

CHAPTER 29

SENATE BILL No. 240
(Amended by Chapter 143)

AN ACT relating to mortgages; concerning the regulation thereof; amending K.S.A. 9-2201, 9-2202, 9-2207, 9-2212, 9-2216a, 9-2220, 16a-1-303, 16a-2-301, 16a-2-302, 16a-2-303, 16a-2-304, 16a-3-308, 16a-6-104, 16a-6-108, 16a-6-117, 16a-6-201 and 16a-6-203 and K.S.A. 2008 Supp. 9-2203, 9-2205, 9-2209, 9-2211 and 9-2216 and repealing the existing sections; also repealing K.S.A. 16a-6-413.

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

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

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

New Sec. 2. (1) The administrator may deny, revoke or suspend the registration of a residential mortgage loan originator if the administrator finds that:

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) None of the following actions shall deprive the administrator of any jurisdiction or right to institute or proceed with any disciplinary proceeding against such registration, to render a decision suspending, revoking or refusing to renew such registration, or to establish and make a

record of the facts of any violation of law for any lawful purpose:

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

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

New Sec. 3. (1) No person required to be licensed or registered under this act shall directly or indirectly:

- (a) Delay closing of a loan for the purpose of increasing interest, costs, fees or charges payable by the borrower;
- (b) misrepresent the material facts or make false promises intended to influence, persuade or induce a consumer to enter into a loan;
- (c) misrepresent to or conceal from an applicant for a loan, a mortgagor or a lender, material facts, terms or conditions of a transaction to which the person required to be licensed or registered is a party;
- (d) engage in any transaction, practice or business conduct that is not in good faith or that operates a fraud upon any person in connection with the making of or purchase or sale of any loan;
- (e) receive compensation for making a residential mortgage loan where the licensee or registrant has otherwise acted as a real estate broker or agent in connection with the sale of the real estate which secures the mortgage transaction unless the person required to be licensed or registered has provided written disclosure to the person from whom compensation is collected that the person is receiving compensation both for making the loan and for real estate broker or agent services;
- (f) engage in any fraudulent lending or underwriting practices;
- (g) advertise, display, distribute, broadcast or televise, or cause or permit to be advertised, displayed, distributed, broadcast or televised, in any manner, any false, misleading or deceptive statement or representation with regard to rates, terms or conditions for a loan;
- (h) record a mortgage if moneys are not available for immediate disbursement to the mortgagor unless, before that recording, the person required to be licensed or registered informs the mortgagor in writing of a definite date by which payment shall be made and obtains the mortgagor's written permission for the delay;
- (i) transfer, assign or attempt to transfer or assign, a license or registration to any other person, or assist or aid and abet any person who does not hold a valid license or registration under this act in engaging in the conduct of mortgage business;
- (j) solicit or enter into a contract with a borrower that provides in substance that the person required to be licensed or registered may earn a fee or commission through best efforts to obtain a loan even though no loan is actually obtained for the borrower;
- (k) solicit, advertise or enter into a contract for specific interest rates, points or other financing terms unless the terms are actually available at the time of soliciting, advertising or contracting;
- (l) make any payment, threat or promise to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment, threat or promise to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property or engage in any activity that would constitute a violation of K.S.A. 58-2344, and amendments thereto; or
- (m) fail to comply with the uniform consumer credit code, or rules and regulations promulgated thereunder, or fail to comply with any other state or federal law, including the rules and regulations promulgated thereunder, applicable to any business authorized or conducted under the uniform consumer credit code.

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

Sec. 4. K.S.A. 9-2201 is hereby amended to read as follows: 9-2201. As used in this act:

- (a) "Bona fide office" means an applicant's or licensee's principal place of business which meets all of the following requirements:
 - (1) The office is located in this state;

- (2) the office is not located in a personal residence;
- (3) the office has regular hours of operation;
- (4) the office is accessible to the public;
- (5) the office is leased or owned by the licensee and serves as an office for the transaction of the licensee's mortgage business;
- (6) the office is separate from any office of another registrant; and
- (7) all of the licensee's books, records and documents are accessible through that office.

