

CHAPTER 144

SENATE Substitute for HOUSE BILL No. 2172

AN ACT relating to the office of the state bank commissioner; concerning the regulation of consumer and mortgage lending; amending K.S.A. 9-2203, 9-2205, 9-2208, 9-2209, 9-2211, 9-2216, 9-2218, 16a-3-205, 16a-5-103, 16a-5-111 and 16a-6-201 and K.S.A. 2004 Supp. 16a-2-103, 16a-2-302, 16a-2-303, 16a-2-304, 16a-2-404, 16a-3-304, 16a-3-308a, 16a-6-104, 16a-6-108 and 16a-6-203 and repealing the existing sections.

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

Section 1. K.S.A. 9-2203 is hereby amended to read as follows: 9-2203. (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. 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.

(c) ~~Any person violating this act shall be guilty of a misdemeanor, and upon conviction shall be punished by a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed one year, or a fine not exceeding \$5,000 or both 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.~~

(d) *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.*

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

Sec. 2. K.S.A. 9-2205 is hereby amended to read as follows: 9-2205. (a) A license or registration shall become effective as of the date specified on the face of the certificate.

(b) A license shall be renewed in each odd-numbered year 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 ~~commission~~ *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 be subject to all reporting and fee requirements contained in K.S.A. 9-2204, and amendments thereto.

Sec. 3. K.S.A. 9-2208 is hereby amended to read as follows: 9-2208.

(a) Each licensee shall prominently display the license of any principal place of business and any branch office in a way that reasonably assures recognition by customers and members of the general public who enter the licensee's place of business.

(b) Prior to entering into any contract for the provision of services or prior to the licensee receiving any compensation or promise of compen-

sation for a mortgage loan the licensee shall acquire from the customer 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 customer.

(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 words "Kansas licensed mortgage company," and must also contain the name, address and license number of the licensee, which shall be the same as the name, address and number on record with the commissioner. Each licensee shall maintain a record of all solicitations or advertisements for a period of 25 months. For the purpose of this subsection, "advertising" does not include business cards or promotional items.

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

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

Sec. 4. K.S.A. 9-2209 is hereby amended to read as follows: 9-2209.

(a) The commissioner may exercise the following powers:

~~(a)~~ (1) Adopt rules and regulations as necessary to carry out the intent and purpose of this act;

~~(b)~~ (2) make investigations and examinations of the licensee's operations, books and records as the commissioner deems necessary for the protection of the public;

~~(c)~~ (3) charge reasonable costs of investigation, administration or examination to be paid by the applicant, licensee or registrant under investigation, examination or requiring administrative action;

~~(d)~~ (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;

~~(e)~~ (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 loans;

~~(f)~~ (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;

~~(g)~~ (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;

~~(h)~~ (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;

~~(i)~~ (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; and

~~(j)~~ (10) require that any licensee, registrant or other person complete a minimum number of continuing education hours on an annual or bi-annual basis. Continuing education courses shall be approved by the commissioner, or the commissioner's designee, and may be made a condition of application 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;*

(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 the proper county or district attorney, who may in the prosecutor's discretion, with or without such a referral, institute the appropriate criminal proceedings under this act. Upon receipt of such referral, the attorney general or the county attorney or district attorney may request that a duly employed attorney of the commissioner prosecute or assist in the prosecution of such violation or violations on behalf of the state. Upon approval of the commissioner, such employee shall be appointed a 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 prosecutor by the attorney general or the county attorney or district attorney; and

(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.

(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.

Sec. 5. K.S.A. 9-2211 is hereby amended to read as follows: 9-2211.

(a) Each applicant or licensee who maintains a bona fide office shall file with the commissioner a surety bond in the amount of \$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;

(2) the terms of the bond shall provide that it may not be terminated without 30 days prior written notice to the commissioner; 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 \$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 following requirements:

(A) The bond shall be payable to the office of the state bank commissioner;

(B) the terms of the bond shall provide that it may not be terminated without 30 days prior written notice to the commissioner; and

(C) 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;

(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 accompanied by a written statement by an independent certified public accountant attesting that the balance sheet has been reviewed in accordance with generally accepted accounting principles.

Sec. 6. K.S.A. 9-2216 is hereby amended to read as follows: 9-2216.

(a) A licensee shall keep for at least 25 months 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. 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) *No person required to be licensed or registered under this act shall:*

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

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

Sec. 7. K.S.A. 9-2218 is hereby amended to read as follows: 9-2218.

