any civil action under this subsection shall be brought within two (2) years following the violation.

History: L. 1973, ch. 85, § 106; Jan. 1, 1974.

KANSAS COMMENT, 2010:

1. The U3C explicitly grants a right of action to a consumer to recover actual damages and penalties for the violation of a number of its provisions. See K.S.A. 16a-5-201. In addition, subsection (1) of this section allows the administrator, after demand, to bring a civil action on behalf of one or more individual consumers in such cases, except for the recovery of penalties, in contemplation that in some number of these cases the administrator may be the only person with the necessary informational or monetary resources to prosecute an action properly, may be the only person who can adequately represent a group of consumers or, for other reasons, may be an appropriate person to litigate the question involved. If a consumer brings an action on behalf of himself or herself, that action takes precedence, whether initiated before or after the administrator's action. If the consumer brings a class action, it takes precedence if it is brought before an action by the administrator with

respect to claims common to both actions, but the administrator is given the authority to intervene. If the administrator's action on behalf of a class of consumers is brought prior to that of the consumer, the administrator's action takes precedence with respect to claims common to both actions.

2. An action for a civil penalty under subsection (2) may be in lieu of or in addition to an action under subsection (1). The civil penalty under subsection (2) may be recovered for any violation of the U3C, including unconscionable or fraudulent conduct under K.S.A. 16a-6-111. The amount of the penalty to be imposed under subsection (2) is in the discretion of the court, but may not exceed $5,000; a penalty may be imposed only if it is found that the defendant has engaged in a course of repeated and willful violations of the U3C. Since this subsection confers a right of recovery on the administrator in that capacity, it prescribes its own statute of limitations. An unintentional and bona fide error defense is inapplicable since recovery can only be had for repeated and intentional violations. Contrast the standards for recovering civil penalties in private actions under K.S.A. 16a-5-201 and 16a-5-203 and in administrative proceedings under K.S.A. 16a-6-108(3)(b).

Attorney General's Opinions:

- Recovery by the administrator. 80-122.
- Finance charges; additional charges not included therein. 81-209.

K.S.A. 16a-6-115. (UCCC) Consumer's remedies not affected.

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 or under other principles of law or equity.

History: L. 1973, ch. 85, § 107; Jan. 1, 1974.

KANSAS COMMENT, 2010:

1. It is not the intention of the grant of powers to the administrator or of any of the other provisions of the U3C dealing with consumers' remedies to diminish in any way the availability of consumers' remedies under other principles of law or equity. For example, the individual consumer has a cause of action under K.S.A. 16a-5-201(3) and (4) to recover any charges in excess of those permitted in the U3C and to recover a penalty in certain cases, and the administrator may also bring an action under K.S.A. 16a-6-113 to recover excess charges on behalf of consumers. Whether a similar action by private parties exists depends upon Kansas law with respect to class actions (K.S.A. 60-223). The U3C does not specifically authorize such class actions for excess charges nor does it preclude them.

2. Various other consumers' remedies provided by other applicable law are not affected by the U3C. Examples include the UCC provisions concerning the buyer's remedies such as revocation of acceptance of goods delivered (K.S.A. 84-2-608), the right to cancel the contract and to take a security interest in the goods delivered (K.S.A. 84-2-711), the right to incidental and consequential damages (K.S.A. 84-2-715), and remedies for fraud (K.S.A. 84-2-721). So, too, the limitations on contract provided for in the UCC in regard to penalties, liquidated damages, and limitations of remedies (K.S.A. 84-2-718 and 84-2-719) continue to apply to transactions governed by the U3C. Finally, remedies provided under such laws as the KCPA and the Kansas Lemon Law, K.S.A. 50-645 and 50-646, are not affected.

K.S.A. 16a-6-116. (UCCC) Venue.

The administrator may bring actions or proceedings in a court in a county in which an act on which the action or proceeding is based occurred or in a county in which respondent resides or transacts business.

History: L. 1973, ch. 85, § 108; Jan. 1, 1974.

KANSAS COMMENT, 2010:
Venue for administrative actions under the U3C is made broad in order to encourage public enforcement of it.

K.S.A. 16a-6-117. Rules and regulations; truth in lending.

The administrator shall adopt rules and regulations necessary to carry out the provisions and terms of the uniform consumer credit code which are consistent with or no less restrictive than the truth-in-lending act, which is contained in title I of the consumer credit protection act, 15 U.S.C.§ 1601 et seq. and regulation Z, 12 C.F.R. § 226 et seq., as amended, the equal credit opportunity act, 15 U.S.C. § 1691-1691f and regulation B, 12 C.F.R. § 202 et seq., as amended, the real estate settlement procedures act of 1974, 12 U.S.C. § 2601 et seq., and regulation X, 24 C.F.R. §§ 3500 et seq., as amended and section 670 of the John Warner national defense authorization act for fiscal year 2007, 10 U.S.C. § 987 et seq. and 32 C.F.R. § 232 et seq.

History: L. 1981, ch. 93, § 1; L. 1992, ch. 46, § 4; L. 1999, ch. 107, § 32; L. 2000, ch. 27, § 4; L. 2009, ch. 29, § 23; L. 2009, ch. 143, § 6; July 1.

KANSAS COMMENT, 2010:
This section directs the administrator to adopt rules and regulations to carry out various provisions of the U3C by incorporating certain definitions and disclosure requirements of TILA and to obtain dual administrative and civil enforcement of TILA. Current regulations are found in K.A.R. 75-6-26. See the Kansas comments to K.S.A. 16a-3-206 and 16a-5-203.

Attorney General's Opinions:
- Arrests, citations, procedures and penalties; appearance bonds; use of credit cards. 82-165.

Part 2

NOTIFICATON AND FEES

K.S.A. 16a-6-201. (UCCC) Applicability.

This part applies to a creditor engaged in this state in entering into consumer credit transactions and to any person who takes assignments of and undertakes collection of payments from or takes

assignments of and enforces rights against debtors arising from these transactions. This part shall not apply to supervised financial organizations (K.S.A. 16a-1-301, and amendments thereto). Nothing in this section shall be construed to require the payment of any fees required by this article by attorneys or collection agencies who receive the same for collection purposes.

History: L. 1973, ch. 85, § 109; L. 1981, ch. 93, § 18; L. 1993, ch. 200, § 14; L. 2005, ch. 144, § 20; L. 2009, ch. 29, § 24; July 1.

KANSAS COMMENT, 2010:

1. All creditors engaged in entering into consumer credit transactions in Kansas must file a notification under K.S.A. 16a-6-202, except supervised financial organizations such as banks and savings and loan associations. As to when a creditor enters into a consumer credit transaction in Kansas, see K.S.A. 16a-1-201 and its broad extra-territorial application.
2. Assignees of consumer obligations must file notification under K.S.A. 16a-6-202.

K.S.A. 16a-6-202. (UCCC) Notification.

(1) Persons subject to this part shall file notification 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 becomes inaccurate after filing, the person filing the notification shall file a corrected or amended notification in such form and at such time as prescribed by rules and regulations adopted by the administrator.

History: L. 1973, ch. 85, § 110; L. 1988, ch. 85, § 12; L. 1999, ch. 107, § 33; July 1.

KANSAS COMMENT, 2010:

The Kansas Comment, 2000 in the K.S.A. bound volume is no longer valid.

K.S.A. 16a-6-203. Fees.

(1) A person required to file notification shall on or before April 30 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, and amendments thereto, for each business location for that year.

(2) Persons required to file notification 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, and amendments thereto, 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 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, 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.

History: L. 1973, ch. 85, § 111; L. 1976, ch. 98, § 3; L. 1978, ch. 73, § 1; L. 2000, ch. 27, § 5; L. 2005, ch. 144, § 21; L. 2009, ch. 29, § 25; July 1.

KANSAS COMMENT, 2010:

1. Any person required to file a notification under this part must pay an annual fee, as established by the administrator, for each business location. The fee must be paid on or before April 30 each year. The purpose of the fee structure is to make the U3C self-supporting, and the fees are left to the administrator to provide more flexibility. All creditors extending consumer credit in Kansas are governed by the U3C and should share in financing the cost of its administration. The fees will normally be set at an amount which will produce funds sufficient for the adequate administration of the U3C.
2. In addition to the annual fee for each business location, subsection (2) provides that persons who are sellers, lessors, or lenders must pay an additional fee for each $100,000, or part thereof, of the average unpaid balances, including unpaid scheduled periodic payments under consumer leases, of obligations arising from consumer credit transactions entered into by such creditor in Kansas and held on the last day of each calendar month during the preceding calendar year. The average of the unpaid balances on the last day of each month during the year has been chosen as a convenient basis for calculating additional fees since creditors normally maintain records of these figures and they are easily audited by the administrator.
3. An assignee required to file notification must, under subsection (3), pay an additional fee for each $100,000, or part thereof, of the average unpaid balances of the obligations arising from consumer credit transactions entered into in Kansas taken by such assignee through assignment and held on the last day of each calendar month during the preceding calendar year.
4. A seller, lessor or lender entering into consumer credit transactions in Kansas cannot escape liability for the fees imposed by subsection (2) by assigning the resulting obligations to an assignee who has not filed notification. Subsection (2) imposes a liability for the fees on the seller, lessor or lender, if an immediate or remote assignee has not filed notification, and a presumption is created on the basis of which the fees can be computed.

Attorney General's Opinions:

- Authority of legislature to transfer money from special revenue funds into state general fund. 2002-45.

Part 4

ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

K.S.A. 16a-6-401. (UCCC) Applicability and scope.

This part applies to the administrator, prescribes the procedures to be observed by him in exercising his powers under K.S.A. 16a-1-101 through 16a-9-102, and supplements the provisions of the part on powers and functions of 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).

History: L. 1973, ch. 85, § 116; Jan. 1, 1974.

KANSAS COMMENT, 2000:

1. This part was patterned after the uniform law commissioners' 1961 revised model state administrative procedure act. It was intended for adoption only in those states which had not enacted an adequate administrative procedure act which would apply to the actions of the administrator under the U3C. In 1973, when the U3C was originally adopted in Kansas, Kansas had no administrative procedure act, and so the provisions of this part were adopted. In 1984, Kansas enacted a comprehensive administrative procedure act, K.S.A. 77-501 et seq. (KAPA), which was not based on the 1961 revised model act, but instead on the more modern 1981 revised state model administrative procedure act. As a result, the KAPA does not much resemble this part of the U3C. While this might have created problems of statutory interpretation, the KAPA, at K.S.A. 77-503, states that its provisions apply only to the extent that other statutes expressly so provide. Only one section of the U3C, K.S.A. 16a-6-410, has been amended to refer to the KAPA. As a result, the procedures spelled out in this part, rather than the KAPA, will apply generally to the actions of the administrator.
2. Many of the sections in this part pertain primarily to rule-making, and these sections often refer to article 4 of chapter 77 of K.S.A. Those provisions do not, of themselves, constitute a comprehensive administrative procedure act, but they do contain a number of guidelines for adoption of rules and regulations by Kansas administrative agencies.
3. This part also applies to action taken by the Kansas commissioner of insurance under article 4 of the U3C. See K.S.A. 16a-4-112(2).

K.S.A. 16a-6-402. (UCCC) Definitions in part.

In this part:

(1) "Contested case" means a proceeding, including but not restricted to one pursuant to the provisions on administrative enforcement orders (subsection (a) of K.S.A. 16a-6-108 and amendments thereto) and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by the administrator after an opportunity for hearing.

(2) "License" means a license authorizing a person to make supervised loans pursuant to the provisions on authority to make supervised loans (K.S.A. 16a-2-301 and amendments thereto).

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

(4) "Rule" means each rule specifically authorized by this act that applies generally and implements, interprets or prescribes law or policy, or each statement by the administrator that applies generally and describes the administrator's procedure or practice requirements or the organization of the administrator's office. The term includes the amendment or repeal of a prior rule but does not include:

(a) statements concerning only the internal management of the administrator's office and not affecting private rights or procedures available to the public;

(b) declaratory rulings issued pursuant to the provisions on declaratory rulings by administrator (K.S.A. 16a-6-409 and amendments thereto); or

(c) intra-office memoranda.

History: L. 1973, ch. 85, § 117; L. 1988, ch. 356, § 48; July 1, 1989.

KANSAS COMMENT, 2000:

These definitions are derived from the 1961 revised model administrative procedures act. They differ in language, and often in substance, from the definitions of the same terms in the KAPA. Compare K.S.A. 77-415 and 77-502.

K.S.A. 16a-6-403. (UCCC) Public information; adoption of rules; availability of rules and orders.

(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;

(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.

History: L. 1973, ch. 85, § 118; L. 1981, ch. 95, § 2; July 1.

KANSAS COMMENT, 2010:
The Kansas Comment, 2000 in the K.S.A. bound volume is no longer valid.

K.S.A. 16a-6-404. Procedure for adoption of rules.

Prior to the adoption, amendment, or repeal of any rule, the administrator shall submit such proposed rule, amendment or revocation to the attorney general for his examination and approval and shall give notice and hold a hearing thereon in the manner required by article 4 of chapter 77 of the Kansas Statutes Annotated and amendments thereto.

History: L. 1973, ch. 85, § 119; Jan. 1, 1974.

KANSAS COMMENT, 2010:
The Kansas Comment, 2000 in the K.S.A. bound volume is no longer valid.

K.S.A. 16a-6-405. Filing and taking effect of rules.

(1) Every rule and regulation or amendment or revocation thereof shall be filed by the administrator in the office of the secretary of state in the manner provided by article 4 of chapter 77 of the Kansas Statutes Annotated and amendments thereto.

(2) Each rule and regulation or amendment or revocation thereof shall take effect at times prescribed under the provisions of article 4 of chapter 77 of the Kansas Statutes Annotated and amendments thereto.

History: L. 1973, ch. 85, § 120; L. 1988, ch. 366, § 4; June 1.

KANSAS COMMENT, 2010:
The Kansas Comment, 2000 in the K.S.A. bound volume is no longer valid.

K.S.A. 16a-6-406. Publication of rules.

The secretary of state shall publish all rules and regulations filed under the provisions of this act subject to and in the manner provided for the publication of rules and regulations under the provisions of article 4 of chapter 77 of the Kansas Statutes Annotated and amendments thereto.

History: L. 1973, ch. 85, § 121; L. 1988, ch. 366, § 5; June 1.

KANSAS COMMENT, 2010:
The Kansas Comment, 2000 in the K.S.A. bound volume is no longer valid.

K.S.A. 16a-6-407. (UCCC) Petition for adoption, amendment or repeal of rules.

An interested person may petition the administrator requesting the promulgation, amendment or repeal of a rule. The administrator may prescribe by rule the form for petitions and the procedure for their submission, consideration and disposition. Within 30 days after submission of a petition the administrator either shall deny the petition in writing stating the reasons for the denials) or shall initiate rule-making proceedings in accordance with the provisions on procedure for adoption of rules set forth in K.S.A 16a-6-404.

History: L. 1973, ch. 85, § 122; L. 1981, ch. 95, § 3; July 1.

KANSAS COMMENT, 2010:
The Kansas Comment, 2000 in the K.S.A. bound volume is no longer valid.

K.S.A. 16a-6-408. Declaratory judgment on validity or applicability or rules.

The validity or applicability of a rule may be determined in an action for declaratory judgment in the manner prescribed by K.S.A. 77-434 and amendments thereto.

History: L. 1973, ch. 85, § 123; Jan. 1, 1974.

KANSAS COMMENT, 2010:
The cited section, K.S.A. 77-434, was repealed in 1984, but no corresponding amendment was made to this section.

K.S.A. 16a-6-409. (UCCC) Declaratory rulings by administrator.

The administrator shall provide by rule for the filing and prompt disposition of petitions or declaratory rulings as to the applicability of any statutory provision or of any rule of the

administrator. Rulings disposing of petitions have the same status as decisions or orders in contested cases.

History: L. 1973, ch. 85, § 124; Jan. 1, 1974.

KANSAS COMMENT, 2010:
The Kansas Comment, 2000 in the K.S.A. bound volume is no longer valid.

K.S.A. 16a-6-410. (UCCC) Contested cases; orders subject to provision of Kansas administrative procedure act; informal disposition.

(1) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice. Orders in contested cases, and proceedings thereon, shall be subject to the provisions of the Kansas administrative procedure act.

(2) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, or consent order.

History: L. 1973, ch. 85, § 125; L. 1988, ch. 356, § 49; July 1, 1989.

KANSAS COMMENT, 2010:
"Contested case" is defined in K.S.A. 16a-6-402. As for subsection (2), the KAPA also recognizes the validity of informal settlements. See K.S.A. 77-505.

K.S.A. 16a-6-414. Judicial review of administrator's actions.

Any action of the administrator pursuant to the uniform consumer credit code is subject to review in accordance with the Kansas judicial review act. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief or trial de novo provided by law. A preliminary, procedural or intermediate action or ruling of the administrator is immediately reviewable if review of the final decision of the administrator would not provide an adequate remedy.

History: L. 1973, ch. 85, § 129; L. 1986, ch. 318, § 22; L. 2010, ch. 17, § 37; July 1.

KANSAS COMMENT, 2010:
The administrator's actions are subject to judicial review under the Kansas judicial review act, K.S.A. 77-601 et seq. That act provides the exclusive means of judicial review of agency action. See K.S.A. 77-606.

Article 9 – EFFECTIVE DATE AND REPEALER

K.S.A. 16a-9-101. (UCCC) Time of taking effect; provisions for transition.

(1) Sections 1 through 135 of this act [*] take effect at 12:01 a.m. on January 1, 1974.

(2) To the extent appropriate to permit the administrator to prepare for operation of sections 1 through 135 of this act [*] when it takes effect and to act on applications for licenses to make supervised loans under this act (subsection (1) of section 16a-2-302), the part on supervised lenders (part 3) of the article on finance charges and related provisions (article 2), and the article on administration (article 6) take effect January 1, 1974.

(3) Transactions entered into before sections 1 through 135 of this act [*] take effect and the rights, duties, and interests flowing from them thereafter may be terminated, completed, consummated, or enforced as required or permitted by any statute, rule of law, or other law amended, repealed, or modified by this act as though the repeal, amendment, or modification had not occurred, but sections 1 through 135 of this act [*] apply to

(a) refinancings, consolidations, and deferrals made after this act takes effect of sales, leases, and loans whenever made;

(b) sales or loans made after this act takes effect pursuant to open end credit entered into, arranged, or contracted for before this act takes effect; and

(c) all credit transactions made before this act takes effect insofar as the article on remedies and penalties (article 5) limits the remedies of creditors.

History: L. 1973, ch. 85, § 130; Jan. 1, 1974.

[*]This act includes 16a-1-101 through 16a-9-102, 16-207, 16-403, 17-2214 and 84-9-203.

KANSAS COMMENT, 2010:

1. The transitional provisions set forth in this section were extremely important for ongoing customer transactions entered into before the effective date of the U3C, January 1, 1974, because certain transactions entered into before that date may well have fallen within the ambit of the U3C. For example, a note executed in 1973 containing a balloon payment scheduled to be due after January 1, 1974 would have been covered as a "refinancing" under subsection (3)(a) and the refinancing would have been required to take place under the limitations imposed by K.S.A. 16a-3-308. Similarly, under subsection (3)(c), a $750 installment sales contract entered into during 1973 would have been subject to the U3C's restrictions on deficiency judgments (K.S.A. 16a-5-103) if judgment was sought after January 1, 1974. On the other hand, a clause in a 1973 installment sales contract giving the seller a security interest in property unrelated to the sale would have been valid, even though such a security interest in a contract executed after January 1, 1974 would be invalid under K.S.A. 16a-3-301. Today, these considerations are largely academic, since it is unlikely that any consumer credit contracts executed before 1974 are still around.
2. Upon the effective date of the U3C, January 1, 1974, the following Kansas statutes were repealed:

(a) the 1955 consumer loan act (former K.S.A. 16-401 to 16-426);

(b) the 1958 sales finance act (former K.S.A. 16-501 to 16-514);

(c) the 1969 truth in lending act (former K.S.A. 16-801 to 16-830);

(d) the 1969 provisions regarding revolving credit (former K.S.A. 16-901 to 16-911); and

(e) the 1969 installment loan rate provisions (former K.S.A. 16-203 and 16-206 to 16-213), although a technical amendment to K.S.A. 16-207 was made.

The only part of the consumer loan act retained was a portion of K.S.A. 16-403, dealing with the office of the consumer credit commissioner. As the comment to K.S.A. 16a-1-202 indicates, the former statutes relating to pawnbrokers and insurance premium financing remain effective since these transactions are excluded from the U3C. The Kansas credit union law (K.S.A. 17-2201 to 17-2268) remains effective. Finally, it should be emphasized that the U3C does not repeal several important provisions relating to interest rates, such as K.S.A. 16-201 (stating the legal rate on unpaid accounts), K.S.A. 16-204 (judgment rate), 16-205 (relationship between contract rate and judgment rate), K.S.A. 16-207 (general usury limits), and K.S.A. 17-7105 (no usury limit when debtor is a corporation).

K.S.A. 16a-9-102. (UCCC) Continuation of licensing.

All persons licensed or otherwise authorized under the provisions of article 4 of chapter 16 of the Kansas Statutes Annotated, and amendments thereto, on the effective date of this act are licensed to make supervised loans under sections 1 through 135 of this act [*], pursuant to the part on supervised lenders (part 3) of the article on finance charges and related provisions (article 2), and all provisions of that part apply to the persons so previously licensed or authorized. The administrator may, but is not required to, deliver evidence of licensing to the persons so previously licensed or authorized.

History: L. 1973, ch. 85, § 131; Jan. 1, 1974.

[*]This act includes 16a-1-101 through 16a-9-102, 16-207, 16-403, 17-2214 and 84-9-203.

KANSAS COMMENT, 2000:

This section provides automatic licensing under article 2, part 3 (K.S.A. 16a-2-301 et seq.) for all lenders previously licensed under the old Kansas consumer loan act. No application or administrative action is required and the formal license under the prior statute, now repealed, will be a license under the U3C. The administrator, at such time as the duties under the U3C permit, may substitute new licenses for those in the lender's possession, but this is entirely a ministerial act.

KANSAS ADMINISTRATIVE REGULATIONS

Agency 75 – OFFICE OF THE STATE BANK COMMISSIONER

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Agency 104 – Joint Regulation – Consumer Credit Commissioner, Credit Union Administrator, Savings and Loan Commissioner and Bank Commissioner

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KANSAS ADMINISTRATIVE REGULATIONS

Agency 75 – OFFICE OF THE STATE BANK COMMISSIONER

Article 6 – UNIFORM CONSUMER CREDIT CODE

K.A.R. 75-6-1. Making transactions outside of the scope of the Kansas uniform consumer credit code subject to same.

The parties to a sale, lease, loan, or modification of a sale, lease, or loan that is not a consumer credit transaction may agree in a writing signed by the parties to make the transaction subject to the Kansas un1iform consumer credit code. Any such agreement may be included in the contractual agreement evidencing the credit transaction, and when so included, no additional signatures shall be required to evidence the agreement to include the transaction within the scope of the Kansas uniform consumer credit code other than the signatures normally used in executing the credit transaction. In order to be effective, each such agreement shall be executed simultaneously with the contractual agreement evidencing the credit transaction.

(Authorized by K.S.A. 16a-6-104(e), as amended by 2009 SB 240, § 21; implementing K.S.A. 16a-1-109; effective, E-74-13, Jan. 1, 1974; effective May 1, 1975; amended Oct. 2, 2009.)

K.A.R. 75-6-9. Additional charges.

(a) The charges enumerated in K.S.A. 16a-2-501 (1)(d), and amendments thereto, shall be considered ‘‘additional charges in connection with a consumer credit transaction’’ if the charges meet the following requirements:

(1) Are made under conditions that permit their exclusion from the definition of ‘‘finance charge’’ under K.S.A. 16a-1-301 (22) and amendments thereto; and

(2) are payable to a third party who is not related to the creditor, except as allowed by K.S.A. 16a-1-301 (10)(b) and amendments thereto.

