

MINUTES OF THE Senate Committee on Financial Institutions and Insurance.

The meeting was called to order by Chairperson Dick Bond at 9:08 a.m. on January 9, 1996 in Room 529-S of the Capitol.

All members were present.

Committee staff present: Dr. William Wolff, Legislative Research Department  
Fred Carman, Revisor of Statutes  
June Kossover, Committee Secretary

Conferees appearing before the committee: Judi Stork, Deputy Bank Commissioner  
William Caton, Consumer Credit Commissioner  
James Maag, Kansas Bankers Association  
George Barbee, Kansas Association of Financial Institutions  
William Sneed, AmVestors

Others attending: See attached list

Chairman Bond welcomed committee members and staff back for the 1996 session and announced that the committee will meet today, Wednesday and Thursday to hear requests for introduction of legislation.

Judi Stork, Deputy Bank Commissioner, appeared before the committee to request legislation as follows:

1. amending 9-903 pertaining to transfer of bank stock (Attachment 1-1);
2. amending 9-1115 pertaining to proof of bond coverage (Attachment 1-2); and
3. amending 9-1122 pertaining to change in bank hours (Attachment 1-3).

Senator Emert moved to introduce the legislation as requested. Senator Praeger seconded the motion. The motion carried.

William Caton, Consumer Credit Commissioner, requested introduction of a bill to amend the Uniform Consumer Credit Code. Amendments 1, 3 and 4 were requested by the Governor to clean up existing rules and regulations and item number 4 is requested to relieve undue regulatory burden on the lending industry. (Attachment #2). Senator Steffes made a motion, seconded by Senator Praeger to introduce this legislation. The motion carried.

James Maag, Kansas Bankers Association, appeared before the committee to request introduction of legislation to amend 16a-2-501 of the Uniform Consumer Credit Code. Mr. Maag provided a brief history of this legislation, which strikes existing language relating to prohibition against overdraft protection. (Attachment #3). Senator Emert made a motion to introduce this bill; Senator Steffes seconded the motion. The motion carried.

George Barbee, Kansas Association of Financial Services, requested legislation to increase the percent charged for loans not secured by land from 2% to 5% of the amount financed or \$150. (Attachment #4). Senator Steffes moved to introduce the legislation as requested. Senator Emert seconded the motion; the motion carried.

William Sneed, AmVestors, requested introduction of legislation pertaining to the following:

1. Tax credit for establishment of a qualified business facility (Attachment 5);
2. Deposit of Securities by a life insurance company (Attachment #6);
3. Exemption of interest in contracts of annuity (Attachment #7);
4. Investment by life insurance companies in tax lien certificates (Attachment #8); and
5. Exceptions to certificate of authority requirements for insurance companies (Attachment #9).

Following brief discussion, Senator Steffes made a motion to introduce the legislation as requested. Senator Praeger seconded the motion. The motion carried.

The committee adjourned at 9:30 a.m.

# SENATE FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE GUEST LIST

DATE: 1/9/96

NAME	REPRESENTING
Tom Robison	Beneficial
George Barber	Ks Assn Fin. Serv's
Tim Randolph	Beneficial
JOHN C. BOTTENBERG	AMVESTORS
Kelly Kuitala	KTLA
Nathy Peterson	Prudential
Denise Denauer	Ameria Investors
BILL SNEED	Am Inv Life
PAT MORRIS	KAIA
Dorothy Taylor	KAIA
Lee Wright	Farmers Inv Group
Donnell	KCLIA
Tom Wilder	Kansas Insurance Dept
John Federico	Pete McGill + Assoc

**9-903. Transfer of stock; report to commissioner.** The shares of stock of any bank or trust company shall be deemed personal property and shall be transferred on the books of the bank or trust company in such manner as the bylaws thereof may direct. No transfer of stock shall be valid against the issuing bank or trust company so long as the registered owner thereof shall be liable as principal debtor, surety or otherwise to the bank or trust company on a matured, charged off or forgiven obligation, nor shall any dividend, interest or profit be paid on such stock so long as the registered owner thereof is indebted to the bank or trust company on a matured, charged off or forgiven obligation, but all such dividends or profits shall be retained by the bank or trust company and applied to the discharge of any such ~~matured~~ obligations. No stock shall be transferred on the books of any bank or trust company when the bank or trust company is in a failing condition, or when its capital stock is impaired, except upon approval of the commissioner. Whenever a transfer of shares of stock of any bank or trust company occurs which results in direct or indirect ownership by a stockholder or an affiliated group of stockholders of 10% or more of the outstanding stock of the bank or trust company, and whenever additional shares of stock of the bank or trust company are transferred to such stockholder or affiliated group of stockholders, the president or other chief executive, officer of the bank or trust company shall report such transfer to the commissioner within 10 days after transfer of the shares of stock on the books of the bank or trust company. (L. 1989, ch. 48, § 17; July 1.)

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Attachment #1

9-1115. Officers of bank or trust company; election; term; bond; forfeiture of office. (a) The board of directors may elect a chairperson and shall elect a president from its members and shall elect one or more vice-presidents, a secretary and a cashier. The office of president and cashier shall not be filled by the same person. Such officers shall hold their offices for a term of not to exceed one year and until their successors are elected and qualified.

(b) The board of directors shall require all officers and employees having the care or handling of the funds of the bank or trust company to give a good and sufficient bond to be executed by an approved corporate surety authorized to do business in this state. The amount and form of the bond shall be approved by the board of directors of the bank or trust company. ~~and the form of such bond shall be approved by the board of directors and the commissioner. Such bond shall be held by the commissioner.~~ The costs of such bonds shall be paid by the bank or trust company.

Proof of current bond coverage shall be provided to the commissioner.

(c) Any officer of any bank or trust company who shall become indebted to such bank or trust company on any judgment or whose indebtedness is charged off or forgiven indebtedness shall forfeit the office and the board of directors shall fill the vacancy. (L. 1992, ch. 33, § 1, July 1.)