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

(c) "Commissioner" means the Kansas state bank commissioner.

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

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

(f) "Loan originator" means an individual:

(1) Who engages in mortgage business on behalf of a single mortgage company;

~~(2) who is registered with the commissioner as required by this act;~~
~~(3) whose conduct of mortgage business is the responsibility of the licensee; and~~

~~(3) who takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan for compensation or gain or in the expectation of compensation or gain; and~~

~~(4) whose job responsibilities include direct contact with borrowers during the loan origination process, which can include soliciting, negotiating, acquiring, arranging or making mortgage loans for others, obtaining personal or financial information, assisting with the preparation of loan applications or other documents, quoting loan rates or terms, or providing required disclosures. It does not mean a person whose job responsibilities on behalf of a licensee are solely clerical in nature; include any individual engaged solely as a loan processor or underwriter.~~

(g) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction and subject to the supervision and instruction of a person registered or exempt from registration under this act.

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

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

(B) communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms.

(2) An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists or other promotional items, that such individual can or will perform any of the activities of a loan originator.

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

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

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

~~(i)~~ (k) "Mortgage loan" means a loan or agreement to extend credit made to a natural person which is secured by a first or second mortgage,

deed of trust, contract for deed or other similar instrument or document representing a security interest or lien upon any lot intended for residential purposes or a one-to-four family dwelling *as defined in section 103(v) of the truth in lending act, 15 U.S.C. 1602(v)*, located in this state, occupied or intended to be occupied for residential purposes by the owner, including the renewal or refinancing of any such loan.

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

~~(k)~~ (m) "Primary market" means the market wherein mortgage loans are originated between a lender and a borrower, whether or not through a mortgage broker or other means.

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

~~(m)~~ (o) "Promotional items" means pens, pencils, hats and other such novelty items.

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

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

Sec. 5. K.S.A. 9-2202 is hereby amended to read as follows: 9-2202. The following are exempt from the licensing requirements of this act:

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

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

~~(c) any person who is registered as a loan broker pursuant to K.S.A. 50-1001 et seq., and amendments thereto, or who is licensed as a supervised lender pursuant to K.S.A. 16a-2-301 et seq., and amendments thereto;~~

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

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

Sec. 6. K.S.A. 2008 Supp. 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 and maintains a valid unique identifier issued by the nationwide mortgage licensing system and registry, if operational at the time of registration.

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

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

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

Sec. 7. K.S.A. 2008 Supp. 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~~ *annually* by filing with the commissioner, at least 30 days prior to the expiration of the license, a renewal application, containing information the commissioner requires to determine the existence of material changes from the information contained in the applicant's original license application or prior renewal applications.

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

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

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

Sec. 8. K.S.A. 9-2207 is hereby amended to read as follows: 9-2207.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) *The imposition of an administrative penalty;*
- (2) *the lapse or suspension of any license or registration issued under this act by operation of law;*
- (3) *the licensee's or registrant's failure to renew any license or registration issued under this act; or*
- (4) *the licensee's or registrant's voluntary surrender of any license or registration issued under this act.*

Sec. 9. K.S.A. 2008 Supp. 9-2209 is hereby amended to read as follows: 9-2209. (a) The commissioner may exercise the following powers:

(1) Adopt rules and regulations as necessary to carry out the intent and purpose of this act *and to implement the requirements of the secure and fair enforcement for mortgage licensing act of 2008, P.L. 110-289;*

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

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

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

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

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

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

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

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

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

(11) require fingerprinting of any applicant, registrant, licensee, members thereof if a copartnership or association, or officers and directors thereof if a corporation, or any agent acting on their behalf, or other person as deemed appropriate by the commissioner. The commissioner, or the commissioner's designee, may submit such fingerprints to the Kan-

sas bureau of investigation, federal bureau of investigation or other law enforcement agency for the purposes of verifying the identity of such persons and obtaining records of their criminal arrests and convictions. *For the purposes of this section and in order to reduce the points of contact which the federal bureau of investigation may have to maintain with the individual states, the commissioner may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the department of justice or any governmental agency;*