(b) Additional charges shall be considered ‘‘in connection with a consumer credit transaction,’’ as used in K.S.A. 16a-2-501 and amendments thereto and subsection (a) of this regulation, if either of the following conditions is met:

(1) In relation to insurance premiums, the creditor or a person related to the creditor receives a commission on any insurance sold on the same day on which the consumer credit transaction was consummated.

(2) In relation to all other additional charges, the charges are made for goods, services, or both rendered within one month before or after the consummation of the consumer credit transaction.

(Authorized by K.S.A. 16a-6-104(e), as amended by 2009 SB 240, § 21; implementing K.S.A. 16a-2-501(1)(d); effective, E-74-13, Jan. 1, 1974; effective May 1, 1975; amended May 1, 1985; amended Sept. 20, 1996; amended Oct. 2, 2009.)

K.A.R. 75-6-23. [16a-3-305(1)] No assignment of earnings.

When a debtor authorizes a deduction from his earnings by the debtor's employer to be paid to the employee's creditor in accordance with the provision permitting such a deduction in K.S.A. 16a-3-305(1), the authorization providing for such "earnings deduction" shall be in a separate printed form or writing apart from the contract. Such authorization shall contain a clear and conspicuous notice to the debtor that the "earnings deduction" that the debtor is authorizing may be revoked by the debtor at any time, and shall also provide appropriate wording so that the form may be used as a form for revoking any such authorization. A copy must be delivered to the debtor at the time of execution. In no such authorization may a reference to an "earnings deduction" be termed a wage assignment. For the purposes of remedies and penalties a violation of this regulation shall constitute a violation of K.S.A. 16a-3-305.

(Authorized by K.S.A. 1976 Supp. 16a-6-104(1)(e); effective Feb. 15, 1977.)

K.A.R. 75-6-26. Federal consumer credit laws.

(a) Each creditor subject to the federal laws and regulations set forth below shall make the disclosures required under these laws and regulations, and shall comply with all other terms and provisions of these laws and regulations applicable to the creditor. The pertinent federal laws and regulations, which are hereby adopted by reference, shall be the following:

(1) Title I of the consumer credit protection act, 15 USC § 1601 et seq., as amended, and in effect on January 1, 2000;

(2) regulation M, 12 CFR part 213, including all appendices, as amended and in effect on January 1, 2000; and

(3) regulation Z, 12 CFR part 226, including all appendices, as amended and in effect on March 31, 2000.

(b) The terms "amount financed" and "annual percentage rate," as used in the Kansas uniform consumer credit code, shall have the same meanings given to these terms in, and shall be interpreted in a manner that is consistent with the usage and treatment of these terms in, and shall be calculated in a manner that conforms to the following:

(1) Title I of the consumer credit protection act, 15 USC § 1601 et seq., as amended, and in effect on January 1, 2000; and

(2) regulation Z, 12 CFR part 226, including all appendices, as amended and in effect on March 31, 2000.

(c) The terms "finance charge" and "prepaid finance charge," as used in the Kansas uniform consumer credit code, shall have substantially the same meanings given to these terms in, and shall be interpreted in a manner that is consistent with the usage and treatment of these terms in, and shall be calculated in a manner that conforms to the following:

(1) Title I of the consumer credit protection act, 15 USC § 1601 et seq., as amended, and in effect on January 1, 2000; and

(2) regulation Z, 12 CFR part 226, including all appendices, as amended and in effect on March 31, 2000.

(d) Notwithstanding subsection (c), the following shall not be included in the meaning of the terms "finance charge" and "prepaid finance charge" as used in the Kansas uniform consumer credit code:

(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 the debt; and

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

(Authorized by and implementing K.S.A. 1999 Supp. 16a-1-301, and K.S.A. 1999 Supp. 16a-6-117; effective, E-82-16, Aug. 12, 1981; amended, T-83-2, Jan. 7, 1982; amended, T-83-6, April 14, 1982; amended, T-84-10, May 25, 1983; amended, T-85-15, May 3, 1984; amended, T-86-12, May 1, 1985; amended, T-87-14, June 6, 1986; amended, T-88-15, July 1, 1987; amended, T-75-7-29-88, July 29, 1988; amended Sept. 19, 1988; amended June 11, 1990; amended Oct. 28, 1991; amended Sept. 8, 1992; amended March 7, 1997; amended Dec. 12, 1997; amended July 14, 2000.)

K.A.R. 75-6-30. Application; place of business.

(a) Each person who proposes to engage in any of the activities for which a license is required under K.S.A. 16a-2-301, and amendments thereto, shall first apply for and obtain a license for each of the person's places of business. Each applicant for a license and each licensee seeking to license one or more additional places of business shall complete and submit a license application for each place of business.

(b) Each location at which an applicant or licensee regularly performs either of the following activities shall constitute a place of business for the purpose of this regulation:

(1) Makes a supervised loan to a Kansas consumer or makes any loan for personal, family, or household purposes to a Kansas consumer; or

(2) accepts payments on loans made to Kansas consumers that the applicant or licensee has taken assignment of for direct collection.

(c) Any location in Kansas at which an applicant or licensee places an automated loan machine shall be deemed a location where an applicant or licensee makes a supervised loan.

(Authorized by and implementing K.S.A. 2004 Supp. 16a-2-302(5), as amended by L. 2005, ch. 144, sec. 9; effective July 14, 2000; amended Jan. 6, 2006.)

K.A.R. 75-6-31. Bond requirements.

(a) Each applicant for a supervised loan license shall submit a bond in the following amounts:

(1) For any applicant who engages in or intends to engage in making loans secured by an interest in real property or contracts for deed, $250,000.00 for the first licensed place of business, plus an additional $25,000.00 for each additional licensed place of business or, if the applicant made more than $50,000,000.00 in such loans in Kansas during the previous calendar year, $300,000.00; or

(2) for all other applicants, $100,000.00 for the first licensed place of business, plus an additional $25,000.00 for each additional licensed place of business.

(b) The total bond requirement for each applicant shall not exceed $300,000.00, unless the administrator determines, after consideration of the factors specified in subsection (c), that special circumstances require a higher bond amount in order to adequately protect Kansas consumers.

(c) In determining whether a higher bond amount is necessary, the following factors shall be considered by the administrator:

(1) Whether the business proposed to be conducted by the applicant involves technology or methods that may require additional regulatory oversight by the administrator;

(2) whether the applicant has been the subject of regulatory or disciplinary actions by the administrator, any regulatory body of this state or any other state, or any federal regulatory body; or

(3) whether the applicant's structure, business activities, or operations possess elements of risk that may require additional regulatory oversight by the administrator.

(Authorized by K.S.A. 16a-2-302(1)(a), as amended by 2009 SB 240, § 17, and K.S.A. 16a-6-104, as amended by 2009 SB 240, § 21; implementing K.S.A. 16a-2-302(2), as amended

by 2009 SB 240, § 17; effective July 14, 2000; amended Jan. 6, 2006; amended Oct. 2, 2009.)

K.A.R. 75-6-32. Notification.

(a) Each person subject to K.S.A. 16a-6-201 through K.S.A. 16a-6-203, and amendments thereto, shall file notification with the administrator within 30 days after commencing business in Kansas and, thereafter, on or before April 30 of each year. The notification shall be submitted on a form provided by the administrator.

(b) If the business's name, status, or list of locations contained in the notification becomes inaccurate after filing, the person shall notify the administrator in writing within 30 days of the date of the change.

(Authorized by K.S.A. 2000 Supp. 16a-6-104; implementing K.S.A. 2000 Supp. 16a-6-202; effective Feb. 23, 2001.)

K.A.R. 75-6-35. Net worth requirements.

(a) Each applicant for a supervised loan license who engages in or intends to engage in making loans secured by an interest in real property or contracts for deed shall comply with both of the following requirements:

(1) Each applicant shall maintain a minimum net worth of $250,000.

(2) At least 20% or $100,000 of the net worth of each applicant, whichever is less, shall be comprised of liquid assets consisting of cash or readily marketable securities registered on a national securities exchange.

(b) As evidence that the applicant is in compliance with subsection (a), each applicant shall submit annually to the administrator, on or before January 1, a current and complete financial statement, accompanied by a written statement signed by an independent certified public accountant attesting that the statement has been reviewed and is in compliance with generally accepted accounting principles. For the purposes of this regulation, a current financial statement shall be one that was prepared within the preceding 12 months.

(Authorized by and implementing K.S.A. 2004 Supp. 16a-2-302(2)(b), as amended by L. 2005, ch. 144, sec. 9; effective Jan. 6, 2006.)

K.A.R. 75-6-36. Prelicensing and continuing education; requirements.

(a) Each individual required to register as a residential mortgage loan originator pursuant to the Kansas uniform consumer credit code, K.S.A. 16a-1-101 et seq. and amendments

thereto, shall complete at least 20 hours of prelicensing professional education (PPE) approved in accordance with subsection (c), which shall include at least the following:

(1) Three hours of federal law and regulations;

(2) three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(3) two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) Each individual required to register as a residential mortgage loan originator pursuant to the Kansas uniform consumer credit code, K.S.A. 16a-1-101 et seq. and amendments thereto, shall annually complete at least eight hours of approved continuing professional education (CPE) as a condition of registration renewal, which shall include at least the following:

(1) Three hours of federal law and regulations;

(2) two hours of ethics, which shall include instruction on fraud consumer protection, and fair lending issues; and

(3) two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(c) Each PPE and CPE course shall first be approved by the administrator, or the administrator's designee, before granting credit.

(d) In addition to the specific topic requirements in subsections (a) and (b), PPE and CPE courses shall focus on issues of mortgage business, as defined by K.S.A. 9-2201 and amendments thereto, or related industry topics.

(e) One PPE or CPE hour shall consist of at least 50 minutes of approved instruction.

(f) Each request for PPE or CPE course approval shall be submitted on a form approved by the administrator. A request for PPE or CPE course approval may be submitted by any person, as defined by K.S.A. 16a-1-301 and amendments thereto.

(g) Evidence of satisfactory completion of approved PPE or CPE courses shall be submitted in the manner prescribed by the administrator. Each residential mortgage loan originator registrant shall ensure that PPE or CPE credit has been properly submitted to the administrator and shall maintain verification records in the form of completion certificates or other documentation of attendance at approved PPE or CPE courses.

(h) Each CPE year shall begin on the first day of January and shall end on the 31st day of December each year.

(i) Each residential mortgage loan originator registrant may receive credit for a CPE course only in the year in which the course is taken. A registrant shall not take the same approved course in the same or successive years to meet the annual requirements for CPE.

(j) Each residential mortgage loan originator registrant who fails to renew the registrant's certificate of registration, in accordance with K.S.A. 16a-2-302 and amendments thereto, shall obtain all delinquent CPE before receiving a new certificate of registration.

(k) A residential mortgage loan originator registrant who is an instructor of an approved continuing education course may receive credit for the registrant's own annual continuing education requirement at the rate of two hours of credit for every one hour taught.

(Authorized by and implementing K.S.A. 16a-6-104, as amended by 2009 SB 240, § 21; effective Oct. 2, 2009.)

K.A.R. 75-6-37. Prelicensure testing.

(a) On and after July 31, 2010, each individual required to register as a residential mortgage loan originator pursuant to the Kansas uniform consumer credit code, K.S.A. 16a-1-101 et seq. and amendments thereto, shall pass a qualified written test. For purposes of this regulation, the administrator's designee for developing and administering the qualified written test shall be the nationwide mortgage licensing system and registry.

(b) A written test shall not be treated as a qualified written test for purposes of subsection (a) unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including the following:

(1) Ethics;

(2) federal laws and regulations pertaining to mortgage origination;

(3) state laws and regulations pertaining to mortgage origination;

(4) federal and state laws and regulations, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(c) (1) An applicant shall not be considered to have passed a qualified written test unless the applicant achieves a test score of at least 75 percent.

(2) An applicant may retake a test three consecutive times, with each consecutive taking occurring at least 30 days after the preceding test.

(3) After failing three consecutive tests, an applicant shall wait at least six months before taking the test again.

(4) A registered mortgage loan originator registrant who fails to maintain a valid license for five years or longer shall retake the test, not including any time during which the individual is a registered loan originator, as defined in section 1503 of title V, S.A.F.E. mortgage licensing act of 2008, P.L. 110-289.

(Authorized by and implementing K.S.A. 16a-6-104, as amended by 2009 SB 240, § 21; effective Oct. 2, 2009.)

K.A.R. 75-6-38. Record retention.

(a) In any loan, lease, or credit sale not secured by an interest in real estate, the licensee or any person required to file notification with the administrator pursuant to K.S.A. 16a-6-202, and amendments thereto, shall retain the following:

(1) The following documents, as applicable, in any transaction closed in the name of the licensee or person filing notification, for at least 36 months following the closing date or, if the transaction is not closed, the application date:

(A) The application;

(B) the contract and any addendum or rider;

(C) the final truth-in-lending disclosure statement, including an itemization of the amount financed and an itemization of any prepaid finance charges, or consumer lease disclosures;

(D) any written agreements with the borrower that describe rates or fees;

(E) any documentation that aided the licensee or person in making a credit decision, including a credit report, verification of employment, verification of income, bank statements, payroll records, and tax returns;

(F) all paid invoices for credit report, filing, and any other closing costs;

(G) any credit insurance requests and insurance certificates;

(H) the assignment of the contract;

(I) phone log or any correspondence with associated notes detailing each contact with the consumer;

(J) all other agreements for products or services charged in connection with each transaction by the licensee, person filing notification, or third party, including guaranteed asset protection (GAP) and warranties; and

(K) any other disclosures or statements required by law; and

(2) the following documents, as applicable, in any transaction in which the licensee or person filing notification owns the account and directly or indirectly undertakes collection of payments or enforcement of rights against debtors, for at least 36 months after the final entry to each account:

(A) A complete payment history, including the following:

(i) An explanation of transaction codes, if used;

(ii) the principal balance;

(iii) the payment amount;

(iv) the payment date;

(v) the distribution of the payment amount to interest, principal, and late fees or other fees; and

(vi) any other amounts that have been added to, or deducted from, a consumer's account;

(B) any other statements, disclosures, invoices, or information for each account, including the following:

(i) Documentation supporting any amounts added to a consumer's account or evidence that a service was actually performed in connection with these amounts, or both, including costs of collection, attorney's fees, skip tracing, retaking, or repossession fees;

(ii) loan modification agreements;

(iii) forbearance or any other repayment agreements;

(iv) subordination agreements;

(v) surplus or deficiency balance statements;

(vi) default-related correspondence or documents;

(vii) evidence of sale of repossessed collateral;

(viii) the notice of the consumer's right to cure;

(ix) property insurance advance disclosure;

(x) force-placed property insurance;

(xi) notice and evidence of credit insurance premium refunds;

(xii) deferred interest;

(xiii) suspense accounts;

(xiv) phone log or any correspondence with associated notes detailing each contact between the servicer and the consumer; and

(xv) any other product or service agreements; and

(C) documents related to the general servicing activities of the licensee, including the following:

(i) Historical records for all adjustable rate indices used;

(ii) a log of all accounts sold, transferred, or assigned that details to whom the accounts were sold, transferred, or assigned;

(iii) a log of all accounts in which repossession activity has been initiated;

(iv) a log of all credit insurance claims and accounts paid by credit insurance; and

(v) a schedule of servicing fees and charges imposed by the licensee or a third party.

(b) In any loan secured by an interest in real estate, the licensee shall retain the following:

(1) The following documents, as applicable, in any mortgage loan in which the licensee does not close the transaction in the licensee's name, for at least 36 months following the closing date or, if the transaction is not closed, the application date:

(A) The application;

(B) the good faith estimate;

(C) the early truth-in-lending disclosure statement;

(D) any written agreements with the borrower that describe rates, fees, broker compensation, and any other similar fees;

(E) an appraisal performed by a Kansas-licensed or Kansas-certified appraiser completed within 12 months before the loan closing date, 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, or, for a nonpurchase money real estate transaction, the estimated market value as determined through an automated valuation model, pursuant to K.S.A. 16a-1-301(6) and amendments thereto, acceptable to the administrator;

(F) the adjustable rate mortgage (ARM) disclosure;

(G) the home equity line of credit (HELOC) disclosure statement;

(H) the affiliated business arrangement disclosure;

(I) evidence that the special information booklet, consumer handbook on adjustable rate mortgages, home equity brochure, reverse mortgage booklet, or any suitable substitute was delivered in a timely manner;

(J) the certificate of counseling for home equity conversion mortgages (HECMs);

(K) the loan cost disclosure statement for HECMs;

(L) the notice to the borrower for HECMs;

(M) phone log or any correspondence with associated notes detailing each contact with the consumer;

(N) any documentation that aided the licensee in making a credit decision, including a credit report, title work, verification of employment, verification of income, bank statements, payroll records, and tax returns;

(O) the settlement statement; and

(P) all paid invoices for appraisal, title work, credit report, and any other closing costs;

(2) the following documents, as applicable, in any transaction in which the licensee provides any money to fund the loan or closes the mortgage loan in the licensee's name, for at least 36 months from the closing date of the transaction:

(A) The high loan-to-value notice required by K.S.A. 16a-3-207 and amendments thereto;

(B) the final truth-in-lending disclosure statement, including an itemization of the amount financed and an itemization of any prepaid finance charges;

(C) any credit insurance requests and insurance certificates;

(D) the note and any other applicable contract addendum or rider;

(E) a copy of the filed mortgage or deed;

(F) a copy of the title policy or search;

(G) the assignment of the mortgage and note;

(H) the initial escrow account statement or escrow account waiver;

(I) the notice of the right to rescind or waiver of the right to rescind;

(J) the special home ownership and equity protection act disclosures required by regulation Z in 12 CFR 226.32(c) and 226.34(a)(2), if applicable;

(K) the mortgage servicing disclosure statement and applicant acknowledgement;

(L) the notice of transfer of mortgage servicing;

(M) any interest rate lock-in agreement or float agreement; and

(N) any other disclosures or statements required by law; and

(3) the following documents, as applicable, in any mortgage transaction in which the licensee owns the mortgage loan or the servicing rights of the mortgage loan and directly or indirectly undertakes collection of payments or enforcement of rights against debtors, for at least 36 months from the final entry to each account:

(A) A complete payment history, including the following:

(i) An explanation of transaction codes, if used;

(ii) the principal balance;

(iii) the payment amount;

(iv) the payment date;

(v) the distribution of the payment amount to interest, principal, late fees or other fees, and escrow; and

(vi) any other amounts that have been added to, or deducted from, a consumer's account;

(B) any other statements, disclosures, invoices, or information for each account, including the following:

(i) Documentation supporting any amounts added to a consumer's account or evidence that a service was actually performed in connection with these amounts, including costs of collection, attorney's fees, property inspections, property preservations, and broker price opinions;

(ii) annual escrow account statements and related escrow account analyses;

(iii) notice of shortage or deficiency in escrow account;

(iv) loan modification agreements;

(v) forbearance or any other repayment agreements;

(vi) subordination agreements;

(vii) foreclosure notices;

(viii) evidence of sale of foreclosed homes;

(ix) surplus or deficiency balance statements;

(x) default-related correspondence or documents;

(xi) the notice of the consumer's right to cure;

(xii) property insurance advance disclosure;

(xiii) force-placed property insurance;

(xiv) notice and evidence of credit insurance premium refunds;

(xv) deferred interest;

(xvi) suspense accounts;

(xvii) phone log or any correspondence with associated notes detailing each contact between the servicer and the consumer; and

(xviii) any other product or service agreements; and

(C) documents related to the general servicing activities of the licensee, including the following:

(i) Historical records for all adjustable rate mortgage indices used;

(ii) a log of all accounts sold, transferred, or assigned that details to whom the accounts were sold, transferred, or assigned;

(iii) a log of all accounts in which foreclosure activity has been initiated;

(iv) a log of all credit insurance claims and accounts paid by credit insurance; and

(v) a schedule of servicing fees and charges imposed by the licensee or a third party.

(c) In addition to meeting the requirements specified in subsections (a) and (b), each licensee or person filing notification shall retain for at least the previous 36 months the documents related to the general business activities of the licensee or person filing notification, which shall include the following:

(1) Advertising records, including copies of printed advertisements or solicitations and those by internet or other electronic means;

(2) the business account check ledger or register;

(3) all financial statements, balance sheets, or statements of condition;

(4) a detailed list of all transactions originated, closed, purchased, or serviced; and

(5) a schedule of the licensee's fees and charges.

(Authorized by K.S.A. 16a-6-104, as amended by 2009 SB 240, § 21; implementing K.S.A. 16a-2-304, as amended by 2009 SB 240, § 19; effective Oct. 2, 2009.)

Agency 104 – Joint Regulation – Consumer Credit Commissioner, Credit Union Administrator, Savings and Loan Commissioner and Bank Commissioner

Article 1 – ADJUSTABLE RATE NOTES

K.A.R. 104-1-2. Consumer-purpose adjustable rate real estate transactions.

(a) A creditor may use any interest-rate index that is readily verifiable by the borrower if it is beyond the control of the creditor to adjust the interest rate on any of the following:

(1) consumer-purpose adjustable rate notes secured by a real estate mortgage; or

(2) consumer-purpose contracts for deed to real estate which contain an adjustable interest rate provision.

(b) Adjustments to the interest rate shall correspond directly to the movement of the index, subject to any rate-adjustment limitations that a creditor may provide.

(c) When the movement of the index permits an interest-rate increase, the creditor may decline to increase the interest rate by the indicated amount. The creditor may decrease the interest rate at any time.

(d) The creditor may implement adjustments to the interest rate through adjustments to the outstanding principal loan balance, loan term, payment amount, or any combination of the above.

(e) The creditor shall not charge the borrower any costs or fees in connection with regularly-scheduled adjustments to the interest rate, payment, outstanding principal loan balance, or loan term.

(f) For purposes of this regulation, "consumer-purpose" means primarily for personal, family or household purposes.

(Authorized by and implementing K.S.A. 16-207d; effective, T-88-28, Aug. 19, 1987; effective May 1, 1988; amended Aug. 9, 1996.)

Agency 40 – Joint Regulation – Insurance Department

Article 5 – CREDIT INSURANCE

K.A.R. 40-5-6. Credit insurance; property and liability; insurance sold in connection with the uniform consumer credit code; types.

The following types of insurance shall be authorized for sale:

(a) For motor vehicles:

(1) Fire, theft, windstorm coverage; or comprehensive coverage, including fire, theft and windstorm;

(2) collision coverage with a deductible of $50 or more; and

(3) bodily injury and property damage liability insurance in accordance with K.S.A. 16a-4-303.

(b) For real property and tangible personal property, other than motor vehicles:

(1) Fire, including lightning coverage and extended coverage. Extended coverage shall be limited to perils of windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, and smoke;

(2) other perils as set out in the extended coverage endorsement approved by the Kansas insurance commissioner for use by a fire or multiple line insurance company; and

(3) bodily injury and property damage liability insurance.

(Authorized by K.S.A. 40-103, 16a-4-112; implementing K.S.A. 16a-4-301, 16a-4-303; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1974; amended May 1, 1986.)

K.A.R. 40-5-8. Same; vendors single interest.

Insurers are prohibited from selling to purchasers, or mortgagors of automobile vendors, single interest coverages including loss by wrongful conversion, embezzlement, or secretion or any other vendors single interest coverage in which a purchaser or mortgagor has no insurable interest. When a vendor single interest coverage is included in an insurance policy covering the interest of a purchaser or mortgagor, the insurance contract shall clearly indicate that the premium for the vendor single interest coverage has been charged to the vendor or mortgagee.

(Authorized by K.S.A. 40-103, 16a-4-112; implementing K.S.A. 16a-4-202; effective Jan. 1, 1966; amended Jan. 1, 1974; amended May 1, 1986.)