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9-1122. Closing one business day a week; permanent change in bank hours; notice.

(a) Any bank or trust company may remain closed on any one business day of every week or may make a permanent change in bank hours of business, upon the adoption by its board of directors of a resolution authorizing the same to be done, and the posting of ~~such~~ the resolution in a conspicuous place within the bank or trust company premises at least fifteen (15) days in advance of any such closing or change in hours. Thereafter, the bank or trust company may remain closed on the business day of every week designated in ~~such~~ the resolution, or may operate under the changed bank hours designated in the resolution, and ~~such~~ the resolution and the posting thereof shall control until the same be repealed or amended by subsequent resolution which shall require the same procedure in order to be effective: *Provided, however,* That if the business day designated in any resolution regarding closing ~~such resolution shall be~~ is a legal public holiday, the bank or trust company may close on the business day ~~next~~ preceding or following the legal public holiday.

Should a legal public holiday fall on Sunday, any bank or trust company may close on the next preceding or following business day.

(b) Every day on which any bank or trust company shall remain closed pursuant to this act shall be deemed a holiday for all of the purposes of chapter 84 of the Kansas Statutes Annotated, and ~~all acts amendatory thereof or supplemental~~ amendments thereto, and with respect to any banking business of any character, ~~with respect to any such bank or trust company; and~~. No ~~such~~ bank or trust company shall be required to permit access to its safe, deposit vault or vaults on any such day. Where a contract by its terms requires the payment of money or the performance of a condition on any such day by, through, with or at any ~~such~~ bank or trust company, then ~~such~~ the payment may be made or condition performed on the next business day with the same force and effect as if made or performed in accordance with the terms of the contract; and no liability or loss of rights of any kind shall result from ~~such~~ the delay.

(c) The posting of the notice provided herein shall be notice to everyone of the closing or change in hours of ~~such~~ the bank or trust company, and thereafter no liability shall be incurred by ~~such~~ the bank or trust company by reason of closing or changing the bank hours pursuant to this act. (L.

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# KANSAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

Bill Graves  
Governor

Wm. F. Caton  
Commissioner

## MEMORANDUM

**TO:** SENATE FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE

**FROM:** Wm. F. Caton, Consumer Credit Commissioner *WFC*

**DATE:** January 9, 1996

Attached please find a bill draft which I respectfully submit for consideration. This proposed legislation amends the Kansas Uniform Consumer Credit Code ("UCCC") in the following areas:

1. A new section to clarify what date a creditor must use when accepting a payment from a consumer.
2. The definition of "closing costs" with respect to a debt secured by an interest in land is amended to be more consistent with what is permitted on real estate loans not subject to the UCCC.
3. Change the statute to reflect the index that is used in determining the dollar amount applied to maximum interest rates set by the UCCC.
4. A clarification of the method of determining the applicability of late fees assessed on delinquent installment payments.

Items 1, 3, and 4 are requested in response to the Governor's request to clean up existing rules and regulations. Item number 2 is requested to relieve an undue regulatory burden on the lending industry which has created considerable non-compliance within the industry. None of these items will have any fiscal impact on the State budget.

I will provide written and oral testimony regarding this request once a hearing date is set. I will also be available to the Committee at their convenience to answer any questions or concerns. Thank you for your consideration on this request.

WFC:dr

Enclosure

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Attachment #2*

SENATE BILL NO. \_\_\_\_\_

By

AN ACT amending the uniform consumer credit code; concerning closing costs; application of certain payments; amending K.S.A. 16a-1-301, 16a-2-401a and 16a-2-502 and repealing the existing sections.

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

New Section 1. 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.

Sec. 2. K.S.A. 16a-1-301 is hereby amended to read as follows: 16a-1-301. 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, defined by rules and regulations adopted by the administrator, of allocating payments made on a debt between the amount financed and the finance charge pursuant to which a payment is applied first to the accumulated finance charge and the balance is applied to the unpaid amount financed.

(2) "Administrator" means the consumer credit commissioner appointed pursuant to K.S.A. 16-403, 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 total of the following items:

(a) In the case of a sale, the cash price of the goods, services, or interest in land, less the amount of any down payment whether made in cash or in property traded in, and the

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amount actually paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest in, a lien on, or a debt with respect to property traded in;

(b) in the case of a loan, the net amount paid to, receivable by, or paid or payable for the account of the debtor, plus the amount of any discount excluded from the finance charge (paragraph (b) of subsection (18) of section K.S.A. 16a-1-301); and

(c) in the case of a sale or loan, to the extent that payment is deferred and the amount is not otherwise included and is authorized and disclosed to the customer:

(i) Amounts actually paid or to be paid by the creditor for registration, certificate of title, or license fees, and

(ii) permitted additional charges (section K.S.A. 16a-2-501).

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

(6) "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.

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

~~(a) -- Fees or premiums for title examination, title insurance, or similar purposes including surveys;~~

~~(b) -- fees for preparation of a deed, settlement statement, or other documents;~~

~~(c) -- escrows for future payments of taxes and insurance;~~

~~(d) -- fees for notarizing deeds and other documents;~~

~~(e) -- appraisal fees, and~~

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~~(f)---fees-for-credit-reports-~~

(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) 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.

(8) "Conspicuous": 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.

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

(10) "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 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) unless the sale is made subject to K.S.A. 16a-1-101 through 16a-9-102, and amendments thereto, by agreement (section K.S.A. 16a-1-109), a sale of an interest in land, other than sales governed by subsection (10)(b)(iii) of this section, if the

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finance charge does not exceed 12% per year calculated according to the actuarial method on the unpaid balances of the amount financed on the assumption that the debt will be paid according to the agreed terms and will not be paid before the end of the agreed term; or

(iii) a sale by contract for deed of real estate the interest rate of which is governed by subsection (b) or (h) of K.S.A. 16-207, and amendments thereto.

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

(12) "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.