(12) refer such evidence as may be available concerning any violation of this act or of any rule and regulation or order hereunder to the attorney general or 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-;

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

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

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

(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. 10. K.S.A. 2008 Supp. 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 *not less than* \$50,000, in a form acceptable to the commissioner, issued by an insurance company authorized to conduct business in this state, securing the applicant's or licensee's faithful performance of all duties and obligations of a licensee meeting the following requirements:

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

(2) the terms of the bond shall provide that it may not be terminated without 30 days prior written notice to the commissioner, *provided that such termination shall not affect the surety's liability for violations of the Kansas mortgage business act occurring prior to the effective date of cancellation and principal and surety shall be and remain liable for a period of two years from the date of any action or inaction of principal that gives rise to a claim under the bond*; and

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

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

(1) File with the commissioner a surety bond in the amount of *not less than* \$100,000, in a form acceptable to the commissioner, issued by an insurance company authorized to conduct business in this state, securing the applicant's or licensee's faithful performance of all duties and obligations of a licensee meeting the following requirements:

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

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

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

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

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

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

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

(d) misrepresent the material facts or make false promises intended to influence, persuade or induce an applicant for a mortgage loan or mortgagee to take a mortgage loan or cause or contribute to misrepresentation by any person acting on ~~the licensee's~~ *behalf of the person required to be licensed or registered;*

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

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

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

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

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

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

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

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

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

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

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

Sec. 12. K.S.A. 2008 Supp. 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, *for such time frames as are specified in the rules and regulations.* If the loan is not serviced by a licensee, the retention period commences on the date the loan is closed or, if the loan is not closed, the date of the loan application. If the loan is serviced by a licensee, the retention period commences on the date the loan is paid in full or the date the licensee ceases to service the loan.

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

business days of the date such documents are requested.

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

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

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

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

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

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

~~(e)~~ (f) 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. 13. K.S.A. 9-2216a is hereby amended to read as follows: 9-2216a. (a) Each licensee shall maintain a journal of mortgage transactions at the licensee's principal place of business, which shall include at least the following information:

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

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

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

(b) Each licensee shall annually, on or before April 1, file a written report with the commissioner containing the information that the commissioner may reasonably require concerning the licensee's business and operations during the preceding calendar year. The report shall be made in the form prescribed by the commissioner. Any licensee who fails to file the report required by this section with the commissioner by April 1 shall be subject to a late penalty of \$100 for each day after April 1 the report is delinquent, but in no event shall the aggregate of late penalties exceed \$5000. The commissioner may relieve any licensee from the payment of any penalty, in whole or in part, for good cause.

Sec. 14. K.S.A. 9-2220 is hereby amended to read as follows: 9-2220.

(a) The provisions of K.S.A. 9-2201 through 9-2220, and amendments thereto, and K.S.A. 9-2216a, and amendments thereto, shall be known and may be cited as the Kansas mortgage business act.

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

Sec. 15. K.S.A. 16a-1-303 is hereby amended to read as follows: 16a-1-303. Other definitions appearing in this act ~~and the sections in which they appear are:~~

"Computational period" 16a-2-510

"Interval" 16a-2-510

"Location" 16a-2-309

"Periodic balance" 16a-2-510

"Last day of the billing cycle" 16a-2-202 and 16a-2-402

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

(a) Who engages in residential mortgage loan origination on behalf

of a single supervised lender;

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

(c) who takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan for compensation or gain or in the expectation of compensation or gain; and

(d) whose job responsibilities include contact with borrowers during the loan origination process, which can include soliciting, negotiating, acquiring, arranging or making mortgage loans for others, obtaining personal or financial information, assisting with the preparation of loan applications or other documents, quoting loan rates or terms or providing required disclosures. It does not include any individual engaged solely as a loan processor or underwriter.

(2) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction and subject to the supervision and instruction of a person registered, or exempt from registration, under this act.

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

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

(ii) communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms.

(b) An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities of a residential mortgage loan originator.