K.A.R. 40-5-9. Credit insurance; fire, casualty and allied lines; mortgagors and mortgagees; conditional sales vendors; and vendors; requirements.

(a) All insurers writing insurance specified in Kansas Statutes Annotated, chapter 40, articles 9, 10, 11, 12, and 16 shall be prohibited from issuing policies covering the interests of a mortgagor and a mortgagee or conditional sales vendor where the mortgagee or conditional sales vendor is, in any manner, the named insured on the policy.

(b) The policy shall be issued only in the name of the mortgagor and mortgagee or conditional sales vendor's interest in the policy shall be limited to participation in recoveries under the perils insured as its interest may appear.

(c) The mortgagee or conditional sales vendor shall not be entitled to the return of unearned premium unless the insurer has notice of assignment of unearned premium by the mortgagor to the mortgagee or conditional sales vendor.

(Authorized by K.S.A. 40-103, 16a-4-112; implementing K.S.A. 16a-4-301; effective Jan. 1, 1966; amended Jan. 1, 1974; amended May 1, 1979; amended May 1, 1986.)

K.A.R. 40-5-10. Credit insurance; fire and extended coverage; issuance for single indivisible premium; requirements.

Fire and extended coverage insurance permitted by Kansas administrative regulation 40-5-6 may be issued for a single indivisible premium subject to the following requirements:

(a) The location of the property insured shall be extended by the policy provisions to insure the property at any location within the continental limits of the United States.

(b) The maximum amount of insurance permitted under this policy shall not exceed $10,000.

(c) The insurer shall be required to obtain a statement from the insured that indicates all of the following:

(1) No other valid and collectible insurance on the insured property exists.

(2) The purchase of insurance from any insurer or agent was the choice of the insured.

(3) The purchase of insurance in connection with the credit transaction is entirely voluntary and not a prerequisite to the extension of credit.

(d) The creditor shall not refuse or decline the insurance provided by the consumer except for reasonable cause.

(Authorized by K.S.A. 40-103, 16a-4-112; implementing K.S.A. 16a-4-301, 16a-4-111; effective Jan. 1, 1966; amended Jan. 1, 1974; amended May 1, 1979; amended May 1, 1986; amended May 1, 1987; amended Oct. 30, 1998.)

K.A.R. 40-5-12. Consumer credit insurance; termination of coverage; prohibited contractual provisions.

(a) A policy or certificate of consumer credit insurance as defined in K.S.A. 16a-4-103, that may be issued, delivered, renewed or continued within or outside this state covering residents of this state, shall not contain provisions which permit coverage to be terminated by the insurer with respect to any policyholder, certificate holder or other insured person unless:

(1) The policy or certificate is formally and specifically terminated;

(2) the insured and any affected certificate holder is provided not less than ten days written notice of termination; and

(3) any unearned premium is returned to the borrower or credited to the account of the consumer as required by K.S.A. 16a-4-108.

(b) The restrictions imposed by section (a) of this regulation shall not apply with respect to transactions permitted or required by K.S.A. 16a-4-108.

(Authorized by K.S.A. 40-103; 16a-4-112; implementing K.S.A. 16a-4-203; effective Nov. 29, 1993.)

K.A.R. 40-5-102. Consumer credit insurance; definitions.

(a) "Credit life insurance" means insurance on the life of a consumer pursuant to or in connection with a consumer credit transaction.

(b) "Credit accident and health insurance" means insurance, written in connection with a consumer credit transaction, to provide benefits in the event of disability of a consumer.

(c) "Claims incurred" means claims actually paid during the year, appropriately adjusted for the yearly change in claim reserves, including reserves for reported claims in process of settlement and claims incurred but not reported.

(d) "Claims" means benefits payable on death or disability excluding loss adjustment expense, claims settlement costs, or other additions of any kind.

(e) "Premiums earned" means the total gross premiums which become due to the insurance company, without reduction of any kind, except the premiums refunded or adjusted on

account of termination of coverage, and appropriately adjusted for changes in gross unearned premiums in force upon a pro rata basis or a "sum of the digits" basis consistent with K.A.R. 40-5-108(a).

(f) "Commissioner" means the commissioner of insurance of the state of Kansas.

(Authorized by K.S.A. 40-103, 16a-4-112; implementing K.S.A. 16a-4-101 through 16a-4-203; effective Jan. 1, 1974; amended May 1, 1979; amended May 1, 1983; amended May 1, 1986.)

K.A.R. 40-5-103. Same; rights and treatment of consumers.

(a) Multiple plans of insurance. If a creditor makes available to consumers more than one plan of credit life insurance, or more than one plan of credit accident and health insurance, all appropriate consumers shall be informed of all available plans.

(b) Substitution. When a creditor requires credit life insurance, credit accident and health insurance, or both, as additional security for an indebtedness, the debtor shall be given the option of furnishing the required amount of insurance through existing policies of insurance, or procuring and furnishing the required coverage through any insurer authorized to transact insurance business in this state. In such a case, the debtor shall be informed by the creditor of the right to provide alternative coverage before the transaction is completed.

(c) Evidence of coverage.

(1) All consumer credit insurance shall be evidenced by an individual policy, or in the case of group insurance, by a certificate of insurance. The individual policy or certificate of insurance shall be delivered to the consumer in accordance with K.S.A. 16a-4-105.

(2) Policy provisions.

(A) Each insurance policy or certificate used in connection with a loan or credit transaction shall contain:

(i) the name and home office address of the insurer;

(ii) the name or names of the debtor;

(iii) the premium, or amount of payment by the debtor, if any, for credit life insurance and for credit accident and health insurance;

(iv) a statement specifying when the insurance of the debtor will become effective and its termination conditions, or the month, day, and year the insurance begins and terminates;

(v) any exceptions, limitations, or restrictions; and

(vi) a statement that the life of the debtor is insured under the policy and that any death benefit paid by reason of death of the debtor shall be applied first to reduce or extinguish the indebtedness.

(B) In addition to the requirements of paragraph (A), each insurance policy issued in connection with a credit transaction or loan shall set forth the kind or kinds of insurance included, the coverages, and all the terms, exceptions, limitations, restrictions, and conditions of the contract or contracts of insurance. Certificates shall contain all provisions of the master policy applicable to the debtor.

(C) The requirements of paragraph (2) are in addition to other requirements imposed by law concerning policy forms and their approval.

(3) Settlement of claims. Separate credit life insurance payments shall be made to the creditor, beneficiary, and to the named second beneficiary, if any, as their interests may appear. If the policy contains no provision for the designation of a second beneficiary, the insurance shall go to the estate of the insured. Each payment made to the creditor shall reduce the indebtedness.

(d) Termination of coverage.

(1) If a debtor is covered by a group insurance policy on which a single premium is charged for insurance, the policy shall provide that the group policy may terminate only with respect to debtors who would otherwise become eligible for coverage after the date of termination, and that insurance coverage with respect to any debtor insured under the policy shall be continued for the entire period for which a single charge has been made, subject to subsections (g) and (h).

(2) If a debtor covered by a group credit insurance policy is charged for insurance on a monthly outstanding balance basis, the policy shall provide that, if the policy is terminated, the insured debtor shall be notified that coverage will terminate not less than 15 days after mailing of the notice. If notice is not given to each insured debtor, coverage shall continue for 30 days from the date of notice to the policyholder, except where replacement of the coverage by the same or another insurer in the same or greater amount takes place without lapse of coverage. The notice to insured debtors required in this paragraph shall be given by the insurer, or at the option of the insurer, by the creditor.

(e) Interest on premiums. If the creditor adds identifiable insurance charges or premiums for consumer credit insurance to the indebtedness, and any direct or indirect finance, carrying,

credit, or service charge is made to the consumer on the insurance charges or premiums, the creditor shall remit and the insurer shall collect on a single premium basis only.

(f) Renewal or refinancing of indebtedness. If the indebtedness is discharged due to renewal or refinancing prior to the scheduled maturity date, the insurance in force shall be terminated before any new insurance may be issued in connection with the renewed or refinanced indebtedness. In all cases of termination prior to scheduled maturity, a refund shall be paid or credited to the debtor as provided in K.A.R. 40-5-108. In any renewal or refinancing of indebtedness, the effective date of the coverage of any policy provision shall be the first date on which the debtor became insured under the policy covering the indebtedness which was renewed or refinanced, at least in the amount of the indebtedness outstanding at the time of renewal and refinancing of the debt.

(g) Voluntary prepayment of indebtedness. If a debtor prepays indebtedness for a reason other than death or a lump sum disability payment:

(1) Any credit life insurance covering an indebtedness shall be terminated and an appropriate refund shall be paid or credited to the debtor by the creditor at the time of prepayment pursuant to K.A.R. 40-5-108; and

(2) any credit accident and health insurance covering an indebtedness shall be terminated and an appropriate refund shall be paid or credited to the debtor by the creditor at the time of prepayment. If the indebtedness is prepaid by the debtor during any period of disability for which benefits are payable, the disability coverage shall continue in force and the insurer shall make periodic payments directly to the debtor until the disability no longer exists or until the end of the term of insurance, whichever occurs first.

(h) Involuntary prepayment of indebtedness. If an indebtedness is prepaid by the proceeds of a credit life insurance policy covering the debtor or by a lump sum payment of a disability claim under a credit accident and health insurance policy covering the debtor, the insurer shall ensure that the following refunds are made by the creditor at the time of prepayment:

(1) In case of prepayment by the proceeds of a credit life insurance policy, an appropriate refund under the credit accident and health insurance coverage; and

(2) in the case of prepayment by a lump sum disability claim, an appropriate refund under the credit life insurance coverage.

(Authorized by K.S.A. 40-103, 16a-4-112; implementing K.S.A. 16a-4-101 through 16a-4-203; effective Jan. 1, 1974; amended May 1, 1979; amended May 1, 1986.)

K.A.R. 40-5-104. Same; coverage without separate charge.

(a) If no separate charge is made to the consumer for consumer credit insurance, the consumer shall be charged a specific amount for insurance if an identifiable charge for insurance is disclosed in the credit or other instrument furnished the consumer setting out the financial elements of the credit transactions, or if there is a differential in the finance charge (as defined in section 16a-1-301(19)) made to consumers in like circumstances, except for their insured or non-insured status.

(b) The rate standards set out in K.A.R. 40-5-107 shall apply to the premiums for consumer credit insurance. The insurer issuing the coverage must obtain form and rate approval by the commissioner.

(Authorized by K.S.A. 40-103, 16a-4-112; implementing K.S.A. 16a-4-101 through 16a-4-203; effective Jan. 1, 1974; amended May 1, 1986.)

K.A.R. 40-5-105. Same; filing requirements.

(a) Each policy form, certificate of insurance, notice of proposed insurance, application for insurance, endorsement, and rider to be delivered or issued for delivery in this state and the schedule of premium rates or charges pertaining thereto shall be filed with the commissioner as required by K.S.A. 16a-4-203 (UCCC), including those approved prior to the effective date of this regulation.

(b) Each filing shall be accompanied by supporting information which establishes that the rates meet the standards set out in K.A.R. 40-5-107 or are the actuarial equivalent.

(c) When forms providing benefits as described in K.A.R. 40-5-107 are filed at or below the rates described, supporting information shall not be submitted.

(Authorized by K.S.A. 40-103, 16a-4-112; implementing K.S.A. 16a-4-101 through 16a-4-203; effective Jan. 1, 1974; amended May 1, 1986.)

K.A.R. 40-5-107. Same; credit insurance rates and forms.

(a) The basic test of the reasonableness of the relation of benefits to the premium charges shall be an anticipated loss ratio of “claims incurred” to “premiums earned” of not less than 50 percent. Due consideration shall be given to a reasonable allowance for expenses.

(b) Benefits shall not be reasonable in relation to the premium charged if the premiums or premium rates filed with the commissioner exceed the following, or actuarially equivalent, rates:

(1) Credit life insurance.

(A) For decreasing term life insurance the rate shall not exceed $.65 per $100 insurance per annum;

(B) for joint life insurance the rate shall not exceed one and two-thirds of the appropriate single life rate;

(C) for level term life insurance the rate shall not exceed $1.20 per $100 insurance per annum;

(D) for monthly outstanding balance insurance the rate shall not exceed $1.00 per month per $1,000 of insurance; and

(E) The rates shall be presumed reasonable only if the policies contain:

(i) No exceptions, limitations or exclusions, except for suicide, during the first two years; and

(ii) no age restriction or only age restrictions making ineligible for coverage debtors 65 years or over at the time the indebtedness is incurred, or debtors who have attained age 66 years or over on the maturity date of the indebtedness.

(2) Credit accident and health insurance.

(A) For credit accident and health insurance the following single premium rates per $100 initial insured indebtedness:

NONRETROACTIVE BASIS
Number of months in which indebtedness is repayable

	14 day elimination period	30 day elimination period
6 or less	1.00	.40
12	1.40	.80
24	2.20	1.60
36	3.00	2.40
48	3.50	2.90
60	3.90	3.30

RETROACTIVE BASIS

	14 day elimination period	30 day elimination period
6 or less	1.80	1.30
12	2.20	1.70
24	3.00	2.50
36	3.80	3.30
48	4.30	3.80

60	4.70	4.20

(B) Rates for policies of credit accident and health insurance, the premiums for which are paid other than on a single premium basis, for benefits on a basis different than as provided in (C) below, or for different monthly durations than illustrated, shall be actuarially consistent with the rates specified above.

(C) The premium rates specified shall be for policies which contain no exclusion for pre-existing conditions except for those conditions which manifest themselves to the insured by requiring medical diagnosis or treatment, or would cause a reasonably prudent person to seek medical diagnosis or treatment within six months preceding the effective date of the coverage as to the insured debtor, and which cause loss within the six months following effective date of coverage. Disabilities thereafter resulting from the condition shall be covered.

(c) Each contract to which the foregoing rules apply may contain provisions excluding or restricting coverage in the event of total disability resulting from pregnancy, intentionally self-inflicted injuries, flight in nonscheduled aircraft, or war. The policies may contain the same age limitation on eligibility as set forth for credit life policies.

(d) Each new policy or certificate of consumer credit insurance issued after the effective date of this regulation shall not be at a rate exceeding any provision of this regulation.

(e) Each insurer may receive approval of a higher premium rate or schedule of rates to be used in connection with a particular policy form providing insurance on the debtors of a creditor or a class or classes of debtors if the insurer demonstrates, to the satisfaction of the commissioner, that the mortality or morbidity experience which may reasonably be anticipated shall develop a loss ratio in excess of 60 percent when the rate standards in K.A.R. 40-5-107 are used.

(f) On the basis of mortality or morbidity experience reported under K.A.R. 40-5-109, the premium rates may be continued, allowed to be increased, or required to be decreased.

(Authorized by K.S.A. 40-103, 16a-4-112; implementing K.S.A. 16a-4-203; effective Jan. 1, 1974; amended May 1, 1979; amended May 1, 1986; amended May 1, 1988.)

K.A.R. 40-5-108. Same; refunds.

(a) Formulas for computing refunds of credit insurance premiums shall be acceptable to the commissioner for coverage as follows:

(1) Pro rata method. The pro rata unearned gross premium method for level term credit life insurance, credit accident and health insurance where the insured is covered for a

constant maximum indemnity for a given period of time, after which the maximum indemnity begins to decrease in even amounts per month, and for credit insurance coverages under which premiums are collected from the consumer on a basis other than the single premium basis.

(2) Sum of the digits method. The "rule of 78" or "sum of the digits" unearned premium method of coverages other than those included in paragraph (1).

(b) At the option of the insurer but consistent with subsection (a):

(1) Any charge for credit insurance may not be made for the first 15 days of a loan month and a full month may be charged for 16 days or more of a loan month; or

(2) a refund may be made on a pro rata basis for each day within the loan month.

(c) The requirements of K.S.A. 16a-4-108 that refund formulas be filed with the commissioner shall be considered fulfilled if the refund formulas shall be set forth in the individual policy or group certificate filed with the commissioner. If the appropriate refund formula is the "sum of the digits" formula, commonly known as the "rule of 78," reference by either phrase shall be sufficient.

(d) Any insurance refund need not be made to the consumer if all refunds and credits due to the consumer amount to less than $1.

(Authorized by K.S.A. 40-103, 16a-4-112; implementing K.S.A. 16a-4-108; effective Jan. 1, 1974; amended May 1, 1979; amended May 1, 1986; amended May 1, 1988; amended July 10, 1989.)

K.A.R. 40-5-109. Same; experience reports.

Each insurer doing consumer credit insurance business in this state shall annually file with the insurance department a report of credit life and credit accident and health business written on a calendar year basis. This report shall utilize the credit insurance supplement-annual statement blank promulgated by the national association of insurance commissioners June 1985. The filing shall be made each year not later than the filing date stated on the most recently adopted "NAIC Credit Insurance Experience Exhibit Form of 1985," which is hereby adopted by reference.

(Authorized by K.S.A. 40-103, 16a-4-112; implementing K.S.A. 16a-4-203; effective Jan. 1, 1974; amended May 1, 1979; amended May 1, 1986; amended May 1, 1988; amended Feb. 9, 1996.)

K.A.R. 40-5-110. Same; supervision of credit insurance operations.

(a) Each insurer transacting credit insurance in this state shall be responsible to conduct a reasonable annual review of the procedures of each creditor with respect to credit insurance business to insure compliance with the insurance laws of this state and the regulations promulgated by the commissioner.

(b) The review required in subsection (a) shall include a determination that all of the following conditions are met:

(1) The proper charges are being made by the creditor.

(2) The proper refunds are being made.

(3) All claims are being filed and properly handled.

(4) All amounts of insurance payable on death in excess of the amounts necessary to discharge the indebtedness are properly refunded.

(5) The creditor is promptly and fairly processing complaints concerning credit insurance operations and is maintaining proper procedures for, and records of, the complaints processed.

(c) Each insurer shall provide the results of the annual reviews for inspection during an examination, upon the request of the commissioner or the commissioner's designee.

(Authorized by K.S.A. 40-103 and K.S.A. 2002 Supp. 16a-4-112; implementing K.S.A. 16a-4-103, 16a-4-104, 16a-4-107, 16a-4-108, and K.S.A. 2002 Supp. 16a-4-112; effective Jan. 1, 1974; amended May 1, 1979; amended May 1, 1986; amended Oct. 17, 2003.)

KANSAS STATUTES

Chapter 9 – BANKS AND BANKING; TRUST COMPANIES

Article 5 – MISCELLANEOUS PROVISIONS

Kansas Money Transmitter Act (K.S.A. 9-508 – K.S.A. 9-513e)

9-508	Kansas money transmitter act; definitions.
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9-510	Same; engaging in business; locations; licensee requirements.
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KANSAS STATUTES

Chapter 9 – BANKS AND BANKING; TRUST COMPANIES

Article 5 – MISCELLANEOUS PROVISIONS

KANSAS MONEY TRANSMITTER ACT
K.S.A. 9-508 – K.S.A. 9-513e

K.S.A. 9-508. Kansas money transmitter act; definitions.

As used in this act,

(a) "Agent" means a person designated by a licensee to receive funds from a Kansas resident in order to forward such funds to the licensee to effectuate money transmission at one or more physical locations throughout the state or through the internet, regardless of whether such person would be exempt from the act by conducting money transmission on such person's own behalf;

(b) "commissioner" means the state bank commissioner;

(c) "control" means the power directly or indirectly to direct management or policies of a person engaged in money transmission or to vote 25% or more of any class of voting shares of a person engaged in money transmission;

(d) "electronic instrument" means a card or other tangible object for the transmission or payment of money, including a prepaid access card or device which contains a microprocessor chip, magnetic stripe or other means for the storage of information, that is prefunded and for which the value is decremented upon each use, but does not include a card or other tangible object that is redeemable by the issuer in goods or services;

(e) "licensee" means a person licensed under this act;

(f) "nationwide multi-state licensing system and registry" means a licensing system developed and maintained by the conference of state bank supervisors, or its successors and assigns, for the licensing and reporting of those persons engaging in the money transmission;

(g) "monetary value" means a medium of exchange, whether or not redeemable in money;

(h) "money transmission" means to engage in the business of the sale or issuance of payment instruments or of receiving money or monetary value for transmission to a location within or outside the United States by wire, facsimile, electronic means or any other means, except that money transmission does not include currency exchange where no transmission of money occurs;

(i) "outstanding payment liability" means:

(1) With respect to a payment instrument, any payment instrument issued or sold by the licensee which has been sold in the United States directly by the licensee, or any payment instrument that has been sold by an agent of the licensee in the United States, which has been reported to the licensee as having been sold and which has not yet been paid by or for the licensee; or

(2) with respect to the transmission of money or monetary value, any money or monetary value the licensee or an agent of the licensee has received from a customer in the United States for transmission which has not yet been delivered to the recipient or otherwise paid by the licensee;

(j) "payment instrument" means any electronic or written check, draft, money order, travelers check or other electronic or written instrument or order for the transmission or payment of money, sold or issued to one or more persons, whether or not such instrument is negotiable. The term ''payment instrument'' does not include any credit card voucher, any letter of credit or any instrument which is redeemable by the issuer in goods or services;

(k) "permissible investments" means:

(1) Cash;

(2) deposits in a demand or interest bearing account with a domestic federally insured depository institution, including certificates of deposit;

(3) debt obligations of a domestic federally insured depository institution;

(4) any investment bearing a rating of one of the three highest grades as defined by a nationally recognized organization that rates such securities;

(5) investment grade bonds and other legally created general obligations of a state, an agency or political subdivision of a state, the United States or an instrumentality of the United States;

(6) obligations that a state, an agency or political subdivision of a state, the United States or an instrumentality of the United States has unconditionally agreed to purchase, insure or guarantee and that bear a rating of one of the three highest grades as defined by a nationally recognized organization that rates securities;

(7) shares in a money market mutual fund, interest-bearing bills or notes or bonds, debentures or stock traded on any national securities exchange or on a national over-the-counter market, or mutual funds primarily composed of such securities or a fund composed of one or more permissible investments as set forth herein;

(8) receivables that are payable to a licensee, in the ordinary course of business, pursuant to contracts which are not past due and which do not exceed in the aggregate 40% of

the total required permissible investments pursuant to K.S.A. 9-513b, and amendments thereto. A receivable is past due if not remitted to the licensee within 10 business days; or

(9) any other investment or security device approved by the commissioner.

(l) "person" means any individual, partnership, association, joint-stock association, trust, corporation or any other form of business enterprise; and

(m) "resident" means any natural person or business entity located in this state;

(n) "service provider" means any person that provides services as described in K.S.A. 9-511(a)(2)(A), and amendments thereto, that are used by an exempt entity or its agent to provide money transmission services to the exempt entity's customers. A service provider does not contract with the customers of an exempt entity on its own or on behalf of an exempt entity or the exempt entity's agent; and

(o) "tangible net worth" means the physical worth of a licensee, calculated by taking a licensee's assets and subtracting its liabilities and its intangible assets, such as copyrights, patents, intellectual property and goodwill.

History: L. 1967, ch. 73, § 1; L. 1995, ch. 18, § 1; L. 2006, ch. 113, § 5; L. 2012, ch. 161, § 4; L. 2013, ch. 45, § 1; L. 2014, ch. 120, § 2; L. 2015, ch. 33, § 1; L. 2017, ch. 52, § 5; July 1.

K.S.A. 9-509. Same; license; application; fingerprinting, when required; net worth requirement; deposit of security or bond; conditions; powers and duties of state bank commissioner.

(a) No person shall engage in the business of selling, issuing or delivering its payment instrument, check, draft, money order, personal money order, bill of exchange, evidence of indebtedness or other instrument for the transmission or payment of money or otherwise engage in the business of money transmission with a resident of this state, or, except as provided in K.S.A. 9-510, and amendments thereto, act as agent for another in the transmission of money as a service or for a fee or other consideration, unless such person files a complete application and obtains a license from the commissioner.