(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 ~~\$5,000~~ \$10,000 per incident for the unlawful act or practice; ~~or~~

(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.

Sec. 8. K.S.A. 2004 Supp. 16a-2-103 is hereby amended to read as follows: 16a-2-103. (1) ~~This section applies~~ *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 ~~annual~~ *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 ~~annual~~ *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.*

~~(3)~~ (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 ~~annual~~ *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.

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

~~(5)~~ (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.

~~(6)~~ (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.

~~(7)~~ (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.

~~(8)~~ (9) This section shall be supplemental to and a part of the uniform consumer credit code.

Sec. 9. K.S.A. 2004 Supp. 16a-2-302 is hereby amended to read as follows: 16a-2-302. (1) (a) The administrator shall receive and act on all applications for licenses to make supervised loans 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 and license 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 20% shall be credited to the state general fund and the balance shall be credited to the bank commissioner fee fund. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the administrator or by a person or persons designated by the administrator.

The 20% credit to the state general fund required by this subsection (c) is to reimburse the state general fund for accounting, auditing, budgeting, legal, payroll, personnel and purchasing services, and any and all other state governmental services, which are performed on behalf of the administrator by other state agencies which receive appropriations from the state general fund to provide such services.

(d) Every licensee shall, on or before the first day of January, pay to the administrator the license fee prescribed under this subsection (1) for each license held for the succeeding license year. Failure to pay the license fee within the time prescribed shall automatically revoke the license.

(2) No license 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. 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 required surety bond may not be canceled by the licensee without providing the administrator at least 30 days' prior written notice and 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; 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 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 in K.S.A. 16a-2-303, and amendments thereto, as grounds for denial, revocation or suspension of a license.

(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 supervised 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.

Sec. 10. K.S.A. 2004 Supp. 16a-2-303 is hereby amended to read as follows: 16a-2-303. (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-6-104~~ 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 containing any false representation of a material fact or omitting to state 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) The administrator may reinstate a license, terminate a suspension, or grant a new license to a person whose license has been revoked or suspended if no fact or condition then exists which clearly would have justified the administrator in refusing to grant a license.

Sec. 11. K.S.A. 2004 Supp. 16a-2-304 is hereby amended to read as follows: 16a-2-304. (1) Every licensee and any assignee or servicer of a consumer credit transaction 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 or servicer 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 or servicer shall be sufficient if the licensee, assignee or servicer 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 of a consumer credit transaction 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 need not be preserved for more than two years after making the final entry relating to the loan, but in the case of a revolving loan account the two years is measured from the date of each entry.

(2) 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 supervised 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.

(3) *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.*

Sec. 12. K.S.A. 2004 Supp. 16a-2-404 is hereby amended to read as follows: 16a-2-404. (1) On consumer loan transactions in which cash is advanced:

(a) With a short term,

(b) a single payment repayment is anticipated, and

(c) such cash advance is equal to or less than \$500, a licensed or supervised lender may charge in lieu of the loan finance charges specified in K.S.A. 16a-2-401, and amendments thereto, the following amounts:

~~(i) On any amount up to and including \$50, a charge of \$5.50 may be added;~~

~~(ii) on amounts in excess of \$50, but not more than \$100, a charge may be added equal to 10% of the loan proceeds plus a \$5 administrative fee;~~

~~(iii) on amounts in excess of \$100, but not more than \$250 a charge may be added equal to 7% of the loan proceeds with a minimum of \$10 plus a \$5 administrative fee;~~

~~(iv) for amounts in excess of \$250 and not greater than the maximum defined in this section, a charge may be added equal to 6% of the loan proceeds with a minimum of \$17.50 plus a \$5 administrative fee 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.

Sec. 13. K.S.A. 16a-3-205 is hereby amended to read as follows: 16a-3-205. (1) The creditor shall deliver or mail to the consumer, without request, a written receipt for each payment by coin or currency on an obligation pursuant to a consumer credit transaction. A periodic statement showing a payment received by mail complies 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 ~~fifteen (15)~~ 15 months and the ~~total amount unpaid~~ 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.

Sec. 14. K.S.A. 2004 Supp. 16a-3-304 is hereby amended to read as follows: 16a-3-304. (1) A creditor may not ~~use~~ engage in a pattern or practice of using multiple agreements ~~with intent~~ 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).

Sec. 15. K.S.A. 2004 Supp. 16a-3-308a is hereby amended to read as follows: 16a-3-308a. (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 disbursement 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.