(13) "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 in 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 K.S.A. 16a-1-101 through 16a-9-102, and amendments thereto, by agreement (section K.S.A. 16a-1-109), a "consumer loan" does not include:

(i) A loan secured by a first real estate mortgage; or

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(ii) a loan secured by a second or other subordinate mortgage if the second or other subordinate mortgage is granted to the same lender as the first mortgage; or

(iii) 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.

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

(15) "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.

(16) "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.

(17) "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.

(18) "Finance charge":

(a) "Finance charge" means the sum of:

(i) All charges payable directly or indirectly by the

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consumer and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit, including any of the following types of charges which are applicable; interest or any amount payable under a point, discount or other system of charges, however denominated; time price differential, service, carrying or other charge, however denominated; premium or other charge for any guarantee or insurance protecting the creditor against the consumer's default or other credit loss; and

(ii) charges incurred for investigating the collateral or credit-worthiness of the consumer.

(b) The term does not include:

(i) Charges as a result of default, additional charges (section K.S.A. 16a-2-501) or delinquency charges (section K.S.A. 16a-2-502), or

(ii) if a lender makes a loan to a debtor by purchasing or satisfying obligations of the debtor pursuant to a lender credit card and the purchase or satisfaction is made at less than the face amount of the obligation, the discount, or

(iii) closing costs as defined in K.S.A. 16a-1-301(7), and amendments thereto.

(19) "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.

(20) 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.

(21) "Interest bearing" means the finance charge on a consumer credit transaction is computed on the unpaid principal balances by the actuarial method.

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

(23) "Loan":

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(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.

(24) "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.

(25) "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.

(26) "Open end credit" means an arrangement pursuant to which:

(a) A creditor may permit a consumer, from time to time, to

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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.

(27) "Organization" means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(28) "Payable in installments" means that payment is required or permitted by agreement to be made in (a) two or more periodic payments, excluding a down payment, with respect to a debt arising from a consumer credit sale pursuant to which a finance charge is made, (b) four or more periodic payments, excluding a down payment, with respect to a debt arising from a consumer credit sale pursuant to which no finance charge is made, or (c) two or more periodic payments with respect to a debt arising from a consumer loan. If any periodic payment other than the down payment under an agreement requiring or permitting two or more periodic payments is more than twice the amount of any other periodic payment, excluding the down payment, the consumer credit transaction is "payable in installments."

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

(30) "Person related to" with respect to an individual means (a) the spouse of the individual, (b) a brother, brother-in-law, sister, sister-in-law of the individual, (c) an ancestor or lineal descendant of the individual or the individual's spouse, and (d) any other relative, by blood, adoption or marriage, of the individual or such individual's spouse who shares the same home with the individual. "Person related to" with respect to an

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organization means (a) a person directly or indirectly controlling, controlled by or under common control with the organization, (b) 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, (c) the spouse of a person related to the organization, and (d) a relative by blood, adoption or marriage of a person related to the organization who shares the same home with such person.

(31) "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.

(32) "Principal" means the total of the amount financed and the prepaid finance charges as authorized by subsection (9) of K.S.A. 16a-2-401, and amendments thereto.

(33) "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.

(34) "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.

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

(36) "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.

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(37) "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.

(38) "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 this 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 this state or of the United States.

(39) "Supervised lender" means a person authorized to make or take assignments of supervised loans, either under a license issued by the administrator (section K.S.A. 16a-2-301) or as a supervised financial organization (section K.S.A. 16a-1-301 (38)).

(40) "Supervised loan" means a consumer loan, including a loan made pursuant to open end credit, in which the rate of the finance charge, calculated according to the actuarial method, exceeds 12% per year.

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

(42) "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.

Sec. 3. K.S.A. 16a-2-401a is hereby amended to read as

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follows: 16a-2-401a. The dollar amounts of \$300 and \$1,000 in subsection (2) of K.S.A. 16a-2-401, and amendments thereto, are subject to change pursuant to the provisions on adjustment of dollar amounts as follows:

(1) From time to time the dollar amounts designated in this section as subject to change shall change, as provided in this section, according to and to the extent of changes in the consumer price index for all urban wage-earners-and-clerical workers consumers: U.S. city average, all items, 1967 = 100, compiled by the bureau of labor statistics, United States department of labor, and hereafter referred to as the index.

(2) The designated dollar amounts shall change on July 1 of each even-numbered year if the percentage of change, calculated to the nearest whole percentage point, between the index at the end of the year in which the change in the designated dollar amount last changed is 10% or more, except that:

(a) The portion of the percentage change in the index in excess of a multiple of 10% shall be disregarded and the dollar amounts shall change only in multiples of 10% of the amounts currently in effect and adjusted to the nearest \$5 increment; and

(b) the dollar amounts shall not change if the amounts required by this section are those currently in effect pursuant to this act as a result of earlier application of this section.

(3) If the index is revised, the percentage of change pursuant to this section shall be calculated on the basis of the revised index. If a revision of the index changes the reference base index, a revised reference base index shall be determined by multiplying the reference base index then applicable by the rebasing factor furnished by the bureau of labor statistics. If the index is superseded, the index referred to in this section is the one represented by the bureau of labor statistics as reflecting most accurately changes in the purchasing power of the dollar for consumers.

(4) The administrator shall adopt rules and regulations announcing:

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(a) On or before April 30 of each year in which dollar amounts are to change, the changes in dollar amounts required by subsection (2); and

(b) promptly after the changes occur, changes in the index required by subsection (3) including, if applicable, the numerical equivalent of the reference base index under a revised reference base index and the designation or title of any index superseding the index.

(5) A person does not violate this act with respect to a transaction otherwise complying with the uniform consumer credit code if such person relies on dollar amounts either determined according to subsection (2) or appearing in the last rule and regulation of the administrator announcing the then current dollar amounts.

Sec. 4. K.S.A. 16a-2-502 is hereby amended to read as follows: 16a-2-502. (1) The parties to a consumer credit transaction may contract for a delinquency charge 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 under subsection (2) 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.

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(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.