(b) Each license shall expire December 31 of each year. A license shall be renewed by filing with the commissioner a complete application and nonrefundable application fee at least 30 days prior to expiration of the license. Renewal applications received between December 1 and December 31 of each year and incomplete renewal applications as of December 1 of each year shall be assessed a late fee. Expired licenses may be reinstated through the last day of February of each year by filing a reinstatement application and paying the appropriate application and late fees.

(c) It shall be unlawful for a person, acting directly or indirectly or through concert with one or more persons, to acquire control of any person engaged in money transmission through purchase, assignment, pledge or other disposition of voting shares of such money transmitter, except with the prior approval of the commissioner. Request for approval of the proposed acquisition shall be made by filing a complete application with the commissioner at least 60 days prior to the acquisition.

(d) All applications shall be submitted in the form and manner prescribed by the commissioner. Additionally, the following shall apply to all applications:

(1) The commissioner may use a nationwide multi-state licensing system and registry for processing applications, renewals, amendments, surrenders, and any other activity the commissioner deems appropriate. The commissioner may also use a nationwide multi-state licensing system and registry for requesting and distributing any information regarding money transmitter licensing to and from any source so directed by the commissioner. The commissioner may establish relationships or contracts with the nationwide multi-state licensing system and registry or other entities to collect and maintain records and process transaction fees or other fees related to applicants, licensees, as may be reasonably necessary to participate in the nationwide multi-state licensing system and registry. The commissioner may report violations of the law as well as enforcement actions and other relevant information to the nationwide multi-state licensing system and registry. The commissioner may require any applicant or licensee to file reports with the nationwide multi-state licensing system and registry in the form prescribed by the commissioner.

(2) An application shall be accompanied by nonrefundable fees established by the commissioner for the license. The commissioner shall determine the amount of such fees to provide sufficient funds to meet the budget requirements of administering and enforcing the act for each fiscal year. Any person using the multi-state licensing system shall pay all associated costs.

(3) (A) The commissioner may require fingerprinting of any individual, officer, director, partner, member, shareholder or any other person related to the application deemed necessary by the commissioner. If the applicant is a publicly traded corporation or a subsidiary of a publicly traded corporation, no fingerprint check shall be required. Fingerprints may be submitted to the Kansas bureau of investigation and the federal bureau of investigation for a state and national criminal history record check. The fingerprints shall be used to identify the person and to determine whether the person has a record of arrests and convictions in this state or other jurisdiction.

(B) The commissioner may use information obtained from fingerprinting and the criminal history for purposes of verifying the identification of the person and in the official determination of the qualifications and fitness of the person, or in the case of an applicant company, the persons associated with the company.

(C) For purposes of this section and in order to reduce the points of contact which the federal bureau of investigation may have with the individual states, the commissioner may use a nationwide multi-state licensing system and registry for requesting information from and distributing information to the department of justice or any governmental agency.

(D) Whenever the commissioner requires fingerprinting, any associated costs shall be paid by the applicant or the parties to the application.

(4) Each application shall include audited financial statements for each of the two fiscal years immediately preceding the date of the application and an interim financial statement, as of a date not more than 90 days prior to the date of the filing of an application. The audited and interim financial statements shall be prepared in accordance with United States generally accepted accounting principles or in any other form or manner approved by the commissioner. Any person not in business two years prior to the filing of the application shall submit a statement in the form and manner prescribed by the commissioner sufficient to demonstrate compliance with subsection (e).

(e) In addition, each person submitting an application shall meet the following requirements:

(1) The tangible net worth of such person shall be at all times not less than $250,000, as shown by an audited financial statement and certified to by an owner, a partner or officer of the corporation or other entity filed in the form and manner prescribed by the commissioner. A consolidated financial statement from an applicant's holding company may be accepted by the commissioner. The commissioner may require any person to file a statement at any other time upon request;

(2) such person shall deposit and at all times keep on deposit with a bank in this state approved by the commissioner, cash or securities satisfactory to the commissioner in an amount not less than $200,000. The commissioner may increase the amount of cash or securities required up to a maximum of $1,000,000 upon the basis of:

(A) The volume of money transmission business transacted in this state by such person; or

(B) the impaired financial condition of a licensee, as evidenced by a reduction in net worth or financial losses;

(3) in lieu of the deposit of cash or securities required by this subsection, such person may give a surety bond in an amount equal to that required for the deposit of cash or securities, in a form satisfactory to the commissioner and issued by a company authorized to do business in this state, which bond shall be payable to the office of the state bank commissioner and be filed with the commissioner; and

(4) such person shall submit a list to the commissioner of the names and addresses of other persons who are authorized to act as agents for transactions with Kansas residents.

(f) The commissioner has the discretion to determine the completeness of any application submitted pursuant to this act. In making the determination, the commissioner shall take into consideration compliance with all requirements set out in this section and any other facts and circumstances that the commissioner deems appropriate.

(1) If the applicant fails to complete the application for a new license or for a change of control of a license within 60 days after the commissioner provides written notice of the incomplete application, the application will be considered abandoned and the application fee will not be refunded. An applicant whose application is abandoned under this section may reapply to obtain a new license.

(2) If the applicant fails to file a complete renewal application on or before December 31 of the year, the license will be deemed to expire on December 31 of the year.

(g) The deposit of cash, securities or surety bond required by this section shall be subject to:

(1) Payment to the commissioner for the protection and benefit of purchasers of money transmission services, purchasers or holders of payment instruments furnished by such person, and those for whom such person has agreed to act as agent in transmission of monetary value and to secure the faithful performance of the obligations of such person in respect to the receipt, handling, transmission and payment of monetary value; and

(2) Payment to the commissioner for satisfaction of any expenses, fines, fees or refunds due pursuant to this act, levied by the commissioner or that become lawfully due pursuant to a final judgment or order.

(h) The aggregate liability of the surety for all breaches of the conditions of the bond, in no event, shall exceed the amount of such bond. The surety on the bond shall have the right to cancel such bond upon giving 30 days' notice to the commissioner and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of the cancellation. The commissioner or any aggrieved party may enforce claims against such deposit of cash or securities or surety bond. So long as the depositing person is not in violation of this act, such person shall be permitted to receive all interest and dividends on the deposit and shall have the right to substitute other securities satisfactory to the commissioner. If the deposit is made with a bank, any custodial fees shall be paid by such person.

(i) (1) The commissioner shall have the authority to examine the books and records of any person operating in accordance with the provisions of this act, at such person's expense, to verify compliance with state and federal law.

(2) The commissioner may require any person operating in accordance with the provisions of this act to maintain such documents and records as necessary to verify compliance with this act, or any other applicable state or federal law or regulation.

(3) For purposes of investigation, examination or other proceeding under this act, the commissioner may administer or cause to be administered oaths, subpoena witnesses and documents, compel the attendance of witnesses, take evidence and require the production of any document that the commissioner determines to be relevant to the inquiry.

(j) Except as authorized with regard to the appointment of agents, a licensee is prohibited from transferring, assigning, allowing another person to use the licensee's license, or aiding any person who does not hold a valid license under this act in engaging in the business of money transmission.

History: L. 1967, ch. 73, § 2; L. 1986, ch. 55, § 1; L. 1992, ch. 62, § 1; L. 2006, ch. 113, § 6; L. 2012, ch. 161, § 5; L. 2013, ch. 45, § 2; L. 2014, ch. 120, § 3; L. 2015, ch. 33, § 2; L. 2017, ch. 52, § 6; July 1.

K.S.A. 9-510. Same; engaging in business; locations; licensee requirements.

A licensee may engage in the business of money transmission at one or more locations in this state and through or by means of such agents as such licensee may designate and appoint from time to time subject to the following provisions:

(a) No agent of a licensee shall be required to comply with the licensing provisions of this act.

(b) Only a licensee may designate an agent. A licensee must obtain prior approval from the commissioner to designate an agent that conducts money transmission business through the internet without a physical location in this state.

(c) No agent shall appoint a subagent.

(d) A person acting as an agent for an exempt entity or any other person accepting funds for transmission through an exempt entity is a money transmitter and subject to the provisions of this act.

(e) In conjunction with filing a renewal application, each applicant shall provide in the form and manner prescribed by the commissioner a complete list of its proposed or existing agents. At the end of each calendar quarter each licensee shall provide in the form and manner prescribed by the commissioner any additions or deletions in the licensee's agents.

(f) A written contract between a licensee and agent shall be maintained for inspection by the commissioner upon request and the written contract must contain provisions to the following effect:

(1) The agent must operate in full compliance with this act and the rules and regulations adopted thereunder.

(2) The agent is prohibited from using subagents or conducting money transmission business from locations that have not been approved by the licensee.

(3) A description of the specific money services the licensee has permitted the agent to perform on behalf of the licensee.

(g) The agent may only conduct activities authorized by the licensee in the written agreement, unless the agent is also a licensee.

(h) A licensee may contract with another licensee to use that other licensee's existing authorized agents only for the purpose of loading funds onto existing prepaid access cards. The licensee with the direct contractual relationship with the agents shall record the transactions as such licensee's own. If a shared agent sells new prepaid access cards on behalf of the licensee, then such licensee must directly contract with the agent and comply with all other requirements for designating an agent.

History: L. 1967, ch. 73, § 3; L. 2006, ch. 113, § 7; L. 2012, ch. 161, § 6; L. 2013, ch. 45, § 3; L. 2015, ch. 33, § 3; July 1.

K.S.A. 9-510a. Same; authorized charges for transmission.

On and after July 1, 2005, any person complying with the provisions of K.S.A. 9-508 through 9-513, and amendments thereto, may charge a different price for a transmission of money service based on the mode of transmission used in the transaction, so long as the price charged for the service is the same for all forms of payment which are accepted within the same mode of transmission.

History: L. 2005, ch. 133, § 1; Apr. 21.

K.S.A. 9-511. Same; inapplicability of act to certain businesses and activities.

The following persons shall be exempt from the provisions of this act:

(a) (1) Banks, building and loan associations, savings and loan associations, savings banks or credit unions, organized under the laws of and subject to the supervision of this state, another state or the United States;

(2) service providers that: (A) By written agreement with the exempt entities listed in (a)(1), provide for receipt and delivery of funds, network access, processing, clearance or settlement services in support of money transmission activities; and (B)

allow the state or federal regulators with regulatory jurisdiction over the exempt entity to examine and inspect the applicable records, books and transactions relating to the service provider;

(3) the government of the United States and its agencies, including agents of the government and its agencies; or

(4) the state of Kansas and its agencies, including agents of the state of Kansas and its agencies.

(b) This act also shall not apply to the distribution, transmission or payment of money as a part of the lawful practice of law, bookkeeping, accounting or real estate sales or brokerage or as an incidental and necessary part of any lawful business activity.

History: L. 1967, ch. 73, § 4; L. 1989, ch. 48, § 10; L. 1990, ch. 53, § 1; L. 2006, ch. 113, § 8; L. 2012, ch. 161, § 7; L. 2013, ch. 45, § 4; L. 2015, ch. 33, § 4; July 1.

K.S.A. 9-512. Same; penalties for violations.

(a) The commissioner, after notice and an opportunity for hearing, may issue an order to address any violation of this act or rules and regulations adopted pursuant thereto:

(1) Assessing a fine against any person who violates this act, or rules and regulations adopted thereto, in an amount not to exceed $5,000 per violation;

(2) assessing the agency's operating costs and expenses for investigating and enforcing this act;

(3) 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;

(4) barring the person from future application for licensure pursuant to the act; and

(5) requiring such affirmative action as in the judgment of the commissioner which will carry out the purposes of this act.

(b) The commissioner may enter into a consent order at any time with a person to resolve a matter arising under this act, rules and regulations adopted thereto, or an order issued pursuant to this act.

(c) The commissioner 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., and amendments thereto, or K.S.A. 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 pursuant to K.S.A. 9-513c, 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. The provisions of this subsection shall expire on July 1, 2023, unless the legislature reviews and reenacts this provision pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2023.

(d) Any person who knowingly violates any provision of this act shall be guilty of a severity level 9, nonperson felony. Each transaction in violation of this act and each day that a violation continues shall be a separate offense. Whenever a corporation violates any provision of this act, such violation shall be attributed to individual directors, officers and agents who have authorized, ordered or performed any of the acts constituting such violation.

(e) A corporation and its directors, officers and agents may each be prosecuted separately for violations of this act and the acquittal or conviction of one such director, officer or agent shall not abate the prosecution of the others.

(f) Whenever it appears that a person has violated, or is likely to violate, this act, rules and regulations adopted thereunder, or an order issued pursuant to this act, then the commissioner may bring an action for injunctive relief to enjoin the violation or enforce compliance, regardless of whether or not criminal proceedings have been instituted. Any person who engages in activities that are regulated and require a license under this act shall be considered to have consented to the jurisdiction of the courts of this state for all actions arising under this act.

History: L. 1967, ch. 73, § 5; L. 2006, ch. 113, § 9; L. 2012, ch. 161, § 8; L. 2018, ch. 75, § 26; July 1.

K.S.A. 9-513. Same; invalidity of part; interpretation of act.

The commissioner and the commissioner's designees shall administer, interpret and enforce this act for the purpose of protecting the citizens of this state, against financial loss, who purchase payment instruments or who give money or control of their funds or credit into the custody of another person for transmission, regardless of whether the transmitter has any office, facility, agent or other physical presence in the state.

History: L. 1967, ch. 73, § 6; L. 2006, ch. 113, § 10; L. 2012, ch. 161, § 9; L. 2013, ch. 45, § 5; L. 2018, ch. 75, § 27; July 1.

K.S.A. 9-513a. Same; issuance of license; revocation of license, when.

The commissioner, after notice and an opportunity for a hearing, may deny, suspend, revoke or refuse to renew or approve a license issued pursuant to this act, or issue a cease and desist order if the commissioner finds any of the following are applicable to any person who is required to be licensed under this act or such person's agent:

(a) The financial responsibility, character, reputation, experience and general fitness of the person, such person's senior officers, directors and principal stockholders are such to warrant the belief that the business may not be operated efficiently, fairly and in the public interest;

(b) the person may be financially unable to perform such person's obligations or that the person has willfully failed without reasonable cause to pay or provide for payment of any of such person's obligations related to the person's money transmission business;

(c) the person no longer meets a requirement for initial granting of a license;

(d) the person has filed with the commissioner any document or statement falsely representing or omitting a material fact;

(e) The person concealed a fact or a condition exists which would clearly have justified the commissioner's refusal to grant a license had the fact or condition been known to exist at the time the application for the license was made;

(f) the person or a senior officer, director or a stockholder who owns more than 10% of the money transmission business' outstanding stock has been convicted of a crime involving fraud, dishonesty or deceit;

(g) there has been entry of a federal or state administrative order against the person for violation of any rule and regulation applicable to the conduct of the person's money transmission business;

(h) the person refused to provide information requested by the commissioner or refused to permit an examination or investigation by the commissioner;

(i) a failure to pay to the commissioner any fee required by this act;

(j) the person has engaged in any transaction, practice or business conduct that is fraudulent or deceptive in connection with the business of money transmission;

(k) the person advertises, displays, distributes, broadcasts or televises any false, misleading or deceptive statement or representation with regard to rates, terms or conditions for the transmission of money;

(l) the person fails to keep and maintain sufficient records to permit an audit to satisfactorily disclose to the commissioner the licensee's compliance with the provisions of the act;

(m) the person has been the subject of any disciplinary action by this or any other state or federal agency;

(n) a final judgment has been entered against the person 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;

(o) the person has violated any order issued by the commissioner, any provision of this act, any rule and regulation adopted thereto, or any other state or federal law applicable to money transmission; or

(p) the person has refused or otherwise failed to provide, after a reasonable time as determined by the commissioner, any information necessary to approve or renew an application or license issued pursuant to this act.

History: L. 2006, ch. 113, § 2; L. 2012, ch. 161, § 10; L. 2015, ch. 33, § 5; L. 2017, ch. 52, § 7; July 1.

K.S.A. 9-513b. Money transmitter; permissible investments; requirements.

(a) Each licensee under this act shall at all times possess permissible investments having an aggregate market value, calculated in accordance with United States generally accepted accounting principles, of not less than the aggregate amount of the outstanding payment liability held by the licensee in the United States. This requirement may be waived by the commissioner if the dollar volume of a licensee's outstanding payment liability does not exceed the bond or other security devices posted by the licensee pursuant to K.S.A. 9-509, and amendments thereto.

(b) In the event of the bankruptcy of the licensee, the permissible investments shall be deemed by operation of law to be held in trust for the benefit of all persons whose money or monetary value is considered outstanding, even if such permissible investments are commingled with other assets of the licensee.

History: L. 2006, ch. 113, § 3; L. 2015, ch. 33, § 6; July 1.

K.S.A. 9-513c. Same; confidential information; release of, when.

(a) Notwithstanding any other provision of law, all information or reports obtained and prepared by the commissioner in the course of licensing or examining a person engaged in money transmission business shall be confidential and may not be disclosed by the commissioner except as provided in subsection (c) or (d).

(b) All confidential information shall be the property of the state of Kansas and shall not be subject to disclosure except upon the written approval of the state bank commissioner.

(c) (1) The commissioner shall have the authority to share supervisory information, including reports of examinations, with other state or federal agencies having regulatory authority over the person's money transmission business and shall have the authority to conduct joint examinations with other regulatory agencies.

(2) The requirements under any federal or state law regarding the confidentiality of any information or material provided to the nationwide multi-state licensing system, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the system. Such information and material may be shared with all state and federal regulatory officials with financial services industry oversight authority without the loss of confidentiality protections provided by federal and state laws.

(d) The commissioner may provide for the release of information to law enforcement agencies or prosecutorial agencies or offices who shall maintain the confidentiality of the information.

(e) The commissioner may accept a report of examination or investigation from another state or federal licensing agency, in which the accepted report is an official report of the commissioner. Acceptance of an examination or investigation report does not waive any fee required by this act.

(f) Nothing shall prohibit the commissioner from releasing to the public a list of persons licensed or their agents or from releasing aggregated financial data on such persons.

(g) The provisions of subsection (a) shall expire on July 1, 2021, unless the legislature acts to reauthorize such provisions. The provisions of subsection (a) shall be reviewed by the legislature prior to July 1, 2021.

History: L. 2006, ch. 113, § 4; L. 2011, ch. 11, § 1; L. 2012, ch. 161, § 11; L. 2013, ch. 45, § 6; L. 2014, ch. 120, § 4; L. 2016, ch. 82, § 2; L. 2018, ch. 87, § 1; L. 2019, ch. 62, § 7; May 30.

K.S.A. 9-513d. Citation of Kansas money transmitter act; rules and regulations.

(a) The provisions of K.S.A. 9-508 through 9-513, and amendments thereto, K.S.A. 2013 Supp. 9-513a through 9-513d, and amendments thereto, and section 1, and amendments thereto, shall be known as and may be cited as the Kansas money transmitter act.

(b) The commissioner is hereby authorized to adopt rules and regulations necessary to administer and implement the Kansas money transmitter act.

History: L. 2006, ch. 113, § 1; L. 2013, ch. 45, § 7; L. 2014, ch. 120, § 5; July 1.

K.S.A. 9-513e. Same; change in executive officers or directors; fingerprinting.

(a) Each licensee under this act shall within 30 days report to the commissioner any change, for whatever reason, in the executive officers or directors, including in its report a statement of the past and current business and professional affiliations of the new executive officers or directors.

(b) The commissioner may require fingerprinting of any new executive officer or director, deemed necessary by the commissioner. Such fingerprints may be submitted to the Kansas bureau of investigation and the federal bureau of investigation for a state and national criminal history record check. The fingerprints shall be used to identify the person and to determine whether the person has a record of arrests and convictions in this state or other jurisdiction.

(c) The commissioner may use information obtained from fingerprinting and the criminal history for purposes of verifying the identification of the person and in the official determination of the qualifications and fitness of the person.

(d) For purposes of this section and in order to reduce the points of contact which the federal bureau of investigation may have with the individual states, the commissioner may use a nationwide multi-state licensing system and registry for requesting information from and distributing information to the department of justice or any governmental agency.

(e) Whenever the commissioner requires fingerprinting, any associated costs shall be paid by the applicant or the parties to the application. If the applicant is a publicly traded corporation or a subsidiary of a publicly traded corporation, no fingerprint check shall be required.

(f) The provisions of this section shall be part of and supplemental to the Kansas money transmitter act.

History: L. 2014, ch. 120, § 1; July 1.

DEPARTMENT OF DEFENSE REGULATIONS

32 C.F.R. Part 232 – LIMITATIONS ON TERMS OF CONSUMER CREDIT EXTENDED TO SERVICE MEMBERS AND DEPENDENTS

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DEPARTMENT OF DEFENSE REGULATIONS

32 C.F.R. Part 232
Limitations on Terms of Consumer Credit Extended to Service Members and Dependents

(Authorized by 10 U.S.C. § 987; Created by 80 FR 43606, effective July 22, 2015)

§ 232.1 Authority, purpose, and coverage.

(a) Authority. This part is issued by the Department of Defense to implement 10 U.S.C. 987.

(b) Purpose. The purpose of this part is to impose limitations on the cost and terms of certain extensions of credit to Service members and their dependents, and to provide additional protections relating to such transactions in accordance with 10 U.S.C. 987.

(c) Coverage. This part defines the types of transactions involving "consumer credit," a "creditor," and a "covered borrower" that are subject to the regulation, consistent with the provisions of 10 U.S.C. 987. In addition, this part:

(1) Provides the maximum allowable amount of all charges, and the types of charges, that may be associated with a covered extension of consumer credit;

(2) Requires a creditor to provide to a covered borrower a statement of the Military Annual Percentage Rate, or MAPR, before or at the time the borrower becomes obligated on the transaction or establishes an account for the consumer credit. The statement required by § 232.6(a)(1) differs from and is in addition to the disclosures that must be provided to consumers under the Truth in Lending Act;

(3) Provides for the method a creditor must use in calculating the MAPR; and

(4) Contains such other criteria and limitations as the Secretary of Defense has determined appropriate, consistent with the provisions of 10 U.S.C. 987.

§ 232.2 Applicability; examples.

(a) (1) Applicability. This part applies to consumer credit extended by a creditor to a covered borrower, as those terms are defined in this part. Nothing in this part applies to a credit transaction or account relating to a consumer who is not a covered borrower at the time he or she becomes obligated on a credit transaction or establishes an account for credit. Nothing in this part applies to a credit transaction or account relating to a consumer (which otherwise would be consumer credit) when the consumer no longer is a covered borrower.

(2) Examples—

(i) Covered borrower. Consumer A is a member of the armed forces but not serving on active duty, and holds an account for closed-end credit with a financial institution. After establishing the closed-end credit account, Consumer A is ordered to serve on active duty, thereby becoming a covered borrower, and soon thereafter separately establishes an open-end line of credit for personal purposes (which is not subject to any exception or temporary exemption) with the financial institution. This part applies to the open-end line of credit, but not to the closed-end credit account.

(ii) Not a covered borrower. Same facts as described in paragraph (a)(2)(i) of this section. One year after establishing the open-end line of credit, Consumer A ceases to serve on active duty. This part never did apply to the closed-end credit account, and because Consumer A no longer is a covered borrower, this part no longer applies to the open-end line of credit.

(b) Examples. The examples in this part are not exclusive. To the extent that an example in this part implicates a term or provision of Regulation Z (12 CFR part 1026), issued by the Consumer Financial Protection Bureau to implement the Truth in Lending Act, Regulation Z shall control the meaning of that term or provision.

§ 232.3 Definitions.

As used in this part:

(a) Affiliate means any person that controls, is controlled by, or is under common control with another person.

(b) Billing cycle has the same meaning as “billing cycle” in Regulation Z.

(c) Bureau means the Consumer Financial Protection Bureau.

(d) Closed-end credit means consumer credit (but for the conditions applicable to consumer credit under this part) other than consumer credit that is “open-end credit” as that term is defined in Regulation Z.

(e) Consumer means a natural person.