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

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

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

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

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

~~(1)~~ (a) Making supervised loans; ~~or~~

~~(2)~~ (b) taking assignments of and directly or indirectly, including through the use of servicing contracts or otherwise, undertaking direct collection of payments from ~~or enforcement of rights against~~ debtors arising from supervised loans, but such person may collect and enforce for three months without a license if the person promptly applies for a license and such person's application has not been denied; or

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

(2) Residential mortgage loan origination shall only be conducted in

this state by an individual who has first been registered with the administrator as a residential mortgage loan originator and maintains a valid unique identifier issued by the nationwide mortgage licensing system and registry if operational at the time of registration.

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

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

(3) Nothing in this section shall be construed to require the licensing of an attorney who is forwarded contracts for collection.

Sec. 17. K.S.A. 16a-2-302 is hereby amended to read as follows: 16a-2-302. (1) (a) The administrator shall receive and act on all applications for licenses to make supervised loans *and all applications for residential mortgage loan originator registrations* under this act. Applications shall be filed 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 *and registration* fees shall be in such amounts as are established pursuant to subsection (5) of K.S.A. 16a-6-104, and amendments thereto. The license year shall be the calendar year. Each license shall be nonrefundable and nonassignable, and shall remain in force until surrendered, suspended or revoked.

(c) The administrator shall remit all moneys received under K.S.A. 16a-1-101 to 16a-6-414, inclusive, and amendments thereto, to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury. Of each deposit 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 *and registrant* shall, on or before the first day of January, pay to the administrator the license *or registration* fee prescribed under this subsection (1) for each license *or registration* held for the succeeding license year. Failure to pay the ~~license~~ fee within the time prescribed shall automatically revoke the license *or registration*.

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

(a) The applicant has filed with the administrator a proper surety bond of at least \$100,000 which has been approved by the administrator. *The bond must provide within its terms that the bond shall not expire for two years after the date of the surrender, revocation or expiration of the subject license, whichever shall first occur.* The required surety bond may not be canceled by the licensee without providing the administrator at least 30 days' prior written notice ~~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,~~ *provided that such cancellation shall not affect the surety's liability for*

violations of the uniform consumer credit code occurring prior to the effective date of cancellation and principal and surety shall be and remain liable for a period of two years from the date of any action or inaction of the principal that gives rise to a claim under the bond; and

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

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

(a) There is a refusal to furnish information required by the administrator within a reasonable time as fixed by the administrator; or

(b) any of the factors stated as grounds for denial, revocation or suspension of a license in K.S.A. 16a-2-303 or section 2, 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 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. 18. K.S.A. 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-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 falsely representing or omitting a material fact;

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

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

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

(h) a final judgment has been entered against the applicant or li-

censee in a civil action and the administrator finds the conduct on which the judgment is based indicates that it would be contrary to the public interest to permit such person to be licensed;

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

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

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

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

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

(a) *The imposition of an administrative penalty under this section;*

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

(c) *the licensee's failure to renew any license issued under this act; or*

(d) *the licensee's voluntary surrender of any license issued under this act.*

~~(4)~~ (5) The administrator may reinstate a license, terminate a suspension, or grant a new license to a person whose license has been revoked or suspended if no fact or condition then exists which clearly would have justified the administrator in refusing to grant a license.

Sec. 19. K.S.A. 16a-2-304 is hereby amended to read as follows: 16a-2-304. (1) Every licensee and any assignee or servicer of a consumer credit transaction *and every person required to file notification* 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 *or person required to file notification* is complying with the provisions of K.S.A. 16a-1-101 through 16a-9-102, and amendments thereto. The record keeping system of a licensee, assignee ~~or~~, servicer *or person required to file notification* shall be sufficient if the licensee, assignee ~~or~~, servicer *or any person required to file notification* makes the required information reasonably available. The records need not be kept in the place of business where supervised loans are made, if the administrator or supervisory official or agency is given free access to the records wherever located. Every licensee and any assignee *or servicer* of a consumer credit transaction *and every person required to file notification* shall provide the administrator with the name, address, telephone number, contact person and any other reasonable information regarding the location and availability of current records of a consumer credit transaction. The records pertaining to any loan ~~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 shall be kept for the minimum time frames established by the administrator pursuant to rules and regulations.~~