Sec. 5. K.S.A. 16a-1-301, 16a-2-401a and 16a-2-502 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.

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**16a-2-501.** (UCCC) Additional charges.

(1) In addition to the finance charge permitted by parts of this article on maximum finance charge 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) annual fees payable in advance or monthly fees, delinquency charges, insufficient check charges as provided in paragraph (e) of this subsection, over-limit fees and cash advance fees, ~~for the privilege of using a lender credit card which entitles the user to purchase goods or services from at least 100 persons not related to the issuer of the lender credit card, under an arrangement pursuant to which the debts resulting from the purchases are payable to the issuer;~~

(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 restricted mail as defined by K.S.A. 60-103, and amendments thereto, 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.

(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 posted conspicuously, 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.

(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.

**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; May 30.

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Sec. 2. K.S.A. 1994 Supp. 16a-2-401 is hereby amended to read as follows: 16a-2-401. (1) With respect to a consumer loan, including a loan pursuant to open end credit, a lender may contract for and receive a finance charge, calculated according to the actuarial method, not exceeding 18% per year on the unpaid balance of the amount financed not exceeding \$1,000 and 14.45% per year on that portion of the unpaid balance in excess of \$1,000.

(2) As an alternative to the rates set forth in subsection (1), with respect to a supervised loan made under a license issued by the administrator, including a loan pursuant to open end credit, a supervised lender may contract for and receive a finance charge, calculated according to the actuarial method, not exceeding the equivalent of the greater of either of the following:

The total of: (a) Thirty-six percent per year on that part of the unpaid balance of the amount financed which is \$300 or less; and

(b) twenty-one percent per year on that part of the unpaid balance of the amount financed which is more than \$300, but does not exceed \$1,000; and

(c) fourteen and forty-five hundredths percent per year on that portion of the unpaid balance of the amount financed which is more than \$1,000; or

(d) eighteen percent per year on the unpaid balance of the amount financed.

(3) This section does not limit or restrict the manner of calculating the finance charge, whether by way of add-on, discount, or otherwise, so long as the rate of the finance charge does not exceed that permitted by this section. The finance charge may be contracted for and earned at the single annual percentage rate that would earn the same finance charge as the graduated rates when the debt is paid according to the agreed terms and the calculations are made according to the actuarial method.

(4) The term of a loan for the purposes of this section commences on the date the loan is made.

(5) Subject to classifications and differentiations the lender may reasonably establish, the lender may make the same finance charge on all amounts financed within a specified range. A finance charge so made does not violate subsections (1) and (2) if:

(a) When applied to the median amount within each range, it does not exceed the maximum amount permitted in subsections (1) and (2); and

(b) when applied to the lowest amount within each range, it does not produce a rate of finance charge exceeding the rate calculated according to paragraph (a) by more than 8% of the rate calculated according to paragraph (a).

(6) Notwithstanding subsections (1) and (2), a lender may contract for and receive a minimum finance charge of not more than \$5 when the amount financed does not exceed \$75, or not more than \$7.50 when the amount financed exceeds \$75.

(7) This section shall not apply to a loan secured by an interest in land the interest rate of which is governed by subsection (b) of K.S.A. 16-207, and amendments thereto, unless made subject hereto by agreement.

(8) Except for paragraph (a) of subsection 9, this section shall not apply to a loan secured by an interest in land subordinate to a prior mortgage and held by a lender other than the lender of the first mortgage, the interest rate of which is governed by subsection (b) or (h) of K.S.A. 16-207, and amendments thereto, unless made subject hereto by agreement.

(9) (a) In addition to the applicable finance charge or rate of interest prescribed by law, a supervised lender may contract for and receive a nonrefundable origination fee not to exceed ~~3%~~ 5% of the amount financed on any consumer loan secured by an interest in land, which fee shall be a nonrefundable, prepaid finance charge.

(b) In addition to the applicable finance charge permitted for consumer credit sales other than sales by way of open end credit or for consumer loans not secured by an interest in land, a creditor may contract for and receive, in connection with any such sale or loan, a nonrefundable origination fee in an amount not to exceed the lesser of ~~2%~~ 5% of the amount financed or ~~\$100~~ \$150, which fee shall be a nonrefundable, prepaid finance charge.

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## SENATE BILL NO. \_\_\_\_\_

By Committee on Financial Institutions and Insurance

AN ACT concerning credit against privilege tax on insurance companies for establishment of a qualified business facility; amending K.S.A. 1995 Supp. 79-32,160a and repealing the existing section.

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

Section 1. K.S.A. 1995 Supp. 79-32,160a is hereby amended to read as follows: 79-32,160a. (a) Any taxpayer who shall invest in a qualified business facility, as defined in subsection (b) of K.S.A. 79-32,154, and amendments thereto, and also meets the definition of a business in subsection (a) of K.S.A. 74-50,114 and amendments thereto, shall be allowed a credit for such investment, in an amount determined under subsection (b) or (c), as the case requires, against the tax imposed by the Kansas income tax act or the privilege tax on net income of insurance companies imposed under article 28 of chapter 40 of the Kansas Statutes Annotated, for the taxable year during which commencement of commercial operations, as defined in subsection (f) of K.S.A. 79-32,154, and amendments thereto, occurs at such qualified business facility. In the case of a taxpayer who meets the definition of a manufacturing business in subsection (c) of K.S.A. 74-50,114 and amendments thereto, no credit shall be allowed under this section unless the number of qualified business facility employees, as determined under subsection (d) of K.S.A. 79-32,154, and amendments thereto, engaged or maintained in employment at the qualified business facility as a direct result of the investment by the taxpayer for the taxable year for which the credit is claimed equals or exceeds two. In the case of a taxpayer who meets the definition of a nonmanufacturing business in subsection (e) of K.S.A. 74-50,114 and amendments thereto, no credit shall be allowed under this

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section unless the number of qualified business facility employees, as determined under subsection (d) of K.S.A. 79-32,154, and amendments thereto, engaged or maintained in employment at the qualified business facility as a direct result of the investment by the taxpayer for the taxable year for which the credit is claimed equals or exceeds five.