(f) (1) Consumer credit means credit offered or extended to a covered borrower primarily for personal, family, or household purposes, and that is:

(i) Subject to a finance charge; or

(ii) Payable by a written agreement in more than four installments.

(2) Exceptions. Notwithstanding paragraph (f)(1) of this section, consumer credit does not mean:

(i) A residential mortgage, which is any credit transaction secured by an interest in a dwelling, including a transaction to finance the purchase or initial construction of the dwelling, any refinance transaction, home equity loan or line of credit, or reverse mortgage;

(ii) Any credit transaction that is expressly intended to finance the purchase of a motor vehicle when the credit is secured by the vehicle being purchased;

(iii) Any credit transaction that is expressly intended to finance the purchase of personal property when the credit is secured by the property being purchased;

(iv) Any credit transaction that is an exempt transaction for the purposes of Regulation Z (other than a transaction exempt under 12 CFR 1026.29) or otherwise is not subject to disclosure requirements under Regulation Z; and

(v) Any credit transaction or account for credit for which a creditor determines that a consumer is not a covered borrower by using a method and by complying with the recordkeeping requirement set forth in § 232.5(b).

(g) (1) Covered borrower means a consumer who, at the time the consumer becomes obligated on a consumer credit transaction or establishes an account for consumer credit, is a covered member (as defined in paragraph (g)(2) of this section) or a dependent (as defined in paragraph (g)(3) of this section) of a covered member.

(2) The term "covered member" means a member of the armed forces who is serving on—

(i) Active duty pursuant to title 10, title 14, or title 32, United States Code, under a call or order that does not specify a period of 30 days or fewer; or

(ii) Active Guard and Reserve duty, as that term is defined in 10 U.S.C. 101(d)(6).

(3) The term "dependent" with respect to a covered member means a person described in subparagraph (A), (D), (E), or (I) of 10 U.S.C. 1072(2).

(4) Notwithstanding paragraph (g)(1) of this section, covered borrower does not mean a consumer who (though a covered borrower at the time he or she became obligated on a consumer credit transaction or established an account for consumer credit) no longer is a covered member (as defined in paragraph (g)(2) of this section) or a dependent (as defined in paragraph (g)(2) of this section) of a covered member.

(h) Credit means the right granted to a consumer by a creditor to defer payment of debt or to incur debt and defer its payment.

(i) Creditor, except as provided in § 232.8(a), (f), and (g), means a person who is:

(1) Engaged in the business of extending consumer credit; or

(2) An assignee of a person described in paragraph (i)(1) of this section with respect to any consumer credit extended.

(3) For the purposes of this definition, a creditor is engaged in the business of extending consumer credit if the creditor considered by itself and together with its affiliates meets the transaction standard for a "creditor" under Regulation Z with respect to extensions of consumer credit to covered borrowers.

(j) Department means the Department of Defense.

(k) Dwelling means a residential structure that contains one to four units, whether or not the structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and manufactured home.

(l) Electronic fund transfer has the same meaning as in the regulation issued by the Bureau to implement the Electronic Fund Transfer Act, as amended from time to time (12 CFR part 1005).

(m) Federal credit union has the same meaning as "Federal credit union" in the Federal Credit Union Act (12 U.S.C. 1752(1)).

(n) Finance charge has the same meaning as "finance charge" in Regulation Z.

(o) Insured depository institution has the same meaning as "insured depository institution" in the Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

(p) Military annual percentage rate (MAPR). The MAPR is the cost of the consumer credit expressed as an annual rate, and shall be calculated in accordance with § 232.4(c).

(q) Open-end credit means consumer credit that (but for the conditions applicable to consumer credit under this part) is "open-end credit" under Regulation Z.

(r) Person means a natural person or organization, including any corporation, partnership, proprietorship, association, cooperative, estate, trust, or government unit.

(s) Regulation Z means any rules, or interpretations thereof, issued by the Bureau to implement the Truth in Lending Act, as amended from time to time, including any interpretation or approval issued by an official or employee duly authorized by the Bureau to issue such interpretations or approvals. However, for any provision of this part requiring a creditor to comply with Regulation Z, a creditor who is subject to Regulation Z (12 CFR part 226) issued by the Board of Governors of the Federal Reserve System must continue to comply

with 12 CFR part 226. Words that are not defined in this part have the same meanings given to them in Regulation Z (12 CFR part 1026) issued by the Bureau, as amended from time to time, including any interpretation thereof by the Bureau or an official or employee of the Bureau duly authorized by the Bureau to issue such interpretations. Words that are not defined in this part or Regulation Z, or any interpretation thereof, have the meanings given to them by State or Federal law.

(t) Short-term, small amount loan means a closed-end loan that is—

(1) Subject to and made in accordance with a Federal law (other than 10 U.S.C. 987) that expressly limits the rate of interest that a Federal credit union or an insured depository institution may charge on an extension of credit, provided that the limitation set forth in that law is comparable to a limitation of an annual percentage rate of interest of 36 percent; and

(2) Made in accordance with the requirements, terms, and conditions of a rule, prescribed by the appropriate Federal regulatory agency (or jointly by such agencies), that implements the Federal law described in paragraph (t)(1) of this section, provided further that such law or rule contains—

(i) A fixed numerical limit on the maximum maturity term, which term shall not exceed 9 months; and

(ii) A fixed numerical limit on any application fee that may be charged to a consumer who applies for such closed-end loan.

§ 232.4 Terms of consumer credit extended to covered borrowers.

(a) General conditions. A creditor who extends consumer credit to a covered borrower may not require the covered borrower to pay an MAPR for the credit with respect to such extension of credit, except as:

(1) Agreed to under the terms of the credit agreement or promissory note;

(2) Authorized by applicable State or Federal law; and

(3) Not specifically prohibited by this part

(b) Limit on cost of consumer credit. A creditor may not impose an MAPR greater than 36 percent in connection with an extension of consumer credit that is closed-end credit or in any billing cycle for open-end credit.

(c) Calculation of the MAPR.—

(1) Charges included in the MAPR. The charges for the MAPR shall include, as applicable to the extension of consumer credit:

(i) Any credit insurance premium or fee, any charge for single premium credit insurance, any fee for a debt cancellation contract, or any fee for a debt suspension agreement;

(ii) Any fee for a credit-related ancillary product sold in connection with the credit transaction for closed-end credit or an account for open-end credit; and

(iii) Except for a bona fide fee (other than a periodic rate) which may be excluded under paragraph (d) of this section:

(A) Finance charges associated with the consumer credit;

(B) Any application fee charged to a covered borrower who applies for consumer credit, other than an application fee charged by a Federal credit union or an insured depository institution when making a short-term, small amount loan, provided that the application fee is charged to the covered borrower not more than once in any rolling 12-month period; and

(C) Any fee imposed for participation in any plan or arrangement for consumer credit, subject to paragraph (c)(2)(ii)(B) of this section.

(iv) Certain exclusions of Regulation Z inapplicable. Any charge set forth in paragraphs (c)(1)(i) through (iii) of this section shall be included in the calculation of the MAPR even if that charge would be excluded from the finance charge under Regulation Z.

(2) Computing the MAPR—

(i) Closed-end credit. For closed-end credit, the MAPR shall be calculated following the rules for calculating and disclosing the "Annual Percentage Rate (APR)" for credit transactions under Regulation Z based on the charges set forth in paragraph (c)(1) of this section.

(ii) Open-end credit—

(A) In general. Except as provided in paragraph (c)(2)(ii)(B) of this section, for open-end credit, the MAPR shall be calculated following the rules for calculating the effective annual percentage rate for a billing cycle as set forth in § 1026.14(c) and (d) of Regulation Z (as if a creditor must comply with that section) based on the charges set forth in paragraph (c)(1) of this section. Notwithstanding § 1026.14(c) and (d) of Regulation Z, the amount of charges related to opening, renewing, or continuing an account must be

included in the calculation of the MAPR to the extent those charges are set forth in paragraph (c)(1) of this section.

(B) No balance during a billing cycle. For open-end credit, if the MAPR cannot be calculated in a billing cycle because there is no balance in the billing cycle, a creditor may not impose any fee or charge during that billing cycle, except that the creditor may impose a fee for participation in any plan or arrangement for that open-end credit so long as the participation fee does not exceed $100 per annum, regardless of the billing cycle in which the participation fee is imposed; provided, however, that the $100-per annum limitation on the amount of the participation fee does not apply to a bona fide participation fee imposed in accordance with paragraph (d) of this section.

(d) Bona fide fee charged to a credit card account—

(1) In general. For consumer credit extended in a credit card account under an open-end (not home-secured) consumer credit plan, a bona fide fee, other than a periodic rate, is not a charge required to be included in the MAPR pursuant to paragraph (c)(1) of this section. The exclusion provided for any bona fide fee under this paragraph (d) applies only to the extent that the charge by the creditor is a bona fide fee, and must be reasonable for that type of fee.

(2) Ineligible items. The exclusion for bona fide fees in paragraph (d)(1) of this section does not apply to—

(i) Any credit insurance premium or fee, including any charge for single premium credit insurance, any fee for a debt cancellation contract, or any fee for a debt suspension agreement; or

(ii) Any fee for a credit-related ancillary product sold in connection with the credit transaction for closed-end credit or an account for open-end credit.

(3) Standards relating to bona fide fees –

(i) Like-kind fees. To assess whether a bona fide fee is reasonable under paragraph (d)(1) of this section, the fee must be compared to fees typically imposed by other creditors for the same or a substantially similar product or service. For example, when assessing a bona fide cash advance fee, that fee must be compared to fees charged by other creditors for transactions in which consumers receive extensions of credit in the form of cash or its equivalent. Conversely, when assessing a foreign transaction fee, that fee may not be compared to a cash advance fee because the foreign transaction fee involves the service of exchanging the consumer's currency (e.g., a reserve currency) for the local currency demanded by a merchant for a good or service, and does not involve the provision of cash to the consumer.

(ii) Safe harbor. A bona fide fee is reasonable under paragraph (d)(1) of this section if the amount of the fee is less than or equal to an average amount of a fee for the same or a substantially similar product or service charged by 5 or more creditors each of whose U.S. credit cards in force is at least $3 billion in an outstanding balance (or at least $3 billion in loans on U.S. credit card accounts initially extended by the creditor) at any time during the 3-year period preceding the time such average is computed.

(iii) Reasonable fee. A bona fide fee that is higher than an average amount, as calculated under paragraph (d)(3)(ii) of this section, also may be reasonable under paragraph (d)(1) of this section depending on other factors relating to the credit card account. A bona fide fee charged by a creditor is not unreasonable solely because other creditors do not charge a fee for the same or a substantially similar product or service.

(iv) Indicia of reasonableness for a participation fee. An amount of a bona fide fee for participation in a credit card account may be reasonable under paragraph (d)(1) of this section if that amount reasonably corresponds to the credit limit in effect or credit made available when the fee is imposed, to the services offered under the credit card account, or to other factors relating to the credit card account. For example, even if other creditors typically charge $100 per annum for participation in credit card accounts, a $400 fee nevertheless may be reasonable if (relative to other accounts carrying participation fees) the credit made available to the covered borrower is significantly higher or additional services or other benefits are offered under that account.

(4) Effect of charging fees on bona fide fees—

(i) Bona fide fees treated separately from charges for credit insurance products or credit-related ancillary products. If a creditor imposes a fee described in paragraph (c)(1) of this section and imposes a finance charge to a covered borrower, the total amount of the fee(s) and finance charge(s) shall be included in the MAPR pursuant to paragraph (c) of this section, and the imposition of any fee or finance charge described in paragraph (c)(1) of this section shall not affect whether another type of fee may be excluded as a bona fide fee under this paragraph (d).

(ii) Effect of charges for non-bona fide fees. If a creditor imposes any fee (other than a periodic rate or a fee that must be included in the MAPR pursuant to paragraph (c)(1) of this section) that is not a bona fide fee and imposes a finance charge to a covered borrower, the total amount of those fees, including any bona fide fees, and other finance charges shall be included in the MAPR pursuant to paragraph (c) of this section.

(iii) Examples.

(A) In a credit card account under an open-end (not home-secured) consumer credit plan during a given billing cycle, Creditor A imposes on a covered borrower a fee for a debt cancellation product (as described in paragraph (c)(1)(i) of this section), a finance charge (as described in paragraph (c)(1)(iii)(A)), and a bona fide foreign transaction fee that qualifies for the exclusion under this paragraph (d). Only the fee for the debt cancellation product and the finance charge must be included when calculating the MAPR.

(B) In a credit card account under an open-end (not home-secured) consumer credit plan during a given billing cycle, Creditor B imposes on a covered borrower a fee for a debt cancellation product (as described in paragraph (c)(1)(i) of this section), a finance charge (as described in paragraph (c)(1)(iii)(A)), a bona fide foreign transaction fee that qualifies for the exclusion under this paragraph (d), and a bona fide, but unreasonable cash advance fee. All of the fees—including the foreign transaction fee that otherwise would qualify for the exclusion under this paragraph (d)—and the finance charge must be included when calculating the MAPR.

(5) Rule of construction. Nothing in paragraph (d)(1) of this section authorizes the imposition of fees or charges otherwise prohibited by this part or by other applicable State or Federal law.

§ 232.5 Optional identification of covered borrower.

(a) No restriction on method for covered-borrower check. A creditor is permitted to apply its own method to assess whether a consumer is a covered borrower.

(b) Safe harbor—

(1) In general. A creditor may conclusively determine whether credit is offered or extended to a covered borrower, and thus may be subject to 10 U.S.C. 987 and the requirements of this part, by assessing the status of a consumer in accordance with this paragraph (b).

(2) Methods to check status of consumer—

(i) Department database—

(A) In general. To determine whether a consumer is a covered borrower, a creditor may verify the status of a consumer by using information relating to that consumer, if any, obtained directly or indirectly from the database maintained by the Department, available at https://www.dmdc.osd.mil/mla/welcome.xhtml. A search of the

Department's database requires the entry of the consumer's last name, date of birth, and Social Security number.

(B) Historic lookback prohibited. At any time after a consumer has entered into a transaction or established an account involving an extension of credit, a creditor (including an assignee) may not, directly or indirectly, obtain any information from any database maintained by the Department to ascertain whether a consumer had been a covered borrower as of the date of that transaction or as of the date that account was established.

(ii) Consumer report from a nationwide consumer reporting agency. To determine whether a consumer is a covered borrower, a creditor may verify the status of a consumer by using a statement, code, or similar indicator describing that status, if any, contained in a consumer report obtained from a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, or a reseller of such a consumer report (as each of those terms is defined in the Fair Credit Reporting Act (15 U.S.C. 1681a) and any implementing regulation (12 CFR part 1022)).

(3) Determination and recordkeeping; one-time determination permitted. A creditor who makes a determination regarding the status of a consumer by using one or both of the methods set forth in paragraph (b)(2) of this section shall be deemed to be conclusive with respect to that transaction or account involving consumer credit between the creditor and that consumer, so long as that creditor timely creates and thereafter maintains a record of the information so obtained. A creditor may make the determination described in this paragraph (b), and keep the record of that information obtained at that time, solely at the time—

(i) A consumer initiates the transaction or 30 days prior to that time;

(ii) A consumer applies to establish the account or 30 days prior to that time; or

(iii) The creditor develops or processes, with respect to a consumer, a firm offer of credit that (among the criteria used by the creditor for the offer) includes the status of the consumer as a covered borrower, so long as the consumer responds to that offer not later than 60 days after the time that the creditor had provided that offer to the consumer. If the consumer responds to the creditor's offer later than 60 days after the time that the creditor had provided that offer to the consumer, then the creditor may not rely upon its initial determination in developing or processing that offer, and, instead, may act on the consumer's response as if the consumer is initiating the transaction or applying to establish the account (as described in paragraph (b)(3)(i) or (ii) of this section).

§ 232.6 Mandatory loan disclosures.

(a) Required information. With respect to any extension of consumer credit (including any consumer credit originated or extended through the internet) to a covered borrower, a creditor shall provide to the covered borrower the following information before or at the time the borrower becomes obligated on the transaction or establishes an account for the consumer credit:

(1) A statement of the MAPR applicable to the extension of consumer credit;

(2) Any disclosure required by Regulation Z, which shall be provided only in accordance with the requirements of Regulation Z that apply to that disclosure; and

(3) A clear description of the payment obligation of the covered borrower, as applicable. A payment schedule (in the case of closed-end credit) or account-opening disclosure (in the case of open-end credit) provided pursuant to paragraph (a)(2) of this section satisfies this requirement.

(b) One-time delivery; multiple creditors.

(1) The information described in paragraphs (a)(1) and (a)(3) of this section are not required to be provided to a covered borrower more than once for the transaction or the account established for consumer credit with respect to that borrower.

(2) Multiple creditors. If a transaction involves more than one creditor, then only one of those creditors must provide the disclosures in accordance with this section. The creditors may agree among themselves which creditor may provide the information described in paragraphs (a)(1) and (a)(3) of this section.

(c) Statement of the MAPR—

(1) In general. A creditor may satisfy the requirement of paragraph (a)(1) of this section by describing the charges the creditor may impose, in accordance with this part and subject to the terms and conditions of the agreement, relating to the consumer credit to calculate the MAPR. Paragraph (a)(1) of this section shall not be construed as requiring a creditor to describe the MAPR as a numerical value or to describe the total dollar amount of all charges in the MAPR that apply to the extension of consumer credit.

(2) Method of providing a statement regarding the MAPR. A creditor may include a statement of the MAPR applicable to the consumer credit in the agreement with the covered borrower involving the consumer credit transaction. Paragraph (a)(1) of this section shall not be construed as requiring a creditor to include a statement of the MAPR applicable to an extension of consumer credit in any advertisement relating to the credit.

(3) Model statement. A statement substantially similar to the following statement may be used for the purpose of paragraph (a)(1) of this section: "Federal law provides important protections to members of the Armed Forces and their dependents relating to extensions of consumer credit. In general, the cost of consumer credit to a member of the Armed Forces and his or her dependent may not exceed an annual percentage rate of 36 percent. This rate must include, as applicable to the credit transaction or account: The costs associated with credit insurance premiums; fees for ancillary products sold in connection with the credit transaction; any application fee charged (other than certain application fees for specified credit transactions or accounts); and any participation fee charged (other than certain participation fees for a credit card account)."

(d) Methods of delivery—

(1) Written disclosures. The creditor shall provide the information required by paragraphs (a)(1) and (3) of this section in writing in a form the covered borrower can keep.

(2) Oral disclosures.

(i) In general. The creditor also shall orally provide the information required by paragraphs (a)(1) and (3) of this section.

(ii) Methods to provide oral disclosures. A creditor may satisfy the requirement in paragraph (d)(2)(i) of this section if the creditor provides—

(A) The information to the covered borrower in person; or

(B) A toll-free telephone number in order to deliver the oral disclosures to a covered borrower when the covered borrower contacts the creditor for this purpose.

(iii) Toll-free telephone number on application or disclosure. If applicable, the toll-free telephone number must be included on—

(A) A form the creditor directs the consumer to use to apply for the transaction or account involving consumer credit; or

(B) A written disclosure the creditor provides to the covered borrower, pursuant to paragraph (d)(1) of this section.

(e) When disclosures are required for refinancing or renewal of covered loan. The refinancing or renewal of consumer credit requires new disclosures under this section only when the transaction for that credit would be considered a new transaction that requires disclosures under Regulation Z.

§ 232.7 Preemption.

(a) Inconsistent laws. 10 U.S.C. 987 as implemented by this part preempts any State or Federal law, rule or regulation, including any State usury law, to the extent such law, rule or regulation is inconsistent with this part, except that any such law, rule or regulation is not preempted by this part to the extent that it provides protection to a covered borrower greater than those protections provided by 10 U.S.C. 987 and this part.

(b) Different treatment under State law of covered borrowers is prohibited. A State may not:

(1) Authorize creditors to charge covered borrowers rates of interest for any consumer credit or loans that are higher than the legal limit for residents of the State, or

(2) Permit the violation or waiver of any State consumer lending protection covering consumer credit that is for the benefit of residents of the State on the basis of the covered borrower's nonresident or military status, regardless of the covered borrower's domicile or permanent home of record, provided that the protection would otherwise apply to the covered borrower.

§ 232.8 Limitations.

Title 10 U.S.C. 987 makes it unlawful for any creditor to extend consumer credit to a covered borrower with respect to which:

(a) The creditor rolls over, renews, repays, refinances, or consolidates any consumer credit extended to the covered borrower by the same creditor with the proceeds of other consumer credit extended by that creditor to the same covered borrower. This paragraph shall not apply to a transaction when the same creditor extends consumer credit to a covered borrower to refinance or renew an extension of credit that was not covered by this paragraph because the consumer was not a covered borrower at the time of the original transaction. For the purposes of this paragraph, the term “creditor” means a person engaged in the business of extending consumer credit subject to applicable law to engage in deferred presentment transactions or similar payday loan transactions (as described in the relevant law), provided however, that the term does not include a person that is chartered or licensed under Federal or State law as a bank, savings association, or credit union.

(b) The covered borrower is required to waive the covered borrower's right to legal recourse under any otherwise applicable provision of State or Federal law, including any provision of the Servicemembers Civil Relief Act (50 U.S.C. App. 501 et seq.).

(c) The creditor requires the covered borrower to submit to arbitration or imposes other onerous legal notice provisions in the case of a dispute.

(d) The creditor demands unreasonable notice from the covered borrower as a condition for legal action.

(e) The creditor uses a check or other method of access to a deposit, savings, or other financial account maintained by the covered borrower, except that, in connection with a consumer credit transaction with an MAPR consistent with § 232.4(b), the creditor may:

(1) Require an electronic fund transfer to repay a consumer credit transaction, unless otherwise prohibited by law;

(2) Require direct deposit of the consumer's salary as a condition of eligibility for consumer credit, unless otherwise prohibited by law; or

(3) If not otherwise prohibited by applicable law, take a security interest in funds deposited after the extension of credit in an account established in connection with the consumer credit transaction.

(f) The creditor uses the title of a vehicle as security for the obligation involving the consumer credit, provided however, that for the purposes of this paragraph, the term "creditor" does not include a person that is chartered or licensed under Federal or State law as a bank, savings association, or credit union.

(g) The creditor requires as a condition for the extension of consumer credit that the covered borrower establish an allotment to repay the obligation. For the purposes of this paragraph only, the term "creditor" shall not include a "military welfare society," as defined in 10 U.S.C. 1033(b)(2), or a "service relief society," as defined in 37 U.S.C. 1007(h)(4).

(h) The covered borrower is prohibited from prepaying the consumer credit or is charged a penalty fee for prepaying all or part of the consumer credit.

§ 232.9 Penalties and remedies.

(a) Misdemeanor. A creditor who knowingly violates 10 U.S.C. 987 as implemented by this part shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(b) Preservation of other remedies. The remedies and rights provided under 10 U.S.C. 987 as implemented by this part are in addition to and do not preclude any remedy otherwise available under State or Federal law or regulation to the person claiming relief under the statute, including any award for consequential damages and punitive damages.

(c) Contract void. Any credit agreement, promissory note, or other contract with a covered borrower that fails to comply with 10 U.S.C. 987 as implemented by this part or which contains one or more provisions prohibited under 10 U.S.C. 987 as implemented by this part is void from the inception of the contract.

(d) Arbitration. Notwithstanding 9 U.S.C. 2, or any other Federal or State law, rule, or regulation, no agreement to arbitrate any dispute involving the extension of consumer credit to a covered borrower pursuant to this part shall be enforceable against any covered borrower, or any person who was a covered borrower when the agreement was made.

(e) Civil liability—

(1) In general. A person who violates 10 U.S.C. 987 as implemented by this part with respect to any person is civilly liable to such person for:

(i) Any actual damage sustained as a result, but not less than $500 for each violation;

(ii) Appropriate punitive damages;

(iii) Appropriate equitable or declaratory relief; and

(iv) Any other relief provided by law.