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

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

(4) *Any records required to be retained may be maintained and preserved by noneraseable, nonalterable electronic imaging or by photograph on film. If the records are produced or reproduced by photographic film, electronic imaging or computer storage medium, the licensee, assignee or*

person required to file notification shall meet the following criteria:

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

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

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

~~(2)~~ (5) On or before April 15 of each year every licensee shall file with the administrator and, in the case of a supervised financial organization with its supervisory official or agency, a composite annual report in the form prescribed by the administrator relating to all 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)~~ (6) No person required to be licensed or file notification under this act shall:

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

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

Sec. 20. K.S.A. 16a-3-308 is hereby amended to read as follows: 16a-3-308. ~~(a)~~ With respect to a consumer credit transaction, other than one pursuant to open end credit if any scheduled payment is more than twice as large as the average of earlier scheduled payments, the consumer has the right to refinance the amount of that payment at the time it is due without penalty. The terms of the refinancing shall be no less favorable to the consumer than the terms of the original transaction. These provisions do not apply to the extent that the payment schedule is adjusted to the seasonal or irregular income of the consumer or to a note secured by a real estate mortgage.

~~(b) In accordance with rules and regulations adopted by the administrator, the provisions of this section shall not apply to a consumer loan secured solely by a motor vehicle.~~

Sec. 21. K.S.A. 16a-6-104 is hereby amended to read as follows: 16a-6-104. This act shall be administered by the consumer credit commissioner of Kansas who is also referred to as the administrator. (1) In addition to other powers granted by this act, the administrator within the limitations provided by law may:

(a) Receive and act on complaints, take action designed to obtain voluntary compliance with the provisions of K.S.A. 16a-1-101 to 16a-9-102, inclusive, and amendments thereto, or commence proceedings on the administrator's own initiative;

(b) counsel persons and groups on their rights and duties under K.S.A. 16a-1-101 to 16a-9-102, inclusive, and amendments thereto;

(c) establish programs for the education of consumers with respect to credit practices and problems and as a condition in settlements of investigations or examinations, the administrator may receive a payment designated for consumer education to be expended as directed by the administrator for such purpose;

(d) make studies appropriate to effectuate the purposes and policies of K.S.A. 16a-1-101 to 16a-9-102, inclusive, and amendments thereto;

(e) adopt, amend and revoke rules and regulations to carry out the specific provisions of K.S.A. 16a-1-101 to 16a-9-102, inclusive, and amendments thereto, *and to implement the requirements of the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289)*;

(f) issue, amend and revoke written administrative interpretations. Such written administrative interpretations shall be approved by the attorney general and published in the Kansas register within 15 days of issuance. The administrator shall annually publish all written administrative interpretations in effect;

(g) maintain offices within this state; and

(h) appoint any necessary attorneys, hearing examiners, clerks, and other employees and agents and fix their compensation, and authorize attorneys appointed under this section to appear for and represent the administrator in court;

(i) examine periodically at intervals the administrator deems appropriate the loans, business and records of every licensee, *registrant* or person filing notification pursuant to K.S.A. 16a-6-201 through 16a-6-203, and amendments thereto, except licensees which are supervised financial organizations. The official or agency responsible for the supervision of each supervised financial organization shall examine the loans, business and records of each such organization in the manner and periodically at intervals prescribed by the administrator. In addition, for the purpose of discovering violations of K.S.A. 16a-1-101 through 16a-9-102, and amendments thereto, or securing information lawfully required, the administrator or the official or agency to whose supervision the organization is subject to K.S.A. 16a-6-105, and amendments thereto, may at any time investigate the loans, business and records of any supervised lender. For examination purposes the administrator shall have free and reasonable access to the offices, places of business and records of the lender, *registrant* or person filing notification *and the administrator may control access to any documents and records of a licensee, registrant or person filing notification under examination;*