(b) The credit allowed by subsection (a) for any taxpayer who invests in a qualified business facility which is located in a designated nonmetropolitan region established under K.S.A. 74-50,116 and amendments thereto, on or after the effective date of this act, shall be a portion of the income tax or privilege tax, but not in excess of 50% of such tax imposed by the Kansas income tax act or the privilege tax on net income of insurance companies imposed under article 28 of chapter 40 of the Kansas Statutes Annotated on the taxpayer's Kansas taxable income, for the taxable year for which such credit is allowed. Such portion shall be an amount equal to the sum of the following:

(1) Two thousand five hundred dollars for each qualified business facility employee determined under K.S.A. 79-32,154, and amendments thereto; plus

(2) one thousand dollars for each \$100,000, or major fraction thereof, which shall be deemed to be 51% or more, in qualified business facility investment, as determined under K.S.A. 79-32,154, and amendments thereto.

(c) The credit allowed by subsection (a) for any taxpayer who invests in a qualified business facility, which is not located in a nonmetropolitan region established under K.S.A. 74-50,116 and amendments thereto and which also meets the definition of business in subsection (a) of K.S.A. 74-50,114 and amendments thereto, on or after the effective date of this act, shall be a portion of the income tax or privilege tax, but not in excess of 50% of such tax imposed by the Kansas income tax act or the privilege tax imposed under article 28 of chapter 40 of the Kansas Statutes Annotated on the taxpayer's Kansas taxable income, for the taxable year for which such credit is allowed.

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Such portion shall be an amount equal to the sum of the following:

(1) One thousand five hundred dollars for each qualified business facility employee as determined under K.S.A. 79-32,154, and amendments thereto; and

(2) one thousand dollars for each \$100,000, or major fraction thereof, which shall be deemed to be 51% or more, in qualified business facility investment as determined under K.S.A. 79-32,154, and amendments thereto.

(d) The credit allowed by subsection (a) for each qualified business facility employee and for qualified business facility investment shall be a one-time credit. If the amount of the credit allowed under subsection (a) exceeds 50% of the tax imposed by the Kansas income tax act or the privilege tax on net income of insurance companies imposed under article 28 of chapter 40 of the Kansas Statutes Annotated on the taxpayer's Kansas taxable income for the taxable year, the amount thereof which exceeds such tax liability may be carried over for credit in the succeeding taxable years until the total amount of such credit is used, except that, before the credit is allowed, a taxpayer, who meets the definition of a manufacturing business in subsection (c) of K.S.A. 74-50,114 and amendments thereto, shall recertify annually that the net increase of a minimum of two qualified business facility employees has continued to be maintained and a taxpayer, who meets the definition of a nonmanufacturing business in subsection (e) of K.S.A. 74-50,114 and amendments thereto, shall recertify annually that the net increase of a minimum of five qualified business employees has continued to be maintained.

(e) Notwithstanding the foregoing provisions of this section, any taxpayer qualified and certified under the provisions of K.S.A. 1995 Supp. 74-50,131 and amendments thereto and that has received written approval from the secretary of commerce and housing for participation and has participated, during the tax year for which the exemption is claimed, in the Kansas industrial training, Kansas industrial retraining or the

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state of Kansas investments in lifelong learning program or is eligible for the tax credit established in K.S.A. 1995 Supp. 74-50,132, shall be entitled to a credit in an amount equal to 10% of that portion of the qualified business facility investment which exceeds \$50,000 in lieu of the credit provided in subsection (b)(2) or (c)(2) without regard to the number of qualified business facility employees engaged or maintained in employment at the qualified business facility. The credit allowed by this subsection shall be a one-time credit. If the amount thereof exceeds the tax imposed by the Kansas income tax act or the privilege tax on net income of insurance companies imposed under article 28 of chapter 40 of the Kansas Statutes Annotated on the taxpayer's Kansas taxable income for the taxable year, the amount thereof which exceeds such tax liability may be carried forward for credit in the succeeding taxable year or years until the total amount of the tax credit is used, except that no such tax credit shall be carried forward for deduction after the 10th taxable year succeeding the taxable year in which such credit initially was claimed and no carry forward shall be allowed for deduction in any succeeding taxable year unless the taxpayer continued to be qualified and was recertified for such succeeding taxable year pursuant to K.S.A. 1995 Supp. 74-50,131 and amendments thereto.

(f) This section and K.S.A. 1995 Supp. 79-32,160b and amendments thereto shall be part of and supplemental to the job expansion and investment credit act of 1976 and acts amendatory thereof and supplemental thereto.

Sec. 2. K.S.A. 1995 Supp. 79-32,160a is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

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## SENATE BILL NO. \_\_\_\_\_

By Committee on Financial Institutions and Insurance

AN ACT concerning life insurance companies; deposit of securities with a custodian bank; amending K.S.A. 40-404 and repealing the existing section.

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

Section 1. K.S.A. 40-404 is hereby amended to read as follows: 40-404. (a) Any life insurance company organized under the laws of this state shall deliver to the commissioner of insurance, to be deposited with the state treasurer in addition to the amount of capital required to be deposited, real estate, certificates of purchase and cash or securities of the kind or character in which the company shall be allowed to invest its funds, in an amount equal to the net reserve of all policies and annuity contracts in force in such company determined by a valuation made in accordance with the provisions of this code. Investments of the company in premium and policy loans, and the investment income due and accrued on investments which are not in default and are on deposit pursuant to this section, shall be considered a part of the legally required reserve deposit necessary to reinsure its outstanding risks and may be retained by the company at its home office as a part of such reserve deposit, and such premium and policy loans shall not be subject to taxation. Within 30 days after June 30 and December 31 in each year, each insurance company shall file with the commissioner under oath of its president or secretary a statement showing the dates and amounts of payments upon principal made during the preceding six months on all mortgages on deposit. On January 1 or within 60 days thereafter in each year, each insurance company shall file a statement in a form prescribed by the commissioner setting forth the investment income due and accrued as of the previous December 31 which is included in such company's required

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reserve pursuant to this section. Willful failure to file any such statement as herein provided shall constitute a misdemeanor punishable by fine of not to exceed \$1,000, and on conviction of two offenses as herein provided the offending officer shall forfeit office.