(2) Costs of the action. In any successful action to enforce the civil liability described in paragraph (e)(1) of this section, the person who violated 10 U.S.C. 987 as implemented by this part is also liable for the costs of the action, together with reasonable attorney fees as determined by the court.

(3) Effect of finding of bad faith and harassment. In any successful action by a defendant under this section, if the court finds the action was brought in bad faith and for the purpose of harassment, the plaintiff is liable for the attorney fees of the defendant as determined by the court to be reasonable in relation to the work expended and costs incurred.

(4) Defenses. A person may not be held liable for civil liability under paragraph (e) of this section if the person 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 any such error. Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors, except that an error of legal judgment with respect to a person's obligations under 10 U.S.C. 987 as implemented by this part is not a bona fide error.

(5) Jurisdiction, venue, and statute of limitations. An action for civil liability under paragraph (e) of this section may be brought in any appropriate United States district court, without regard to the amount in controversy, or in any other court of competent jurisdiction, not later than the earlier of:

(i) Two years after the date of discovery by the plaintiff of the violation that is the basis for such liability; or

(ii) Five years after the date on which the violation that is the basis for such liability occurs.

§ 232.10 Administrative enforcement.

The provisions of this part, other than § 232.9(a), shall be enforced by the agencies specified in section 108 of the Truth in Lending Act (15 U.S.C. 1607) in the manner set forth in that section or under any other applicable authorities available to such agencies by law.

§ 232.11 Servicemembers Civil Relief Act protections unaffected.

Nothing in this part may be construed to limit or otherwise affect the applicability of section 207 and any other provisions of the Servicemembers Civil Relief Act (50 U.S.C. App. 527).

§ 232.12 Effective dates.

(a) In general. This regulation shall take effect October 1, 2015, except that, other than as provided in this section and in § 232.13(b)(1), nothing in this part shall apply to consumer credit that is extended to a covered borrower and consummated before October 3, 2016.

(b) Prior extensions of consumer credit. Consumer credit that is extended to a covered borrower and consummated any time between October 1, 2007, and October 3, 2016, is subject to the definitions, conditions, and requirements of this part as were established by the Department and effective on October 1, 2007.

(c) New extensions of consumer credit. Except as provided in paragraphs (d) and (e) of this section with respect to extensions of consumer credit under paragraph (b) of this section (and except as permitted by § 232.13(b)(1)), the requirements of this part that are effective as of October 1, 2015, shall apply only to a consumer credit transaction or account for consumer credit consummated or established on or after October 3, 2016.

(d) Provisions of 10 U.S.C. 987(d)(2). The amendments to 10 U.S.C. 987(d)(2) enacted in section 661(a) of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239, 126 Stat. 1785), as reflected in § 232.7(b), took effect on January 2, 2014.

(e) Civil liability remedies. The provisions set forth in § 232.9(e) shall apply with respect to consumer credit extended on or after January 2, 2013.

§ 232.13 Compliance dates.

(a) In general. Except as provided in paragraph (c) of this section, a creditor must comply with the requirements of this part, as may be applicable, with respect to a consumer credit transaction or account for consumer credit consummated or established on or after October 3, 2016, not later than that date.

(b) Safe harbors for identifying a covered borrower—

(1) New safe harbors. Section 232.5 shall apply October 3, 2016.

(2) Prior safe harbor valid until general compliance date. The provisions relating to the identification of a covered borrower set forth in § 232.5(a) of the regulation established by the Department and effective on October 1, 2007 (including the interpretation by the Department that provides an exception from the safe harbor for the creditor's knowledge that the applicant is a covered borrower) shall remain in effect until October 3, 2016.

(c) Limited exemption for credit card account; reservation of authority—

(1) In general. Notwithstanding § 232.3(f)(1) and subject to paragraph (c)(2) of this section, until October 3, 2017, consumer credit does not mean credit extended in a credit card account under an open-end (not home-secured) consumer credit plan.

(2) Authority to issue an order to extend exemption. The Secretary, or an official of the Department duly authorized by the Secretary, may, by order, extend the expiration of the exemption set forth in paragraph (c)(1) of this section, until a date not later than October 3, 2018.

CONSUMER CREDIT COMMISSIONER ADMINISTRATIVE INTERPRETATIONS

In 2020, the following administrative interpretations issued under K.S.A. 16a-6-104(1)(f) remain in effect.

Current Administrative Interpretations

No. 1001.....Call or Demand Notes

No. 1002.....Refund of Credit Insurance Premiums

No. 1003.....Clarification of Charges on Discretionary Overdrafts by Financial Institutions

No. 1004.....Guaranteed Asset Protection ("GAP")

Letter Regarding 2019 Amendment to No. 1004

No. 1005.....The Sale of Credit Insurance After the Consummation of a Closed-End Consumer Credit Transaction or Open-End Consumer Line of Credit

No. 1006.....REVOKED

No. 1007.....Interest Rates on Mortgage Loans

No. 1008.....Notice for high loan-to-value mortgages

No. 1009.....Calculation of the 8% Cap on Prepaid Finance Charges in K.S.A. 16a-2-401(6)

No. 1010.....Prompt Crediting of Payments; Date of Receipt

No. 1011.....Computation of Interest; Prepaid Finance Charges

Administrative Interpretation No. 1001
Call or Demand Notes
December 1, 1992

A request has been made to the Consumer Credit Commissioner for an Administrative Interpretation concerning the inclusion of a demand feature in a non-real estate consumer installment loan agreement.

A demand or call provision is an acceleration clause which allows a lender to call monies due under the instrument at the will of the creditor.

The Kansas Uniform Consumer Credit Code section 16a-5-109 permits creditors to accelerate an agreement if:

(1) the consumer fails to make a payment as required by the agreement; or

(2) the prospect of payment, performance, or realization of collateral is significantly impaired; the burden of establishing the prospect of significant impairment is on the creditor.

Notwithstanding subsection (1) a creditor may not accelerate an agreement only for failure to make a required payment unless the consumer has been given the notice of right to cure as provided by 16a-5-110 and 16a-5-111.

The calling or demanding of payment in full following 24 months of a 48 month contract, for example, would trigger the consumer's right to finance the balloon payment at the same rate and terms as the original installment note (16a-3-308).

Demand notes will be allowed only when the agreements are ``interest only'' in which the consumer is required only to pay interest and not pay principal. Demand provisions in these types of transactions is entirely understandable, given the need of the creditor eventually to recover its principal.

Wm. F. Caton
Commissioner

Administrative Interpretation No. 1002
Refund of Credit Insurance Premiums
January 27, 1993; amended October 13, 1999

The purpose of this Administrative Interpretation is to clarify the requirements of K.S.A. 16a-4-108(3) in regard to the notices to be provided to consumers who may be eligible for a refund of credit insurance premiums.

Section 16a-4-108(3) states ". . . (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 any separate charge made to him 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 terminate prior to the end of the term for which it was written because of prepayment in full or otherwise . . ."

The phrase "promptly make or cause to be made" does not have a definition in the code and apparently has been misunderstood by creditors. For purposes of K.S.A. 16a-4-108(3), 30 days shall be considered a reasonable time within which to promptly make or cause to be made" a refund or credit to the consumer.

This interpretation outlines the Administrator's opinion of the appropriate format for notices to be sent to consumers in order to comply with the above quoted statute. The notices are required of creditors who have become an assignee of a consumer credit transaction which has separate prepaid charges for credit insurance which have been retained by the original creditor.

A creditor who accepts such a consumer credit transaction from an original creditor should notify the consumer within ten calendar days that they have been assigned the consumer credit transaction. If credit insurance was purchased, a notice in the following form will be deemed by the Administrator to satisfy the requirements of K.S.A. 16a-4-108:

> **"YOU HAVE PURCHASED CREDIT LIFE AND/OR DISABILITY INSURANCE IN CONNECTION WITH THE ABOVE-STATED CONSUMER CREDIT TRANSACTION."**
>
> **"PLEASE BE ADVISED THAT IF YOU PAY THE CONSUMER CREDIT TRANSACTION IN FULL BEFORE THE END OF THE TERM FOR WHICH IT WAS WRITTEN, YOU MAY BE ENTITLED TO A REFUND OR CREDIT FOR CREDIT INSURANCE PREMIUMS PAID."**
>
> **"TO OBTAIN YOUR REFUND, YOU MUST CONTACT THE ORIGINAL CREDITOR."**
>
> **"IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT THE OFFICE OF THE STATE BANK COMMISSIONER, DIVISION OF**

CONSUMER AND MORTGAGE LENDING AT 700 SW JACKSON, SUITE 300, TOPEKA, KANSAS 66603."

Upon prepayment of any consumer credit transaction described above, an additional notice must be made to the consumer with a copy sent to the original creditor. The notice should include the following:

1. DATE OF CONSUMER CREDIT TRANSACTION REPAYMENT.

2. NAME OF CONSUMER AND CONSUMER CREDIT TRANSACTION NUMBER.

3. A STATEMENT INDICATING THAT A POTENTIAL REFUND MAY BE DUE TO THE CONSUMER.

4. THE ORIGINAL CREDITOR'S NAME AND CURRENT ADDRESS.

5. A STATEMENT THAT THE ORIGINAL CREDITOR IS INITIALLY RESPONSIBLE FOR MAKING THE REFUND OF THE UNEARNED PREMIUM.

6. A STATEMENT INDICATING THE ORIGINAL CREDITOR MUST RETAIN WRITTEN PROOF OF THE REFUND.

7. A STATEMENT DIRECTING THE CONSUMER TO CONTACT THE OFFICE OF THE STATE BANK COMMISSIONER DIVISION OF CONSUMER AND MORTGAGE LENDING WITHIN THIRTY (30) DAYS IF THEY HAVE FAILED TO RECEIVE THEIR REFUND.

A sample notice is available upon request.

Creditors will be considered to have substantially complied with K.S.A. 16a-4-108 by providing to consumers the information outlined above. Failure by a creditor to comply with K.S.A. 16a-4-108(3) may result in action by the Administrator, including the possible imposition of a fine.

Kevin C. Glendening
Acting Deputy Commissioner
Division of Consumer and Mortgage Lending
Office of the State Bank Commissioner

SAMPLE NOTICES

A. INITIAL NOTICE

DATE OF NOTICE
RE: Loan Number
You have purchased credit life insurance in connection with the above stated loan.

Please be advised that if you pay the loan in full before the end of the term for which it was written, you may be entitled to a refund or credit for credit insurance premiums paid.

To obtain your refund, you must contact the original creditor.

If you have any questions, please contact the Office of the State Bank Commissioner, Division of Consumer and Mortgage Lending at 700 SW Jackson, Suite 300, Topeka, Kansas 66603.

B. NOTIFICATION OF POTENTIAL REFUND ON CREDIT INSURANCE DUE TO PREPAYMENT

DATE OF NOTICE
TO: BORROWER
RE: Loan Number
Date of Loan Prepayment

This is notification that there may be a refund or credit due to the above-named consumer for credit insurance premiums paid.

Because the loan identified above has been prepaid in full, there may be a refund due for credit insurance premiums that have already been paid for the full term of the loan.

According to Kansas law, a consumer shall receive a refund or a credit for any insurance premiums paid when the insurance terminates prior to the end of the term for which it was written because of prepayment of the loan. (See K.S.A. 16a-4-108)

Upon prepayment in full, the consumer must contact the dealer/originator of the loan and request payment of any funds due for credit insurance premiums paid. The dealer/originator of the loan may be contacted at the following address:

For examination purposes, the originator of the credit insurance must keep written proof that a refund has been properly made, and thus all obligations under law regarding this matter have been satisfied.

If the consumer does not receive a refund or credit due within thirty (30) days of their request, please contact the Office of the State Bank Commissioner, Division of Consumer and Mortgage Lending, at 700 SW Jackson, Suite 300, Topeka, Kansas 66603.

Administrative Interpretation No. 1003

Clarification of Charges on Discretionary Overdrafts by Financial Institutions

July 14, 1994; Amended October 13, 1999

This administrative interpretation is given to clarify whether overdraft charges imposed by financial institutions constitute a finance charge and subsequently are subject to the Kansas Uniform Consumer Credit Code (Code). This interpretation applies only to discretionary overdrafts allowed by the financial institution where there is not a prearranged agreement to extend credit by paying checks drawn on a customer's checking account where the checking account contains less funds than the amount of the check or checks presented for payment.

The definition of an overdraft does not clearly come under the definition of consumer loan as defined in 16a-1-301(17). Comments included in the Code on that section indicate that a consumer loan usually includes ". . .all loans under $25,000 made by professional lenders to individuals for personal, family or household purposes as long as they are payable in installments or a finance charge is imposed". Overdrafts could better be defined as "sale of services" as defined in 16a-1-301(40). Again, the Kansas Comments of the Code relating to the definition of "loan" provide a distinction between loans and sales, and state ". . .thus, forbearance of debt arising from sales or leases is not a loan transaction within this act . . ."

Kansas Regulation K.A.R. 75-6-26 requires creditors to disclose to consumers the information required by Truth-in-Lending Regulation Z, 12 CFR 226 et seq., including all appendices thereto as amended and in effect on September 1, 1999 (Reg Z) (authorized by and implementing K.S.A. 16a-1-301 and 16a-6-117). Reg Z, 226.4 (c) (3) ("charges excluded from the finance charge") states, "charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items an the imposition of the charge were previously agreed upon in writing". Official Staff Commentary on Reg Z further expresses the following opinion on 226.4 (c) (3), "a charge on an overdraft balance computed by applying a rate of interest to the amount of the overdraft is not a finance charge, even though the consumer agrees to the charge in the account agreement, unless the financial institution agrees in writing that it will pay such items".

Conclusions:

1. Discretionary overdrafts by a financial institution without a prearranged agreement to create an overdraft, although generally considered as extensions of credit, do not constitute a consumer loan as defined by the Code in K.S.A. 16a-1-301 (17).

2. Charges on overdrafts without a prearranged agreement, however calculated, do not constitute a finance charge as defined by the Code in K.S.A. 16a-1-301(22).

3. The Code is silent in regard to charges imposed on discretionary overdrafts by a financial institution. When the Code is silent, Reg Z is used for reference. Reg Z in paragraph 226.4(c) (3) specifically excludes charges on discretionary overdrafts from the definition of "Finance Charge".

Therefore, it is the interpretation of this office, based on the facts, interpretations and conclusions stated above, that transactions involving financial institutions' imposition of charges on discretionary overdrafts are not subject to the Kansas Uniform Consumer Credit Code.

Kevin C. Glendening
Acting Deputy Commissioner
Division of Consumer and Mortgage Lending
Office of the State Bank Commissioner

Amended Administrative Interpretation No. 1004
Guaranteed Asset Protection ("GAP")
April 30, 2019

(Note regarding April 2019 amendment: The OSBC's intent is to allow companies to phase in new forms and not require immediate compliance with the latest amendment to this AI. The OSBC expects those affected by the amendment to come into compliance as soon as possible, but the OSBC has set a definite time of January 1, 2020, for full compliance with AI 1004. Until that date, old forms that are otherwise compliant now, but do not include the new language, will be considered compliant and therefore the cost of GAP may continue to be excluded from the finance charge using such forms until January 1, 2020.)

Administrative Interpretation No. 1004 was issued October 20, 1994 and first amended August 7, 1997.
This Administrative Interpretation was further amended December 19, 2012, and again on April 30, 2019.

This Administrative Interpretation provides guidelines that must be followed for creditors to exclude the cost of Guaranteed Asset Protection ("GAP") waiver agreements from the calculation of the finance charge with consumer credit sales and closed-end consumer loans pursuant to the Uniform Consumer Credit Code. A GAP waiver agreement cancels or waives all or part of the outstanding balance due on a consumer's finance agreement in the event physical damage insurance does not pay the consumer's debt in full following a total loss or unrecovered theft of the vehicle. This Amended Administrative Interpretation is limited to GAP waiver products offered in connection with the finance agreement on a consumer vehicle. For purposes of this Amended Administrative Interpretation, "vehicle" means self-propelled or towed vehicles designed for personal use, including but not limited to automobiles, trucks, motorcycles, recreational vehicles, travel trailers, all-terrain vehicles, snowmobiles, and personal watercraft.

GAP waiver products may be offered to consumers and the charges for GAP products may continue to be excluded from the finance charge in Kansas provided the following conditions are met:

1. There must be a reasonable expectation that the condition will exist where the loan balance will exceed the fair market value of the vehicle at some point in time during the life of the loan in order for a creditor to offer GAP to the consumer. The price charged for GAP shall be subject to the principles of unconscionability expressed in K.S.A. 16a-5-108.

2. In accordance with the Truth in Lending Act and implementing regulations, as they may be amended from time to time, all GAP waiver agreements must:

    a. contain a written statement that GAP coverage is not required by the creditor;

    b. disclose the cost of the GAP product; and

c. have the consumer affirmatively sign a written request for GAP coverage after receiving the required disclosures.

3. In addition to the requirements of the Truth in Lending Act, all GAP waiver agreements shall contain the following provisions:

   a. The GAP waiver agreement must identify the name of the dealership or financial institution selling the GAP product and the GAP Administrator;

   b. The GAP waiver agreement remains a part of the finance agreement upon the assignment, sale, or transfer of such finance agreement by the creditor;

   c. The consumer must have no less than a 30-day unconditional right to cancel with a full refund of the purchase price of the GAP waiver agreement, provided no amounts have been waived pursuant to the agreement;

   d. The GAP waiver agreement must include, at a minimum, coverage of the physical damage insurance deductible up to $500; however, the GAP waiver agreement may cover deductibles in excess of $500;

   e. The GAP waiver agreement must include a warning in bold type that the GAP coverage may not cancel or waive the entire amount owing at the time of loss;

   f. The procedure the consumer must follow to obtain GAP waiver benefits under the terms and conditions of the GAP waiver agreement, including a telephone number and address where the consumer may apply for waiver benefits; and

   g. The GAP waiver agreement must contain a statement advising Kansas consumers how to contact the GAP provider with claims for GAP coverage, and that information shall be printed in bold font. The word "claims" shall be bolded and underlined. The form must also advise Kansas consumers that they may contact the Kansas Office of the State Bank Commissioner with complaints about their GAP waiver agreement at 700 S.W. Jackson, Suite300, Topeka, KS 66603, www.osbckansas.org/. The word "complaints" should be bolded and underlined.

4. The GAP waiver agreement must provide coverage, subject to conditions and exclusions identified in the agreement, for all physical damage claims or unrecovered theft that constitute a total loss. All conditions and exclusions to GAP coverage must be clearly and conspicuously disclosed in the GAP waiver agreement in easy to read language. A creditor or such other entity acting on the creditor's behalf shall not sell GAP coverage on a vehicle that does not meet the eligibility requirements of the GAP waiver agreement.

5. The amount waived or cancelled pursuant to the GAP waiver agreement shall be computed as the difference between the outstanding balance on the date of loss and the primary insurance carrier's determination of the Actual Cash Value of the vehicle. The GAP waiver agreement must clearly define the method used to determine the outstanding balance on the date of loss in a manner in which a consumer may reasonably be expected to understand, including disclosure of all items that will be excluded from the outstanding balance on the date of loss. (For example: delinquent or deferred payments, late payment charges, refundable items, etc.)

   The GAP waiver agreement must uniformly define the term "Actual Cash Value" as the value established by the primary insurance carrier. If there is no primary insurance coverage at the time of the loss, the market value of the vehicle will be determined by the National Automobile Dealers Association ("NADA") Official Used Car Guide or equivalent. Terms such as "Payable Loss" and "Constructive Total Loss" must be consistent with this method of calculating the GAP waiver benefit.

6. The initial creditor that offers a GAP waiver agreement must report the sale of, and forward funds received on all such waivers to the designated GAP Administrator identified in the GAP waiver agreement.

7. Each creditor must insure its GAP waiver obligations under a contractual liability insurance policy issued by an insurer licensed in this state. Additionally, each creditor must maintain copies, in paper or electronic form, of all GAP waiver agreements for a period of not less than three years following the termination of the agreement. GAP administrators must also be prepared to provide records as requested by the Administrator of the Uniform Consumer Credit Code.

Failure to meet the requirements of this Administrative Interpretation will require that the cost of the GAP product to be included in the finance charge and disclosed accordingly.

This Amended Administrative Interpretation applies to all GAP waiver agreements executed on and after May 15, 2019.

Tim Kemp
Acting Bank Commissioner & Administrator
Kansas Uniform Consumer Credit Code

Letter Regarding 2019 Amendment to Administrative Interpretation No. 1004

Kansas
Office of the State Bank Commissioner

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Tim Kemp, Acting Bank Commissioner

Laura Kelly, Governor

April 16, 2019

Ms. Athena E. Andaya
Deputy Attorney General
120 SW 10th Avenue, 2nd Floor
Topeka, KS 66612

Re: OSBC Administrative Interpretation 1004

Dear Athena:

Please find enclosed an amended Administrative Interpretation (AI) proposed by the Office of the State Bank Commissioner (OSBC). The OSBC is authorized to issue AIs pursuant to the Uniform Consumer Credit Code, K.S.A. 16a-6-104(1)(f), and our AIs must be approved by the Attorney General.

The proposed amendment is intended to address the influx of phone calls our office receives from all over the United States on GAP complaints. Because the current language of the AI requires GAP waiver agreements to include our phone number and GAP forms are mass produced throughout the country, our phone number is advertised to consumers throughout the United States as the resource for a consumer complaint relating to GAP. However, our jurisdiction is limited to addressing only Kansas consumers who have a GAP complaint.

The amendment removes the OSBC phone numbers from the form and instead directs the consumer to our website, which outlines the complaint process for consumers. We believe this method of informing the public will apprise them of our limited jurisdiction to actions arising in Kansas and reduce the number of phone calls we receive from individuals who we cannot help.

If you have any questions, please contact me at 296-1545 or Melissa.Wangemann@osbckansas.org. Thank you, Athena.

Sincerely,

Melissa A. Wangemann
General Counsel

Encl: Amended AI 1004

Administrative Interpretation No. 1005

The Sale of Credit Insurance After the Consummation of a Closed-End Consumer Credit Transaction or Open-End Consumer Line of Credit

December 13, 1994

The question has arisen whether written authorization by the consumer is required on the post-loan sale of credit insurance on consumer credit transactions. The requirement to obtain specific affirmative written indication of the consumer's desire to purchase such insurance as required in K.S.A. 16a-2-501(2)(b) is intended if the insurance is written in connection with the extension of credit. The term "extension of credit" is not a defined term in the Kansas Uniform Consumer Credit Code, so it is the interpretation by the Commissioner that is specifically relates to the period of time when the loan is contemplated and approved by the creditor and ends upon the consummation or opening of a consumer credit transaction. The Official Staff Commentary on Regulation Z, Truth-in-Lending in section 226.4(b)(7) and (8) 2. states, "Insurance written in connection with a transaction. Insurance sold after consummation in closed-end credit transactions or after the opening of a plan in open-end credit transactions is not 'written in connection with' the credit transaction if the insurance is written because of the consumer's default (for example, by failing to obtain or maintain required property insurance) or because the consumer requests insurance after consummation or the opening of a plan (although credit-sale disclosures may be required for the insurance sold after consummation if it is financed)".

Although disclosures are required by Regulation Z if the premium is financed in an open end credit transaction by adding the monthly premium to the balance on which a finance charge is assessed, the written authorization by the consumer is a separate action from disclosure by the creditor and not required in this instance.

Conclusion: Written authorization by the consumer on the sale of credit insurance after consummation of a closed-end or opening of an open-end consumer credit transaction is not required if it fits the circumstances set forth above. Disclosure of finance charges in connection with the financing of the credit insurance premium is required.