(j) refer such evidence as may be available concerning violations of this act or of any rule and regulation or order to the attorney general or the proper county or district attorney, who may in the prosecutor's discretion, with or without such a reference, institute the appropriate criminal proceedings under this act. Upon receipt of such reference, the attorney general or the county attorney or district attorney may request that a duly employed attorney of the administrator prosecute or assist in the prosecution of such violation on behalf of the state. Upon approval of the administrator, such employee shall be appointed special prosecutor for the attorney general or the county attorney or district attorney to serve without compensation from the attorney general or the county attorney or district attorney. Such special prosecutor shall have all the powers and duties prescribed by law for assistant attorneys general or assistant county or district attorneys, and such other powers and duties as are lawfully delegated to such special prosecutors by the attorney general or the county attorney or district attorney; ~~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. *For purposes of this section and in order to reduce the points of contact which the federal bureau of investigation may have to maintain with the individual states, the administrator may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the department of justice or any governmental agency;*

(l) *exchange information regarding the administration of this act with any agency of the United States or any state which regulates the licensee, registrant or person required to file notification, or who administers statutes, rules and regulations or other programs related to consumer credit and to enter into information sharing arrangements with other governmental agencies or associations representing governmental agencies which are deemed necessary or beneficial to the administration of this act;*

(m) *require that any applicant, licensee, registrant or other person complete a minimum number of prelicensing education hours and complete continuing education hours on an annual basis. Prelicensing and continuing education courses shall be approved by the administrator or the administrator's designee and may be made a condition of the application approval and renewal;*

(n) *require that any applicant, licensee, registrant or other person successfully pass a standardized examination designed to establish such person's knowledge of residential mortgage loan origination transactions and all applicable state and federal law. Such examinations shall be cre-*

ated and administered by the administrator or the administrator's designee and may be made a condition of application approval;

(o) use the nationwide mortgage licensing system and registry as a channeling agent for requesting and distributing any information regarding residential mortgage loan originator registration or supervised lender licensing to and from any source so directed by the administrator;

(p) establish relationships or contracts with the nationwide mortgage licensing system and registry or other entities to collect and maintain records and process transaction fees or other fees related to applicants, licensees, registrants or other persons subject to the act and to take such other actions as may be reasonably necessary to participate in the nationwide mortgage licensing system and registry. The administrator shall regularly report violations of law, as well as enforcement actions and other relevant information, to the nationwide mortgage licensing system and registry, and make publicly available the proposed budget, fees, and audited financial statements of the nationwide mortgage licensing system and registry as may be prepared by the nationwide mortgage licensing system and registry and provided to the administrator;

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

(r) require that any mortgage loan originator applicant, registrant or other person complete a minimum number of prelicensing education hours and complete continuing education hours on an annual or biannual basis. Prelicensing and continuing education courses shall be approved by the administrator or the administrator's designee and may be made a condition of application approval and renewal; and

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

(2) The administrator shall enforce the provisions of this act and the rules and regulations and interpretations adopted thereunder with respect to a creditor, unless the creditor's compliance is regulated exclusively or primarily by another state or federal agency.

(3) To keep the administrator's rules and regulations in harmony with the rules of administrators in other jurisdictions which enact the revised uniform consumer credit code, the administrator, so far as is consistent with the purposes, policies and provisions of K.S.A. 16a-1-101 to 16a-9-102, inclusive, and amendments thereto, may:

(a) Before adopting, amending and revoking rules and regulations, advise and consult with administrators in other jurisdictions which enact the uniform consumer credit code; and

(b) in adopting, amending and revoking rules and regulations, take into consideration the rules of administrators in other jurisdictions which enact the revised uniform consumer credit code.

(4) Except for refund of an excess charge, no liability is imposed under K.S.A. 16a-1-101 to 16a-9-102, inclusive, and amendments thereto, for an act done or omitted in conformity with a rule and regulation or written administrative interpretation of the administrator in effect at the time of the act or omission notwithstanding that after the act or omission the rule and regulation or written administrative interpretation may be determined by judicial or other authority to be invalid for any reason.