(b) Such deposit shall be held in trust by the commissioner and state treasurer, who shall be vested with an interest therein for the benefit of the policyholders and the annuity bondholders of the depositing company. Such deposit may be withdrawn only upon the order of the commissioner. If the policies or annuity bonds, in whole or in part, of the company are assumed, reinsured or instruments substituted therefor by any other insurance company, whether or not organized under the laws of Kansas, by obligations running to the policyholders or annuity bondholders, and whether or not the depositing company shall be inert, insolvent or dissolved, the deposit existing at the time of such transaction shall not be released, reduced or withdrawn on account thereof. The new obligor shall make and maintain a like deposit, on like terms, as the prior depositing company, up to the amount of the net reserve of the policies and annuity bonds covered by the new obligations.

(c) If there should be one or more further assumptions, reinsurances or substitutions, in succession, directly or indirectly, to any such new obligations, and whether or not the prior company shall be inert, insolvent or dissolved, the provisions of this act, applying in case of any assumption, reinsurance or substitution, shall govern with reference to the retention, continuance and further making and maintenance of the deposit, up to the amount of the net reserve of the policies and annuity bonds covered by such further obligations.

(d) Such deposits shall be kept by the state treasurer and commissioner in strong, locked metal boxes within the built-in security type vault located in the state office building. Such security-type vault shall be under the custody, control and supervision of the commissioner except that the state treasurer

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shall maintain at all times during regular working hours one or more persons appointed and authorized by the state treasurer to be present in the security-type vault and act on behalf of the state treasurer in the acceptance, custody, control and release of all insurance company securities deposited pursuant to the provisions of this code with the state treasurer and commissioner. The commissioner with the advice of the state treasurer ~~shall be authorized and empowered to issue such~~ may adopt rules and regulations governing the operation and supervision of such security-type vault to promote the efficient operation and security of all deposits maintained therein. Separate boxes shall be used for the deposits of each depositor, and if necessary, more than one box for the deposits of one depositor.

The boxes shall be securely fastened to the structure of the vault, or to a strong metal case or cases which cannot be removed from the vault except with difficulty. The locks on each box shall be kept fastened at all times except when ingress and egress are necessary to carry out the duties of the state treasurer and commissioner as joint custodians of such deposits, and such boxes shall be fastened, or unfastened, only by the use of two keys. One key shall be in the custody of the state treasurer and the other in the custody of the commissioner. When access to any box shall be required, each state officer, or such officer's deputy, assistant or designated employee, shall use the key in custody to unfasten and fasten the lock. No other person shall have any key which can be used for such purpose. No persons other than the state treasurer, commissioner or persons appointed or authorized to act for them shall be permitted access to such security-type vault except with their express consent and in their company. The post auditor shall have access for the purpose of carrying out duties provided by law.

~~It shall be the duty of~~ The commissioner to shall obtain and maintain the fixtures of such vault necessary to carry out the purposes of the provisions of this code relating to deposits of

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securities and investments of insurance companies doing business in this state. In addition the commissioner shall appoint, ~~within the provision of the civil service law~~ in accordance with the Kansas civil service act, and available appropriations, ~~such additional~~ employees ~~as may be~~ necessary to properly carry out the custody, control and supervisory duties of such vault facilities. With the joint consent of the state treasurer and commissioner, and if there is space available in boxes not occupied by nor needed for insurance company deposits, deposits may be made by other state departments or agencies on a plan whereby the access to such boxes is by the use of two keys, one available only to the depositor and the other available to the commissioner of insurance.

(e) (1) Life insurance companies organized under the laws of this state ~~are authorized to~~ may satisfy the deposit requirements of this section by depositing assets with a any custodian bank ~~having its principal place of business in Kansas~~, pursuant to a written agreement with such custodian bank. Such deposit shall have the same force and effect as the deposit of such assets directly with the commissioner under subsection (a) and K.S.A. 40-230, and amendments thereto, but the requirements of K.S.A. 40-230, and amendments thereto, that the treasurer and the commissioner give receipts for such assets and that such assets be delivered only on the joint order of the treasurer and commissioner shall not apply to assets deposited pursuant to this subsection, and the requirement of subsection (b) that deposits be withdrawn only on the order of the commissioner shall not apply to assets deposited pursuant to this subsection.

(2) Assets deposited pursuant to this subsection shall be held by the custodian bank on behalf of the commissioner as in trust for the use and benefit of the company. Such assets shall remain the specific property of the company and shall not be subject to the claim of any third party against the custodian.

(3) The custodian bank is authorized to redeposit such assets with a clearing corporation as defined in K.S.A. 84-8-102,

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and amendments thereto, and as permitted by K.S.A. 40-2b20, and amendments thereto. The custodian bank is authorized to hold such assets through the federal reserve bank book-entry system.

(4) The commissioner shall by rule and regulation establish such requirements relating to deposits under this subsection as may be appropriate to assure the security and safety of such deposits, including, but not limited to the following:

- (A) Capital and surplus of the custodian bank;
- (B) title in which deposited assets are held;
- (C) records to be kept by the custodian and the commissioner's access thereto;
- (D) periodic reports by the custodian to the commissioner;
- (E) responsibility of the custodian to indemnify the company for loss of deposited assets;
- (F) withdrawal or exchange of deposited assets; and
- (G) authority of the commissioner to terminate the deposit if the condition of the custodian bank should threaten the security of the deposited assets.

Sec. 2. K.S.A. 40-404 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

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## SENATE BILL NO. \_\_\_\_\_

By Committee on Financial Institutions and Insurance

AN ACT concerning annuity contracts issued by life insurance companies; certain exemptions; amending K.S.A. 40-414 and repealing the existing section.