~~(4)~~(5) This section shall be supplemental to and a part of the uniform consumer credit code.

Sec. 16. K.S.A. 16a-5-103 is hereby amended to read as follows: 16a-5-103. (1) This section applies to a deficiency on a consumer credit sale of goods or services and on a consumer loan in which the lender is subject to defenses arising from sales (~~section~~ 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 ~~one thousand dollars (\$1,000)~~ \$1,000 or less, and the seller is not obligated to resell the collateral unless the buyer has paid ~~sixty percent (60%)~~ 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 ~~he~~ *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 ~~one thousand dollars (\$1,000)~~ \$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 (~~section 84-9-504~~ 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 (~~section~~ 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 ~~one thousand dollars (\$1,000)~~ \$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 (~~section 84-9-504~~ 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 (~~section~~ 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 (~~section~~ K.S.A. 16a-3-405, *and amendments thereto*), when under this section ~~he~~ *the creditor* would not be entitled to a deficiency judgment if ~~he~~ *the creditor* took possession of the collateral, and obtains judgment:

- (a) ~~he~~ *The creditor* may not take possession of the collateral, and
- (b) the collateral is not subject to levy or sale on execution or similar proceedings pursuant to the judgment.

Sec. 17. K.S.A. 16a-5-111 is hereby amended to read as follows: 16a-5-111. (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 ~~twenty (20)~~ 20 days after a notice of the consumer's right to cure (~~section~~ K.S.A. 16a-5-110, *and amendments thereto*) is given. Until ~~twenty (20)~~ 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 ~~or deferral~~ charges. Cure restores the consumer to ~~his~~ *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 (~~section~~ 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.

Sec. 18. K.S.A. 2004 Supp. 16a-6-104 is hereby amended to read as follows: 16a-6-104. This act shall be administered by the consumer credit commissioner of Kansas who is also referred to as the administrator. (1) In addition to other powers granted by this act, the administrator within the limitations provided by law may:

(a) Receive and act on complaints, take action designed to obtain voluntary compliance with the provisions of K.S.A. 16a-1-101 to 16a-9-102, inclusive, 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;

(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 *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 *or person filing notification*; ~~and~~

(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; *and*

(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 who is directly engaged in lending activities. 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.

(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.

Sec. 19. K.S.A. 2004 Supp. 16a-6-108 is hereby amended to read as follows: 16a-6-108. (1) If the administrator determines after notice and opportunity for a hearing that any person has engaged, is engaging or is about to engage in any act or practice constituting a violation of any provision of this act or any rule and regulation, order or administrative interpretation hereunder, 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 or other per-

son 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; ~~or. 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 bar the person from subsequently applying for a license 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 act for judicial review and civil enforcement of agency actions.

Sec. 20. K.S.A. 16a-6-201 is hereby amended to read as follows: 16a-6-201. This part applies to a creditor engaged in this state in entering into consumer credit transactions and to ~~a creditor having an office or place of business in this state~~ any person who takes assignments of and undertakes direct collection of payments from or enforcement of rights against debtors arising from these transactions. This part shall not apply to supervised financial organizations (K.S.A. 16a-1-301 ~~(38)~~, 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.

Sec. 21. K.S.A. 2004 Supp. 16a-6-203 is hereby amended to read as follows: 16a-6-203. (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 ~~(6)~~ (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 ~~(6)~~ (5) of K.S.A. 16a-6-104, and amendments thereto, for each business location for each \$100,000, or part thereof which exceeds \$10,000 and which is above the first \$100,000, 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 other than a supervised financial organization who has not filed notification. The unpaid balances of assigned obligations held by an assignee other than a supervised financial organization 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 ~~(6)~~ (5) of K.S.A. 16a-6-104, and amendments thereto, for each \$100,000, or part thereof which exceeds \$10,000, 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.

New Sec. 22. (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.

Sec. 23. K.S.A. 9-2203, 9-2205, 9-2208, 9-2209, 9-2211, 9-2216, 9-2218, 16a-3-205, 16a-5-103, 16a-5-111 and 16a-6-201 and K.S.A. 2004 Supp. 16a-2-103, 16a-2-302, 16a-2-303, 16a-2-304, 16a-2-404, 16a-3-304, 16a-3-308a, 16a-6-104, 16a-6-108 and 16a-6-203 are hereby repealed.

Sec. 24. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 15, 2005.