Wm. F. Caton
Commissioner

Administrative Interpretation No. 1006
Mortgage Broker Fees
August 7, 1997

REVOKED OCTOBER 13, 1999

Administrative Interpretation No. 1007
Interest Rates on Mortgage Loans
September 1, 1998; Amended October 13, 1999

This administrative interpretation will modify the previous policy of this agency regarding the Kansas Uniform Consumer Credit Code (the "Code"), specifically K.S.A. 16a-2-401(7) and (8), and the maximum permissible interest rate for first mortgage loans made subject to the Code and subordinate mortgage loans

A first mortgage loan is only subject to the Code if the parties so agree in writing pursuant to K.S.A. 16a-1-109. K.S.A. 16a-2-401(7) provides that the interest rate of these first mortgage loans is governed by K.S.A. 16-207(b) ***unless made subject hereto by agreement.***

It is the opinion of the Acting Consumer Credit Commissioner that for purposes of K.S.A. 16a-2-401(7) and (8), a promissory note or other loan document signed by a borrower, in connection with a first or subordinate mortgage loan as described above, which discloses an interest rate not exceeding the interest rate ceilings established by K.S.A. 16a-2-401(1) or (2), constitutes an "agreement" by the parties that the loan is made subject to the provisions of K.S.A. 16a-2-401, including the interest rate ceilings.

This administrative interpretation applies to mortgage loans made before July 1, 1999, the effective date of 1999 Substitute Senate Bill 301. Code references in this interpretation refer to the Code prior to the effective date of 1999 Substitute Senate Bill 301.

Kevin C. Glendening
Acting Deputy Commissioner
Division of Consumer and Mortgage Lending
Office of the State Bank Commissioner

Administrative Interpretation No. 1008
Notice for high loan-to-value mortgages
October 13, 1999, Amended November 30, 2000

A notice in substantially the following form should be used in order to satisfy the notice requirement set forth in K.S.A. 16a-3-207, as amended, regarding high loan-to-value mortgage loans:

[date]

[name of consumer(s)]
[address of consumer(s)]

Dear [name of consumer(s)]

You have applied for a loan which will be secured by a mortgage on your home. ***We are required by the Kansas Uniform Consumer Credit Code to provide you with the following information not less than three days prior to the time you receive the loan funds.***

An appraisal is attached (or will be provided to you as soon as available) which estimates that the value of your home may be less than the amount of the loan for which you have been approved (plus any existing mortgage loans you have). If the value of your home is less than the combined amount of all mortgage loans on your home, then you don't have any "equity" in your home. This means, if you were to sell your home, that the sale proceeds may not be enough to repay your mortgage loans. The amount of equity you have in your home depends on how much you pay down your mortgage loans, and whether the value of your home increases or decreases.

Under Kansas law, most "unsecured" creditors, such as a credit card lender, cannot obtain a court-ordered lien on your home if you default, which would allow them to foreclose. However, if you give a creditor a mortgage on your home, then the creditor can foreclose on your home if you do not repay the loan. For example, if you refinance unsecured credit card debt with a second mortgage loan, then the second mortgage lender could foreclose on your home if you default. Foreclosure would force you to move, and your home would be sold. The sale proceeds would be paid to the lender

You may want to consider credit counseling, which could help you in budgeting and developing a plan to pay off your current debts. Credit counseling is available at little or no cost from non-profit and for-profit entities. Consumer Credit Counseling Service is a nationwide non-profit provider with locations across Kansas. You can call 1-800-388-2227 for a referral to a Kansas office which can assist you in person or by phone.

If you have additional questions regarding consumer credit matters, contact the Deputy Commissioner of Consumer and Mortgage Lending for Kansas at 1-877-387-8523 (toll free) to obtain additional information

If, within three days after receipt of this notice, you decide not to take the mortgage loan you have applied for, then you are entitled to a refund of any application fee or other amounts you have paid to the lender. However, you are not entitled to a refund of any out-of-pocket costs that the lender pays to a third party to process your loan application.

[name of lender]

The undersigned consumer(s) was provided this notice at least three days prior to receiving the loan funds

[signature of consumer(s)]

The three-day time period in K.S.A. 16a-3-207, as amended, must be calculated in accordance with K.S.A. 60-206.

For the purpose of K.S.A. 16a-3-207, as amended, a loan is determined to be made at the time the loan proceeds are disbursed.

Kevin C. Glendening
Acting Deputy Commissioner
Division of Consumer and Mortgage Lending
Office of the State Bank Commissioner

Administrative Interpretation No. 1009
Calculation of the 8% Cap on Prepaid Finance Charges in K.S.A. 16a-2-401(6)
October 13, 1999; Amended November 30, 2000

This interpretation is given in order to clarify K.S.A. 16a-2-401 regarding charges to be included when calculating the 8% cap on prepaid finance charges for consumer loans secured by an interest in real estate. The listed examples contained in this interpretation should not be strictly construed. They are not all-exclusive nor all-inclusive, as the type of charge being levied depends on the factors described below.

For consumer loans secured by real estate, state law imposes an 8% cap on prepaid finance charges, with a maximum of 5% of those charges allowed to be retained by the lender. A prepaid finance charge is 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. However, finance charges are not "prepaid" merely because they are precomputed, regardless of whether a portion of the charge will be rebated to the consumer upon prepayment.

K.A.R. 75-6-26 defines "finance charge" to have the same meaning as "finance charge" under Regulation Z, with one major exception. Except for appraisals, which can be payable to the lender or a related party, the Code limits costs in real estate transactions to bona fide and reasonable fees that are paid *to unrelated third parties*. Regulation Z, on the other hand, allows some real estate transaction costs to be paid to the creditor or to a related party and still be excluded from the finance charge.

In calculating the cap on prepaid finance charges, a lender should first determine which charges constitute "finance charges" under Regulation Z. All of those items are included in the 8% cap. Next, the lender must look at the remaining charges which do not constitute finance charges under Regulation Z and determine to whom the fee was paid. Other than appraisal fees, if the fee was paid to the lender or a related party, then pursuant to state law, they also must be included in the cap.

A. Common examples of items that ARE included in the 8% cap, either because they are finance charges under Regulation Z, or because they are finance charges under state law are:

1. Administrative fees
2. Assignment fees
3. Broker's fees/Finder's fees
4. Buyer's points
5. Closing fees, unless paid to a third party
6. Credit investigation fees
7. Credit report review fees, unless secured by real estate and paid to a third party
8. Documentation preparation fees, unless paid to a third party
9. Lender's inspection fees
10. Loan fees

11. Loan guarantee insurance premiums, if such insurance is required by the creditor
12. Processing fees
13. Service fees
14. Underwriting fees
15. Origination fees
16. Flood insurance monitoring fees (ongoing monitoring over the life of the loan)
17. Tax service fees (ongoing monitoring over the life of the loan)

B. Common examples of items that are NOT included in the 8% cap, because they are not finance charges under Regulation Z or under state law include:

Even if retained by the lender or a related party:

1. Application fees, if they are charged to all borrowers
2. Appraisal fees

Only if they are paid to a third party not related to the lender:

3. Closing agent fees, if the lender does not require use of the closing agent or retain a portion of the charge
4. Courier fees
5. Credit report fees
6. Document preparation fees
7. Flood insurance determination fees, if imposed as part of the initial credit decision and performed prior to closing
8. Notary fees
9. Pest inspection fees
10. Recording fees to government entities
11. Survey fees
12. Tax service fees, if imposed as part of the initial credit decision
13. Title examination or title insurance fees

Administrative Interpretation No. 1010
Prompt Crediting of Payments; Date of Receipt
October 13, 1999; Amended November 30, 2000

This interpretation is given in order to clarify the difference between K.S.A. 16a-2-104 and Truth in Lending, Regulation Z, 12 CFR Section 226

The language of K.S.A. 16a-2-104 and Regulation Z, Section 226.10, is substantially similar. However, Section 226.10 of Regulation Z applies only to open-end credit transactions. K.S.A. 16a-2-104 was adopted to apply to all consumer credit transactions. Its application is not limited to open-end credit transactions.

The creditor is to credit the payment as of the date of receipt. The Administrator interprets the "date of receipt" as used in K.S.A. 16a-2-104 to mean the date that the payment instrument or other means of completing the payment reached the creditor. For example:

1. Payment by check is received on the date the creditor receives the check, not when the funds are collected.

2. In a voluntary payroll deduction plan in which funds are deposited in the creditor's asset account, payment is received on the date when it is debited to the asset account, (rather than on the date of the deposit), provided the consumer retains use of the funds until the contractual payment date.

3. If the consumer elects to have payment made by a third-party payor such as a financial institution, through a preauthorized payment or telephone bill-payment arrangement, payment is received when the creditor gets the third-party payor's check or other transfer medium, such as an electronic fund transfer.

4. If the consumer elects to make payment in a type of night deposit or drop box and such payment is made after the creditor's business hours, on a national holiday, or weekend, the payment is considered received the morning of the next business day.

5. Setting a cut-off hour for receipt of payments would be a "reasonable requirement" under the statute. A creditor may specify that payments must be received by a certain cut-off hour in order to be credited as being received that day, so long as the creditor specifies that requirement in writing to the consumer. The statute states that reasonable requirements may be imposed if a creditor specifies the requirements "in a writing delivered to the consumer".

   It is the interpretation of the Administrator that this language requires a written notice to each consumer whose consumer credit transaction would be subject to the requirement. Simply posting a notice in the lobby, for example would not satisfy the statutory requirement.

Franklin Nelson
State Bank Commissioner

Administrative Interpretation No. 1011
Computation of Interest; Prepaid Finance Charges
July 14, 2004

This interpretation concerns K.S.A. 16a-2-103(5) and the computation of interest in consumer loans and consumer credit sales. K.S.A. 16a-2-103(5) was passed as part of a bill containing several revisions to the Kansas Uniform Consumer Credit Code (UCCC) in 1999. That section is designed to address when interest can be charged, from a timing perspective.

Periodic interest may not be charged on a consumer loan until, and may only be charged to the extent that, principal has been disbursed to or for the benefit of the consumer. (An exception is made for loans, other than cash advances, pursuant to lender credit cards.) If principal is disbursed in multiple advances, interest may accrue on each advance only when it has been disbursed as directed by the consumer. Similarly, in a consumer credit sale transaction, interest may not be charged until the related goods, services or interest in land, as the case may be, have been shipped, delivered, furnished or otherwise made available to or for the benefit of the consumer.

K.S.A. 16a-2-103(5) does not prohibit a creditor from charging interest on points or other prepaid finance charges. Consumers sometimes elect to finance closing costs such as these through the creditor deducting and retaining the prepaid finance charges from the loan proceeds. Prepaid finance charges which are not paid separately in cash or by check by the consumer are considered to be part of the principal amount of the loan (see K.S.A. 16a-1-301 (37)). When the consumer elects to pay prepaid finance charges from the proceeds of the loan, rather than paying them separately out of pocket, that portion of the principal has, in effect, been disbursed for the benefit of the consumer, and interest may be charged.

Kevin C. Glendening
Deputy Commissioner
Administrator of the UCCC

GUIDANCE

Please note that subsequent legal cases and legislation can affect the validity of past guidance documents. Guidance documents are valid at the time they are published, based on the law and facts at that given time. In 2020, the following guidance documents remain valid.

Current Guidance – General

CML 2019-1.....Advertising

CML 2019-2.....Use of Fictitious Names

CML 2020-1.....Historical Usury Rates for First Mortgage Loans

Current Guidance – Money Transmitter

MT 2014-1 .....Virtual Currency

MT 2016-1 .....Agent-of-the-Payee

Instructions for Submitting a Request for an Agent-of-the-Payee Exemption

MT 2019-1 .....Cash-In-Transit

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David L. Herndon, Acting Bank Commissioner

Laura Kelly, Governor

CML Guidance 2019-1
Advertising
August 23, 2019

Information Required in Advertising

KMBA. Licensees and registrants soliciting or advertising mortgage business directed at Kansas residents must include the name and license number/unique identifier of the licensee on record with the OSBC per K.S.A. 9-2208 (c) and (e).

CSO. Similarly, credit service organizations must include the name and license number used on record with the OSBC for solicitations and advertisements per K.S.A. 50-1120 (d) and (f).

U3C. A licensee subject to the Uniform Consumer Credit Code may only conduct business under the name given in the license per K.S.A. 16a-2-302(7).

KMTA. Kansas law does not prescribe requirements for money transmitter names.

Limits on Name Under the Banking Code. A provision of the Kansas banking code, K.S.A. 9-2011, states:

> It shall be unlawful for any individual, firm or corporation to advertise, publish or otherwise promulgate that the individual, firm or corporation is engaged in the **banking business or trust business** without first having obtained authority from the commissioner. Any such individual or member of any such firm or officer of any such corporation violating this section, upon conviction shall be guilty of a class A, nonperson misdemeanor.

Use of the words "trust company" or "bank" (or any derivative such as banc, banque) may constitute advertising to the general public that such person is engaged in the banking business. Such advertising makes it appear that the person has obtained authority from the OSBC and it is in fact a bank/trust company subject to banking law and supervision. Such an assertion is deceptive and confusing to the public.[1]

The OSBC must review names on a case-by-case basis to determine whether the particular use of the words in the name could be construed to mean the entity is lawfully engaged in the

[1] Exception are businesses that are clearly not financial institutions such as "Blood Bank."

business of banking. Factors to be considered in deciding whether the use of the words “bank,” “trust,” or “trust company” are appropriate: 1. type of service provided, 2. level of sophistication of the parties interacted with, and 3. the amount of contact the business has with the public.

Retention of Advertising Records

KMBA. Licensees shall maintain a record of all solicitations or advertisements for a period of 36 months in accordance with K.S.A. 9-2208(c). Such advertising does not include business cards or promotional items.

CSO. Each licensee must maintain a record of all solicitations or advertisements for a period of 36 months, not including business cards or promotional items per K.S.A. 50-1120(d).

U3C. K.S.A. 16a-2-304 outlines the requirements for record retention under the U3C. Generally, records must be maintained in order for the administrator to determine compliance with the law. Under K.A.R. 75-6-38—a regulation implementing the U3C’s record retention—each licensee or person filing notification shall retain copies of advertisements or solicitations whether printed or internet/electronic.

KMTA. The commissioner has discretion to require any person under the Act to maintain such documents and records as necessary to verify compliance with law. The commissioner may deny, suspend, revoke or refuse to renew or approve a license for any person who fails to keep and maintain sufficient records to permit an audit or to show compliance with the law per K.S.A. 9-513a.

False and Misleading Advertisement

KMBA. An individual engaging solely in loan processing or underwriting cannot represent to the public that such individual can or will perform any activities of a loan originator. This prohibition includes advertising, communicating, or using business cards, stationery, brochures, signs, rate lists or other promotional items per K.S.A.9-2201(i)(2). No KMBA solicitation or advertisement can 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, per K.S.A. 9-2208(d). No person who is required to be licensed or registered under the KMBA can 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 per K.S.A. 9-2212(m).

CSO. No CSO solicitation or advertisement shall contain false, misleading or deceptive information per K.S.A. 50-1120(e).

U3C. Under K.S.A. 16a-2-310, no person shall 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. Under K.S.A.16a-3-208, a supervised lender

shall not, directly or indirectly, make a false, misleading or deceptive advertisement regarding loans or the availability of loans.

A supervised lender cannot advertise any size of 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.

KMTA. The commissioner may deny, suspend, revoke or refuse to renew or approve a license for any person who: engages in any transaction, practice or business conduct that is fraudulent or deceptive in connection with the business of money transmission or; advertises, displays, distributes, broadcasts or televises any false, misleading or deceptive statement or representation with regard to rates, terms or conditions for the transmission of money per K.S.A. 9-513a(j), (k).

Regulation Z

In addition to state law restrictions on advertising solicitations, Regulation Z, 12 C.F.R. 1026, requires that certain disclosures be provided in advertisements. Licensees should refer to Regulation Z for specific advertising requirements applicable to the loan products they offer. Features common to many of the advertisements we have reviewed include statements regarding terms of repayment or specifying the amount of a payment. Such statements trigger additional disclosures that must be made pursuant to Regulation Z. The OSBC expects all licensees to familiarize themselves with Regulation Z's advertising provisions and to seek legal counsel when necessary to ensure compliance. Licensees should not rely on marketing companies offering form solicitations for compliance with either state or federal law.

Internet Communications and Social Media

Any website or internet post, as well as social media, e.g., Facebook, Twitter, Instagram, and any form of electronic promotion is considered advertising subject to this Regulatory Mailing.

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David L. Herndon, Acting Bank Commissioner

Laura Kelly, Governor

CML Guidance 2019-2
Use of Fictitious Names
October 24, 2019

The purpose of this memorandum is to clarify the opinion of this office regarding a licensee's use of fictitious names, also referred to as trade names, or dba (doing business as) names in loan contracts and other documents. Our office routinely receives questions from regulated entities as to the proper use of these names.

While a document that references only the fictitious name of a licensee may be valid and enforceable by either party to the transaction, the use of an alternative name could lead to confusion for consumers. It is recommended that licensees use their full legal name in all documents prepared or used by a licensee when entering into transactions with Kansas consumers. It is acceptable to add a fictitious name that is properly noted on the entity's license in legal documents when the legal name is also used. A licensee may use just the fictitious name that is listed on the license without the official legal name so long as the use is not intended to cause confusion or deceit to the public.

Assume the legal name of a licensee is "XYZ Financial Group" but with a dba of "XYZ Mortgage." The company has properly noted both names on the license. The best practice is for all loan documents to include the official legal name "XYZ Financial Group." The company may also include the company's dba "XYZ Mortgage" with the legal name, or alone if the dba does not cause confusion or deception to the public.

Should you have any questions or concerns please contact the Office of the State Bank Commissioner, Consumer and Mortgage Lending Division, at 785-296-2266.

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David L. Herndon, Bank Commissioner

Laura Kelly, Governor

CML Guidance 2020-1
Historical Usury Rates for First Mortgage Loans
March 18, 2020

Usury Rate for First Mortgage Loans Prior to July 1, 2013

Prior to July 1, 2013, Kansas law defined a floating usury cap in K.S.A. 16-207(b) for interest rates on first mortgage loans.[1] This subsection also required the Secretary of State to periodically publish notice of this maximum interest rate. Effective July 1, 2013, that subsection was repealed. The floating cap was removed, and the secretary of state was no longer required to publish notice of the maximum interest rate. On and after July 1, 2013, all first mortgage loans are subject to K.S.A. 16-207(a), which continues to provide a general usury cap of 15% per annum, unless otherwise specifically authorized by other provisions of law.

This guidance document contains the historical text of 16-207(b) prior to July 1, 2013, and the relevant historical rates as published by the Secretary of State from January 1993 up to June 2013. This historical data remains relevant for first mortgage loans entered into prior to July 1, 2013.

Historical Text of K.S.A. 16-207(b)

Prior to July 1, 2013, K.S.A. 16-207(b) stated:

> The interest rate limitation set forth in this subsection applies to all first mortgage loans and contracts for deed to real estate, unless the parties agree in writing to make the transaction subject to the uniform consumer credit code, K.S.A. 16a-1-101 to 16a-9-102, and amendments thereto. The interest rate limitation set forth in this subsection does not apply to a second mortgage loan governed by the uniform consumer credit code, K.S.A. 16a-1-101 to 16a-9-102, and amendments thereto, unless the lender and the borrower agree in writing that the interest rate for the loan is to be governed by this subsection. The maximum rate of interest per annum for notes secured by real estate mortgages and contracts for deed to real estate governed by this subsection shall be at an amount equal to 1 ½ percentage points above the yield of thirty-year fixed rate conventional home

[1] In this guidance document, "first mortgage loans" refers to consumer, first-lien, fixed-rate, real-estate mortgage loans and contracts for deed to real estate.

mortgages committed for delivery within 61 to 90 days accepted under the federal home loan mortgage corporation's daily offerings for sale on the last day on which commitments for such mortgages were received in the preceding month unless otherwise specifically authorized by law. Such interest rate shall be computed for each calendar month and be effective on the first day thereof. The secretary of state shall publish notice of such maximum interest rate not later than the second issue of the Kansas register published each month.

Chart of Historical Usury Rates for First Mortgage Loans

See the following page for a chart of maximum interest rates for first mortgage loans as published by the Secretary of State from January 1993 through June 2013.

Historical Kansas Usury Rates for First Mortgage Loans from January 1993 to June 2013

	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003
January	4.42%	5.02%	6.11%	6.47%	6.30%	7.41%	7.57%	7.56%	7.13%	7.20%	7.07%
February	4.60%	4.93%	6.09%	6.33%	6.51%	7.04%	7.72%	7.57%	6.97%	7.15%	7.16%
March	4.59%	4.96%	6.16%	6.25%	6.53%	7.36%	7.48%	7.58%	7.07%	6.95%	6.98%
April	4.60%	5.11%	6.16%	6.37%	5.92%	7.16%	7.55%	7.82%	7.42%	6.91%	7.02%
May	4.43%	4.90%	6.01%	6.36%	6.09%	7.42%	7.58%	7.96%	7.13%	7.50%	6.94%
June	4.93%	4.74%	5.85%	6.12%	6.53%	7.59%	7.79%	8.05%	7.01%	7.72%	6.38%
July	NA	4.49%	5.87%	5.74%	6.58%	7.72%	8.07%	8.22%	6.99%	7.61%	6.62%
August	NA	4.30%	5.77%	5.58%	6.57%	7.82%	8.06%	7.97%	7.16%	7.46%	7.48%
September	NA	4.32%	5.30%	5.37%	6.47%	7.68%	7.83%	7.78%	7.12%	7.13%	7.58%
October	NA	4.10%	5.03%	5.57%	6.21%	7.40%	7.70%	7.58%	7.31%	7.09%	7.02%
November	NA	4.34%	5.18%	5.46%	6.33%	7.93%	7.59%	7.63%	7.63%	7.02%	7.33%
December	NA	4.25%	5.12%	5.69%	5.96%	6.87%	7.31%	7.47%	7.64%	7.15%	7.28%

	2002	2001	2000	1999	1998	1997	1996	1995	1994	1993
January	8.64%	8.78%	9.71%	8.29%	8.75%	9.54%	8.74%	10.95%	8.76%	9.62%
February	8.36%	8.50%	10.09%	8.21%	8.60%	9.54%	8.65%	10.66%	8.47%	9.20%
March	7.91%	8.48%	9.73%	8.67%	8.64%	9.55%	9.21%	10.15%	8.95%	8.97%
April	8.59%	8.51%	9.88%	8.63%	8.69%	9.87%	9.59%	10.22%	9.78%	8.99%
May	8.21%	8.71%	9.87%	8.62%	8.55%	9.79%	9.80%	10.06%	10.17%	8.98%
June	8.10%	8.63%	10.08%	8.97%	8.57%	9.64%	10.01%	9.40%	10.24%	9.06%
July	8.05%	8.78%	9.70%	9.24%	8.56%	9.44%	9.80%	9.42%	10.32%	8.65%
August	7.93%	8.42%	9.70%	9.55%	8.56%	9.05%	9.88%	9.52%	10.12%	8.64%
September	7.51%	8.30%	9.51%	9.69%	8.31%	9.21%	9.94%	9.38%	10.17%	8.31%
October	7.24%	8.02%	9.34%	9.44%	8.01%	9.03%	9.78%	9.39%	10.50%	8.38%
November	7.24%	7.62%	9.35%	9.43%	8.09%	8.94%	9.44%	9.18%	10.68%	8.34%
December	7.43%	8.23%	9.06%	9.56%	8.24%	8.91%	9.22%	8.93%	10.97%	8.79%

Office of the State Bank Commissioner
Guidance Document MT 2014-01

Date: June 6, 2014

Regulatory Treatment of Virtual Currencies Under the Kansas Money Transmitter Act

Purpose

The purpose of this guidance document is to clarify the applicability of the Kansas Money Transmitter Act (KMTA)[1] to persons or entities engaging in the use and/or transmission of virtual currencies.[2] This guidance document provides the policy of the Office of the State Bank Commissioner (OSBC) regarding the regulatory treatment of virtual currencies pursuant to the statutory definitions of the KMTA.