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

Section 1. K.S.A. 40-414 is hereby amended to read as follows: 40-414. (a) If a life insurance company or fraternal benefit society issues any policy of insurance, including a contract of annuity, or beneficiary certificates upon the life of an individual and payable at the death of the insured, or in any given number of years, to any person or persons having an insurable interest in the life of the insured, the policy and its reserves, or their present value, shall inure to the sole and separate use and benefit of the beneficiaries named in the policy and shall be free from:

(1) The claims of the insured or the insured's creditors and representatives;

(2) the claims of any policyholder or the policyholder's creditors and representatives, subject to the provisions of subsection (b);

(3) all taxes, subject to the provisions of subsection (d); and

(4) the claims and judgments of the creditors and representatives of any person named as beneficiary in the policy of insurance.

(b) The nonforfeiture value of a life insurance policy shall not be exempt from:

(1) Claims of the creditors of a policyholder who files a bankruptcy petition under 11 U.S.C. 101 et seq. on or within one year after the date the policy is issued; or

(2) the claim of any creditor of a policyholder if execution

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on judgment for the claim is issued on or within one year after the date that the policy is issued.

(c) Nothing in this section shall be construed as restricting the right of the insured to change the beneficiary if the policy reserves that right to the insured.

(d) Nothing in this section shall be construed as exempting from taxation any real estate which may at any time be carried by any life insurance company as a part of its legal reserve.

(e) The provisions of subsection (b) shall apply only to life insurance policies purchased on or after July 1, 1988.

(f) The provisions of subsection (b) shall not apply to that portion of the nonforfeiture value of a life insurance policy, issued on or within one year of the filing of a bankruptcy petition under 11 U.S.C. 101 et seq. or an execution on judgment for the claim of the creditor, which is derived from the surrender of a life insurance policy issued more than one year prior to such bankruptcy petition or such execution.

Sec. 2. K.S.A. 40-414 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

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## SENATE BILL NO. \_\_\_\_\_

By Committee on Financial Institutions and Insurance

AN ACT concerning investments by life insurance companies; tax lien certificates; amending K.S.A. 40-2b09 and repealing the existing section.

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

Section 1. K.S.A. 40-2b09 is hereby amended to read as follows: 40-2b09. Any life insurance company heretofore or hereafter organized under any law of this state may invest by loans or otherwise with the direction or approval of a majority of its board of directors or authorized committee thereof, any of its funds, or any part thereof in:

(a) Bonds, notes, obligations or other evidences of indebtedness secured by mortgages or deeds of trust which are a first lien upon unencumbered real property and appurtenances thereto within the United States of America, or any insular or territorial possession of the United States, or the Dominion of Canada, and upon leasehold estates in real property wherein the term of such including any options to extend is not less than 15 years beyond the maturity of the loan as made or extended. At the date of acquisition the total indebtedness secured by such lien shall not exceed 80% of the market value of the property upon which it is a lien, unless that portion of the total indebtedness in excess of 80% of market value is insured by a mortgage insurance company authorized by the commissioner of insurance to do business in this state. These limitations shall not apply to obligations described in subsections (b), (c), (d), (e) and (f) ~~of this section~~. For the purpose of this section a mortgage or deed of trust shall not be deemed to be other than a first lien upon property within the meaning of this section by reason of the existence of taxes or assessments against real property and appurtenances thereto that are not delinquent,

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instruments creating or reserving mineral, oil, or timber rights, rights of way, joint driveways, sewer rights, rights in walls or by reason of building restrictions or other like restrictive covenants, or when such real estate is subject to lease in whole or in part whereby rents or profits are reserved to the owner or when there is in existence a fixed obligation or lien against the property where an escrow account or indemnification bond is or has been established or obtained sufficient to cover the maximum liability created by such obligation or lien;

(b) bonds, notes, or other evidences of indebtedness representing loans and advances of credit that have been issued, guaranteed or insured by the United States government or any agency or instrumentality thereof or insured by any insurance company authorized to transact such business in this state. Any uninsured or nonguaranteed portion shall not exceed 75% of the total amount;

(c) contracts of sale, purchase money mortgages or deeds of trust secured by property obtained through foreclosure, or in settlement or satisfaction of any indebtedness;

(d) bonds, notes, obligations, or other evidences of indebtedness secured by mortgages or deeds of trust which are a first lien upon unencumbered personal or real or both personal and real property, including a leasehold of real estate, under lease, purchase contract, or lease purchase contract to any governmental body or instrumentality whose obligations qualify under K.S.A. 40-2b01, 40-2b02 or 40-2b03, and amendments ~~to those sections~~ thereto, or to a corporation whose obligations qualify under K.S.A. 40-2b05, and amendments thereto, if there is adequate rental, after making allowance of lessors' or sellers' obligations and liabilities, if any, under the terms of the lease or contract, to retire the loan as to payments of principal and interest and such rentals are pledged or assigned to the lender;

(e) bonds, notes or other evidences of indebtedness representing loans and advances of credit that have been issued, guaranteed or insured, in accordance with the terms and

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provisions of an act of the federal parliament of the Dominion of Canada approved March 18, 1954, cited as the "national housing act, 1954," as heretofore and hereafter amended;

(f) participation in mortgage lending is specifically permitted in this section as between Kansas domiciled life insurance companies, or, between Kansas domiciled life insurance companies and life insurance companies organized under the laws of another country, state, or territory and authorized to do business in the state of Kansas, or, between Kansas domiciled life insurance companies and banks, trust companies or savings and loan associations located within the state of Kansas, upon unencumbered real property and appurtenances thereto. At the date of acquisition the total indebtedness assumed by such lien shall not exceed 80% of the market value of the property upon which it is a lien, unless that portion of the total indebtedness in excess of 80% of market value is insured by a mortgage insurance company authorized by the commissioner of insurance to do business in this state;

(g) first mortgages or deeds of trust upon improved real property to be occupied as a personal residence by an officer of the insurer, if the mortgage is at an interest rate that is no less than the prevailing rate of the insurer's existing portfolio of mortgage loans. Mortgages or deeds of trust entered into pursuant to this subsection shall be subject to the conditions set forth in subsection (a) ~~of this section~~ relating to mortgages or deeds of trust generally;

(h) tax lien certificates issued by local taxing authorities, which for reporting in the annual statement may be pooled by state and year of issue.

Sec. 2. K.S.A. 40-2b09 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

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## SENATE BILL NO. \_\_\_\_\_

By Committee on Financial Institutions and Insurance

AN ACT concerning exemptions from requirement of certificate of authority for insurer; amending K.S.A. 40-2702 and repealing the existing section.

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

Section 1. K.S.A. 40-2702 is hereby amended to read as follows: 40-2702. (a) As used in this act, unless the context otherwise requires, the term "insurer" means and includes all corporations, companies, associations, societies, fraternal benefit societies, mutual nonprofit hospital service and nonprofit medical service companies, partnerships and persons engaged as principals in the business of insurance of the kinds enumerated in articles 4, 5, 6, 7, 11, 18, 19, 19a, 19b, 19c, 22, 32 and 38 of chapter 40 of the Kansas Statutes Annotated, and any amendments thereto, insofar as the business of insurance of the kinds enumerated in such articles relate to life and accident or sickness. Whenever in this section there is reference to an act effected or committed by mail, the venue of such act shall be at the point where the matter transmitted by mail is delivered and takes effect.

It shall be unlawful for any insurer to transact insurance business in this state, as set forth in subsection (b) ~~of--this section~~, without a certificate of authority from the commissioner of insurance. This section shall not apply to:

(1) The lawful transaction of insurance procured by agents under the authority of K.S.A. 40-246b, 40-246c and 40-246d, and amendments thereto, relating to accident and sickness insurance;

(2) contracts of reinsurance issued by an insurer not organized under the laws of this state;

(3) transactions in this state involving a policy lawfully solicited, written and delivered outside of this state, covering

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only subjects of insurance not resident in this state at the time of issuance and which transactions are subsequent to the issuance of such policy;

(4) attorneys acting in the ordinary relation of attorney and client in the adjustment of claims or losses;

(5) transactions in this state involving group life and group sickness and accident or blanket sickness and accident insurance or group annuities, where the master policy of such groups was lawfully issued and delivered in and pursuant to the laws of a state in which the insurer was authorized to do an insurance business to a group organized for purposes other than the procurement of insurance and where the policyholder is domiciled or otherwise has a bona fide residence;

(6) transactions in this state involving any policy of life or accident and health insurance or annuity contract issued prior to the effective date of this act; and

(7) contracts of insurance written by certain lodges, societies, persons and associations specified in K.S.A. 40-202, and amendments thereto, and organizations preempted from state jurisdiction as a result of compliance with both the employees retirement income security act of 1974, as amended, including all bonding provisions, and paragraph (9) of subsection (c) of section 501 of the internal revenue code, and.

~~(8) any life insurance company organized and operated without profit to any private shareholder or individual, exclusively for the purpose of aiding and strengthening educational institutions, organized and operated without profit to any private shareholder or individual, by issuing insurance and annuity contracts directly from the home office of the company, without insurance agents or insurance representatives in this state, only to or for the benefit of such institutions and individuals engaged in the services of such institutions, but this exemption shall be conditioned upon any such company complying with the following requirements:~~

~~(i) Payment of an annual registration fee of \$500;~~

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~~(ii) filing a copy of the form of any policy or contract issued to Kansas residents with the commissioner of insurance;~~

~~(iii) filing a copy of its annual statement prepared pursuant to the laws of its state of domicile, as well as such other financial material as may be requested, with the commissioner of insurance; and~~

~~(iv) providing, in such form as may be prescribed by the commissioner of insurance, for the appointment of the commissioner of insurance as its true and lawful attorney upon whom may be served all lawful process in any action or proceeding against such company arising out of any policy or contract it has issued to, or which is currently held by, a Kansas citizen and process so served against such company shall have the same force and validity as if served upon the company.~~

(b) Any of the following acts in this state effected by mail or otherwise by or on behalf of an unauthorized insurer is deemed to constitute the transaction of an insurance business in this state:

(1) The making of or proposing to make, as an insurer, an insurance contract;

(2) the taking or receiving of any application for insurance;

(3) the receiving or collection of any premium, commission, membership fees, assessments, dues or other consideration for any insurance or any part thereof;

(4) the issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state;

(5) directly or indirectly acting as an agent for or otherwise representing or aiding on behalf of another any person or insurer in the solicitation, negotiation, procurement or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications or delivery of policies or contracts or investigation or adjustment of claims or losses or in the

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transaction of matters subsequent to effectuation of the contract and arising out of it or in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance resident in this state. Nothing herein shall be construed to prohibit full-time salaried employees of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance in behalf of such employer;

(6) the transaction of any kind of insurance business specifically recognized as transacting an insurance business within the meaning of the statutes relating to insurance; or

(7) the transacting of or proposing to transact any insurance business, in substance equivalent to any of the foregoing, in a manner designed to evade the provisions of this act.

(c) (1) The failure of an insurer transacting insurance business in this state to obtain a certificate of authority from the commissioner of insurance shall not impair the validity of any act or contract of such insurer and shall not prevent such insurer from defending any action at law or suit in equity in any court of this state, but no insurer transacting insurance business in this state without a certificate of authority shall be permitted to maintain an action in any court of this state to enforce any right, claim or demand arising out of the transaction of such business until such insurer shall have obtained a certificate of authority.

(2) In the event of failure of any such unauthorized insurer to pay any claim or loss within the provisions of such insurance contract, any person who assisted or in any manner aided, directly or indirectly, in the procurement of such insurance contract shall be liable to the insured for the full amount of the claim or loss in the manner provided by the provisions of such insurance contract.

Sec. 2. K.S.A. 40-2702 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

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