Types of Virtual Currency

In broad terms, a virtual currency is an electronic medium of exchange typically used to purchase goods and services from certain merchants or to exchange for other currencies, either virtual or sovereign.[3] As of the date of this memorandum, the OSBC is not aware of any virtual currency that has legal tender status in any jurisdiction, nor of any virtual currency issued by a governmental central bank. As such, virtual currencies exist outside established financial institution systems. There are many different virtual currency schemes, and it is not easy to classify all of them, but for purposes of this document, they can generally be divided into two basic types: centralized and decentralized.

Centralized virtual currencies are created and issued by a specified source. They rely on an entity with some form of authority or control over the currency. Typically, the authority behind a centralized virtual currency is also the creator. Centralized virtual currencies can be further divided into subclassifications that quickly become too complex to apply a universal policy. Some can be purchased with sovereign currency, but cannot be exchanged back to sovereign currency; some can be converted back to sovereign currency; some are used only for purchase of goods and services from a closed universe of merchants, while others may have a

[1] Kansas Statutes Annotated 9-508 *et seq*.
[2] Much of this document is modeled after guidance issued by the Texas Department of Banking in Supervisory Memorandum 1037 and we thank them for allowing the OSBC to adapt it for use in Kansas.
[3] As used in this document, sovereign currency refers to government-issued currency with legal tender status in the country of issuance, such as U.S. Dollars or Euros. This includes both government-issued fiat currency and commodity-backed currency that is designated as legal tender.

theoretically open universe of merchants. Some centralized currencies are backed by the issuer with sovereign currency or precious metals, and therefore derive intrinsic value.

In contrast, decentralized virtual currencies are not created or issued by a particular person or entity, have no administrator, and have no central repository. Thus far, decentralized currencies are all cryptocurrencies such as Bitcoin, Litecoin, Peercoin, and Namecoin. A cryptocurrency is based on a cryptographic protocol that manages the creation of new units of the currency through a peer-to-peer network. The creation of cryptocurrency happens through a process called mining that basically involves running an application on a computer that performs proof-of-work calculations. When the computer performs a sufficient amount of these calculations, the cryptocurrency's underlying protocol essentially generates a new unit of the currency that can be delivered to the miner's wallet. Because users' wallets act as the connection points of the cryptocurrency's peer-to-peer network, transfers of cryptocurrency are made directly from wallet to wallet, without any intermediary, whereas transmissions of sovereign currencies must be made through one or more intermediaries such as a financial institution or money transmitter.

One important characteristic of cryptocurrency is its lack of intrinsic value. A unit of cryptocurrency does not represent a claim on a commodity, and is not convertible by law. And unlike fiat currencies,[4] there is no governmental authority or central bank establishing its value through law or regulation. Its value is only what a buyer is willing to pay for it. Most cryptocurrencies are traded on third party exchange sites, where the exchange rates with sovereign currencies are determined by averaging the transactions that occur. Some experts consider cryptocurrency to be a new asset class that is neither currency nor commodity, but possessing characteristics of both, as well as characteristics of neither.

Application of Kansas Money Transmitter Act to Virtual Currency

Currency Exchange

The act of two-party currency exchange by itself is not covered by the KMTA regardless of whether it is sovereign currency being exchanged or virtual currency. Further, it is not regulated by the OSBC. However, the presence of a third party involved in a currency exchange transaction, will likely subject the transaction to the KMTA as "money transmission" and is discussed further below.

Money Transmission

This guidance document does not address money transmission activities involving the various centralized virtual currencies in existence. Many of these types of virtual currency schemes are complicated and nuanced and general guidance cannot adequately cover all the possible types

[4] Fiat currency is government-issued legal tender, such as the U.S. Dollar. It has no intrinsic value and does not represent a claim on a commodity; its value is established by law.

of these currencies. Thus, operators engaging in activities that may be considered money transmission involving a centralized virtual currency will have to seek an individual licensing determination from the OSBC.

This guidance is focused on money transmission activities involving decentralized cryptocurrencies, such as Bitcoin. Whether or not a Kansas money transmitter license is required for an entity to engage in the transmission of cryptocurrency turns on the question of whether cryptocurrency is considered "money" or "monetary value" under the KMTA. Money transmission is defined in statute and means "to engage in the business of receiving money or monetary value for transmission to a location within or outside the United States by…electronic means or any other means…"[5] Money is not defined in statute, but Black's Law Dictionary defines "money" as the "medium of exchange authorized or adopted by a government as part of its currency." Since no cryptocurrency is currently authorized or adopted by any governmental entity as part of its currency, it is clear that cryptocurrency is not considered "money" for the purposes of the KMTA.

Monetary value, however, is defined in statute as "a medium of exchange, whether or not redeemable in money."[6] Medium of exchange is not defined by statute, but Black's Law Dictionary defines "medium of exchange" as "anything generally accepted as payment in a transaction and recognized as a standard of value." Cryptocurrencies are not generally accepted as payment in the current economy. While there may be a few retailers who are accepting Bitcoin or other cryptocurrencies, it is not generally accepted throughout the entire economy and does not even approach the extent to which U.S. Dollars (or other sovereign currencies) are accepted. Nor, does it have a recognized standard of value. There is no set value for a single unit of a cryptocurrency. As stated above, the value of a unit of cryptocurrency is only what a buyer is willing to pay for it and what a seller is willing to accept in order to part with it. There is no intrinsic or set value for a unit of cryptocurrency.

Therefore, because cryptocurrencies as currently in existence are not considered "money" or "monetary value" by the OSBC, they are not covered by the KMTA. Since the KMTA does not apply to transmission of decentralized cryptocurrencies, an entity engaged solely in the transmission of such currency would not be required to obtain a license in the State of Kansas. However, should the transmission of virtual currency include the involvement of sovereign currency in a transaction, it may be considered money transmission depending on how such transaction is organized.

To provide further guidance, the regulatory treatments of some common types of transactions involving cryptocurrency are as follows:

- Exchange of cryptocurrency for sovereign currency between two parties is not money transmission under the KMTA. This is essentially a sale of goods between two parties. The seller gives units of cryptocurrency to the buyer, who pays the seller directly with sovereign

[5] K.S.A. 9-508(g).
[6] K.S.A. 9-508(f).

currency. The seller does not receive the sovereign currency with the intent to transmit to another entity

- Exchange of one cryptocurrency for another cryptocurrency is not money transmission. Regardless of how many parties are involved, since cryptocurrency is not considered "money" under the KMTA, no money transmission occurs.

- Transfer of cryptocurrency by itself is not money transmission. Because cryptocurrency is not money or monetary value, the receipt of it with the intent to transmit it to another entity is not money transmission. This includes intermediaries who receive cryptocurrency for transfer to a third party, and entities that, akin to depositories, hold cryptocurrencies on behalf of customers.

- Exchange of cryptocurrency for sovereign currency through a third party exchanger is generally considered money transmission. For example, most Bitcoin exchange sites facilitate exchanges by acting as an escrow-like intermediary. In a typical transaction, the buyer of cryptocurrency sends sovereign currency to the exchanger who holds the funds until it determines that the terms of the sale have been satisfied before remitting the funds to the seller. Irrespective of its handling of the cryptocurrency, the exchanger conducts money transmission by receiving the buyer's sovereign currency in exchange for a promise to make it available to the seller.

- Exchange of cryptocurrency for sovereign currency through an automated machine may or may not be money transmission depending on the facts and circumstances of its operation and the flow of funds between the operator of the automated machine and the customer. For example, several companies have begun selling automated machines commonly called "Bitcoin ATMs" that facilitate contemporaneous exchanges of bitcoins for sovereign currency. Most such machines currently available, when operating in their default mode, act as an intermediary between a buyer and a seller, typically connecting through one of the established exchange sites. When a customer buys or sells bitcoins through a machine configured in this way, the operator of the machine receives the buyer's sovereign currency with the intent to transfer it to the seller. This would be considered money transmission under the KMTA and would require licensure. However, at least some Bitcoin ATMs can be configured to conduct transactions only between the customer and the operator or owner of the machine, with no third parties involved. If the machine never involves a third party, and only facilitates a sale or purchase of bitcoins by the machine's operator directly with the customer, there is no money transmission because at no time is sovereign money received by the owner or operator of the machine with the intent to transfer it to another entity.

Additional Issues with Virtual Currency

- A cryptocurrency business that conducts money transmission, as outlined above, must comply with all applicable licensing, reporting, net worth and other relevant requirements of the Kansas Money Transmitter Act under K.S.A 9-508 *et seq.*

- Any entity engaged in money transmission must comply with the permissible investment requirements of K.S.A 9-513b and as defined in K.S.A. 9-508(j). For purposes of allowed permissible investments, no virtual currency has been approved for use under this section by the Commissioner. Therefore, if a licensed money transmitter is seeking to comply with the permissible investment requirement, it must have adequate U.S. currency or other approved investments to cover its outstanding payment instruments.

- For any entity intending to obtain licensing as a money transmitter, the OSBC will require any applicant who regularly handles virtual currencies in the course of its activities to submit a current third party security audit of all relevant computer and information systems. Because of the increased risk that Kansas consumers may face when using the services of a money transmitter involved with virtual currencies, it is incumbent upon any license applicant to demonstrate that all of a customer's sovereign and virtual currency are secure while controlled by the transmitter.

(*This guidance document is issued pursuant to K.S.A. 9-513 and K.S.A 77-438. This document is only intended as general guidance and any licensing determination made by the OSBC is based upon the specific facts presented for each unique case. The OSBC reserves the right to exercise its discretion in the application of this guidance document and it may edit, modify or retract its interpretation at any time. Issued June 6, 2014.)

Office of the State Bank Commissioner
Guidance Document MT 2016-01

Date: 11/30/2016

Regulatory Treatment of an Agent-of-the-Payee

Purpose

The purpose of this guidance document is to clarify the Office of the State Bank Commissioner's (OSBC) policy regarding the Kansas Money Transmitter Act (KMTA)[1] licensure requirements of persons who enter into an agency relationship to accept and process payments on behalf of a principal acting as a payee in a money transmission transaction.

The KMTA also discusses agents of exempt entities and agents of licensees. This guidance document does not alter the licensing requirement for agents of exempt entities[2] or a licensee's requirement to gain prior approval from the commissioner prior to agent designation.[3]

An agent-of-the-payee relationship typically arises in situations where the payee provides goods or services to a consumer, and it is not cost effective or feasible for the payee to handle immediate credit payments directly. For instance, a consumer may wish to make a payment on a utility bill but does not find it convenient to drive to the utility bill's headquarters. The hypothetical payee utility company wishes to allow consumers to make payments at convenient locations and receive immediate credit, but it is not cost effective for the utility company to hire employees to be located throughout the city. The utility company finds it cost effective to pay a commission to a local grocery store to accept payment on the utility company's behalf and permit the agent to provide immediate credit on the consumer's account.

Interpretation

An agent-of-the-payee relationship is money transmission as defined by the KMTA. Money transmission is defined under the KMTA as "to engage in the business of the sale or issuance of payment instruments or of receiving money or monetary value for transmission to a location within or outside the United State by wire, facsimile, electronic means or any other means…."[4] An agent-of-the-payee is considered to be engaged in money transmission because in exchange for money, an agent-of-the-payee is either appointed or agrees to collect and process payments from the consumer and forward payment to the payee.

[1] Kansas Statutes Annotated § 9-508 *et seq.*
[2] Kansas Statutes Annotated § 9-510(d)
[3] Kansas Statutes Annotated § 9-510(b)
[4] Kansas Statutes Annotated § 9-508(h).

Application under Kansas Common Law

While under the KMTA an agent-of-the-payee engages in money transmission, Kansas agency common law recognizes the customer's transaction is completed once the agent-of-the-payee receives payment in certain situations. Because the customer's transaction is completed upon the agent-of-the payee receiving payment, there is no money transmission.

Under Kansas agency common law, an agent's actions will impute[5] to a principal if the principal intends the agent to act on the principal's behalf and the agent acts within the authority granted.[6] In an agent-of-the-payee relationship, a payee would be the principal and the agent-of-the-payee is the agent. Kansas agency common law recognizes express and apparent agency authority[7]. A person is considered an agent if the person has express or apparent authority from a principal to do an act. Express authority is created if the principal has specifically delegated authority to the agent to do an act. Apparent authority is created based on the conduct of the principal and a consumer's reasonable reliance that an agent has authority to bind the principal. Apparent authority is a highly subjective test that often must be determined by a trier of fact. For this reason, the OSBC will only consider agent-of-the-payee relationships with written express authority when determining if licensure is required.

An agent-of-the-payee would not be subject to KMTA licensure based on common law express agency principles if the agent-of-the-payee can prove that:

1. There is a preexisting written agreement between the payee and the agent;
2. The payee expressly grants authority to the agent to accept payments on the payee's behalf in the preexisting written agreement;
3. Payment is treated as received by the payee upon receipt by the agent; and
4. Payment is for goods or services other than money transmission that has been provided or to be provided by the payee.

If an agent acts within its express authority to accept the funds on behalf of a payee, the law of Kansas deems the payee to have accepted and received the payment. The payee is considered liable to the consumer whether or not the agent actually transmits the funds to the payee. The legal responsibility of the payee to the consumer remains the same if the funds are in the hands of the agent or the payee. Thus, the agent receiving the money subject to the four steps above renders the transaction a two-party transaction between the customer and the payee.[8] The agent-of-the-payee doesn't accept money from the customer with the promise to make it available at a different location, so there is no money transmission.[9] The customer leaves the transaction with the benefit of the bargain and the payee has no recourse with the customer if the payee never receives the payment.

[5]Imputation is to ascribe or attribute; to regard as being done, caused, or possessed by. Black's Law Dictionary 14c (10th ed. 2014).
[6] *Golden Rule Ins. Co. v. Tomlinson*; 300 Kan. 944, 958-59; 335 P.3d 1178, 1190 (2014).
[7] *Id*.
[8] Texas Department of Banking Opinion Number 14-01 issued May 9, 2014.
[9] *Id*.

Predetermination Requirement

Current licensees may request a review by the OSBC to confirm that the services they currently offer qualify for the agent-of-the-payee exemption. Licensees must continue to report eligible activity until the OSBC determines their qualification. Once confirmed, the company may choose not to report the eligible activity during the annual assessment period. All other activity that requires licensure must be reported.

Unlicensed persons that believe they may have a business model eligible for exemption must request a review before conducting activity in the state. A person must request the confirmation from the OSBC by June 30, 2017 to avoid a potential enforcement action.

This guidance document is issued pursuant to K.S.A. 9-513 and K.S.A 77-438. This document is only intended as general guidance and any licensing determination made by the OSBC is based upon the specific facts presented for each unique case. The OSBC reserves the right to exercise its discretion in the application of this guidance document and it may edit, modify or retract its interpretation at any time. Issued 11/30/2016.

RELATED TO GUIDANCE DOCUMENT MT 2016-01

Instructions for Submitting a Request for an Agent-of-the-Payee Exemption

If you are seeking an exemption for Agent-of-the-Payee based on Guidance Document MT 2016-01, please submit the following items:

1. A letter that specifically requests a review for an Agent-of-the-Payee exemption on your company. Reference within the letter the contractual language that pertains to the criteria required by the Guidance Document.

   Specifically:

   - ✓ The payee expressly grants authority to the agent to accept payments on the payee's behalf in the preexisting written agreement.
   - ✓ Payment is treated as received by the payee upon receipt by the agent. If applicable, this shall include who is liable for lost payments.
   - ✓ Payment is for goods or services other than money transmission that has been provided or to be provided by the payee.

2. A copy of each preexisting written agreement(s) that pertains to this request between your company as the agent and the payee.

Your letter and all supporting documents must be received in order for this request to be considered "complete" and for our office to begin such review. Failure to provide all required information will result in a denial.

Complete requests may be submitted by mail or email to:

Bailey Burghart, Licensing Program Analyst
Office of the State Bank Commissioner
700 SW Jackson, Suite 300
Topeka, KS 66603

bailey.burghart@osbckansas.org

Office of the State Bank Commissioner
Guidance Document MT 2019-01

Date: 11/01/2019

Regulatory Treatment of Cash-In-Transit

Purpose

The purpose of this guidance document is to clarify the Office of the State Bank Commissioner's (OSBC) policy regarding the treatment of cash-in-transit as a permissible investment under the Kansas Money Transmitter Act (KMTA).

Currently, the KMTA does not define "cash" to include cash-in-transit items nor "deposits" to include deposits-in-transit; however, it does direct licensees to calculate their permissible investments in accordance with United States Generally Accepted Accounting Principles (US GAAP) pursuant to K.S.A. 9-513b(a).

K.S.A. 9-513b(a) of the KMTA states "each licensee under this act shall at all times possess permissible investments having an aggregate market value, calculated in accordance with United States generally accepted accounting principles, of not less than the aggregate amount of the outstanding payment liability held by the licensee in the United States. This requirement may be waived by the commissioner if the dollar volume of a licensee's outstanding payment liability does not exceed the bond or other security devices posted by the licensee pursuant to K.S.A. 9-509, and amendments thereto."

Definition of Permissible Investments

Per K.S.A 9-508(k) of the KMTA, "permissible investments" means, in part:

(1) Cash;

(2) deposits in a demand or interest-bearing account with a domestic federally insured depository institution, including certificates of deposit.

US GAAP definition of Cash

Cash is defined by the Financial Accounting Standards Board (FASB) as follows:

> "Consistent with common usage, cash includes not only currency on hand but demand deposits with banks or other financial institutions. Cash also includes other kinds of accounts that have the general characteristics of demand deposits in that the customer may deposit additional funds at any time, and they may also effectively withdraw funds at any time without prior notice or penalty. All charges and credits to those accounts are cash receipts or payments to both the entity owning the account and the bank holding it. For example, a bank's granting of a loan by crediting the proceeds to a customer's demand deposit account is a cash payment by the bank and a cash receipt of the customer when the entry is made.[1]"

[1] FASB ASC Master Glossary, "Cash."

US GAAP Treatment of Cash-In-Transit

State regulators for money transmitters use the term cash-in-transit for the money services business call reports. Cash-in-transit does not appear to be a term used in the accounting industry but appears to have the same meaning as the industry term deposit-in-transit.

US GAAP permits a licensee to include deposits-in-transit in its calculation of cash.[2] Some deposits are received via automated clearing house (ACH) procedures. The question arose whether the KMTA permits cash-in-transit to be a permissible investment when an ACH-in-transit—a form of deposits-in-transit—is considered cash under US GAAP, and if the KMTA would permit cash-in-transit to be a permissible investment.

US GAAP states cash must include all cash within the payor's control, which includes cash in banks, cash on hand, and deposits-in-transit.[3] In addition, the Securities and Exchange Commission criticizes entities that do not reduce cash when payments are issued and no longer within the entity's control.[4] This cannot be considered an account payable.[5] Once the customer remits the money to the licensee, the customer can no longer declare it as cash, even though the money has not cleared out of the bank account.[6]

Application of Cash-In-Transit under the KMTA

US GAAP requires deposits-in-transit to be included in cash even before the entity has the funds cleared into its bank account. There is also no requirement for an allowance for loss. Like issuing a check, when an entity submits an ACH payment, it must reduce its cash balance once the funds are no longer within its control. The applicable date here is the "launch date." This is the date the ACH originator debits the sender's account and begins crediting the recipient's account. The recipient of an ACH-in-transit is required under US GAAP to declare the ACH-in-transit as cash after the launch date.

The OSBC will allow licensees to declare 100% of all deposits-in-transit as a form of deposit in a demand or interest-bearing account because doing so is consistent with US GAAP. Therefore, an incoming ACH-in-transit after the "launch date" from customers or agents should be counted towards the applicable demand or interest-bearing account balance for permissible investment purposes pursuant to K.S.A. 9-513b. Additionally, a licensee may declare an outgoing ACH-in-transit as towards the demand or interest-bearing account balance until the "launch date." Licensees will need to provide additional permissible investments after the launch date until the outstanding liability is extinguished.

This guidance document is issued pursuant to K.S.A. 9-513 and K.S.A 77-438. This document is only intended as general guidance and any compliance determination made by the OSBC is based upon the specific facts of each unique case. The OSBC reserves the right to exercise its discretion in the application of this guidance document and it may edit, modify or retract its interpretation at any time.

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[2] It is our position that US GAPP would permit a deposit-in-transit to be treated as cash as it is a credit towards a demand deposit account. FASB ASC Master Glossary, "Cash."
[3] FASB ASC Master Glossary, "Cash."
[4] GameStop Corp., Annual Report (Form 10-K) (February 1, 2014).
[5] *Id.*
[6] FASB ASC Master Glossary, "Cash."

General Usury Statute
K.S.A. 16-207

(a)
If no other law addresses a loan's maximum interest rate, the maximum rate is 15%. The only loan that isn't addressed in some other law is a consumer-purpose non-real-estate loan in excess of $25,000. Also note that these 15% loans can be contracted under the UCCC to get the UCCC's higher rates.

Prior to July 1, 2013, rates for first mortgages and contracts for deed were limited to the Freddie Mac rate-plus-1.5%. This provision has been repealed and the fallback maximum usury rate of 15% applies to these loans.

(b)
No prepayment penalty can be charged on a home loan unless the prepayment occurs within the first six months of the loan.

(c)
Lenders can collect actual filing fees and reasonable expenses.

(d)
The penalty for a lender exceeding the maximum rate in (a) is (1) forfeiture of excess interest, (2) an amount equal to the excess (deducted from the loan balance), and (3) attorney's fees.

(e)
The 15% rate in (a) does not apply to business and agricultural loans – these loans have no usury rate. This includes business and agricultural loans secured by contracts for deed.

(f)
Loans made by qualified retirement plans are not subject to the 15% rate limitation in (a).

(g)
The 15% rate in (a) does not apply to adjustable rate mortgages – they have no usury rate.

(h)
If the LTV of a first mortgage exceeds 100%, the loan is under the UCCC, but is still subject to the usury rate limitations.

If a first mortgage exceeds the mortgage code rate, the loan is subject to the UCCC's balloon payment and negative amortization restrictions.

Any loan can be contracted under the UCCC to obtain the UCCC's higher rates, in which case all UCCC provisions become applicable.

(i)
If a loan is subject to the UCCC, subsections (b), (c) and (d) will not apply – UCCC rules apply instead.

UCCC Rates and Charges
K.S.A. 16a-2-401

(1)
Open-end non-real-estate loans do not have a rate limit.

(2)
Closed-end non-real-estate loans are subject to a maximum rate of 36% on the first $860, and 21% on amounts over $860.

(3)
The maximum rate of second mortgages and manufactured-home loans is 18%.

(4)
If first mortgages are contracted under the UCCC, they have a maximum rate of 18%. Similarly, if manufactured-home loans not otherwise subject to the UCCC (over $25,000) are "contracted under," the maximum rate is 18%.

(5)
The UCCC does not restrict the finance charge calculation method (add-on, discount, or otherwise).

(6)
On real estate loans and manufactured-home loans, prepaid finance charges are limited to a total of 8% of the amount financed. Charges paid to lender cannot exceed 5% of the amount financed.

On non-real-estate loans, except manufactured-home loans, prepaid finance charges cannot exceed the lesser of 2% of the amount financed or $100.

(6) – continued

Prepaid finance charges permitted by this section are in addition to the finance charges permitted in (1)-(4).

(7)
First and second adjustable rate mortgages are not subject to the rates in (3) and (4)—ARMs have no rate limit.

(8)
If the LTV of a first mortgage exceeds 100%, the loan is under the UCCC for all purposes except the loan is subject to the K.S.A. 16-207(a) maximum interest rate.

(9)
If a loan is rewritten within 12 months, prepaid finance charges payable to lender can be recharged only on the "additional amount financed" (i.e. new money).

(10)
On open-end credit, the parties may agree to any minimum finance charge with no limitation. [For closed-end credit, K.S.A. 16a-2-510(a) limits the minimum finance charge to $5 on loans of $75 or less and $7.50 on loans over $75.]

(11)
If parties contract for deed under the UCCC, the rate-and-charge limits in (4) and (6) apply.

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