(5) The administrator prior to December 1 of each year shall establish such fees as are authorized under the provisions of K.S.A. 16a-1-101 to 16a-9-102, inclusive, and amendments thereto, for the ensuing calendar year in such amounts as the administrator may determine to be sufficient to meet the budget requirements of the administrator for each fiscal year.

Sec. 22. K.S.A. 16a-6-108 is hereby amended to read as follows: 16a-6-108. (1) If the administrator determines after notice and opportunity for a hearing that any person has engaged, is engaging or is about to engage in any act or practice constituting a violation of any provision of this act or any rule and regulation, order or administrative interpretation hereunder, the administrator by order may require that such person cease and desist from the unlawful act or practice and take such affirmative action as in the judgment of the administrator will carry out the purposes

of this act.

(2) If the administrator makes written findings of fact that the public interest will be irreparably harmed by delay in issuing an order under subsection (1), the administrator may issue an emergency cease and desist order. Such order shall be subject to the same procedures as an emergency order issued under K.S.A. 77-536, and amendments thereto. Upon the entry of such an order the administrator shall promptly notify the person subject to the order that it has been entered, of the reasons and that upon written request the matter will be set for a hearing which shall be conducted in accordance with the provisions of the Kansas administrative procedure act. If no hearing is requested and none is ordered by the administrator, the order will remain in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to the person subject to the order, shall by written findings of fact and conclusion of law vacate, modify or make permanent the order.

(3) If the administrator reasonably believes that a person has violated this act or a rule and regulation, order or administrative interpretation of the administrator under this act, the administrator, in addition to any specific power granted under this act, after notice and hearing in an administrative proceeding, unless the right to notice and hearing is waived by the person against whom the sanction is imposed, may require any or all of the following:

(a) Censure the person if the person is licensed under this act;

(b) issue an order against an applicant, licensed person, *residential mortgage loan originator registrant* or other person who knowingly violates this act or a rule and regulation, order or administrative interpretation of the administrator under this act, imposing a civil penalty up to a maximum of \$5,000 for each violation. If any person is found to have knowingly or willfully violated any provision of this act, and such violation is committed against elder or disabled persons, as defined in K.S.A. 50-676, and amendments thereto, in addition to any civil penalty otherwise provided by law, the administrator may impose an additional penalty not to exceed \$5,000 for each such violation;

(c) revoke or suspend the person's license *or registration* or bar the person from subsequently applying for a license *or registration* under this act; or

(d) issue an order requiring the person to pay restitution for any loss arising from the violation or requiring the person to disgorge any profits arising from the violation. Such order may include the assessment of interest not to exceed 8% per annum from the date of the violation.

(4) Any person aggrieved by a final order of the administrator may obtain a review of the order in accordance with the provisions of the act for judicial review and civil enforcement of agency actions.

Sec. 23. K.S.A. 16a-6-117 is hereby amended to read as follows: 16a-6-117. The administrator shall adopt rules and regulations necessary to carry out the provisions and terms of the uniform consumer credit code which are consistent with or no less restrictive than the truth-in-lending act, which is contained in title I of the consumer credit protection act, 15 U.S.C. § 1601 et seq. and regulation Z, 12 C.F.R. § 226 et seq., as amended, *the equal credit opportunity act, 15 U.S.C. § 1691-1691f and regulation B, 12 C.F.R. § 202 et seq., as amended, the real estate settlement procedures act of 1974, 12 U.S.C. § 2601 et seq., and regulation X, 24 C.F.R. §§ 3500 et seq., as amended and section 670 of the John Warner national defense authorization act for fiscal year 2007, 10 U.S.C. § 987 et seq. and 12 C.F.R. § 232 et seq.*

Sec. 24. 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 any person who takes assignments of and undertakes ~~direct~~ collection of payments from or ~~enforcement of~~ *takes assignments of and enforces* rights against debtors arising from these transactions. This part shall not apply to supervised financial organizations (K.S.A. 16a-1-301, and amendments thereto). Nothing in this section shall be construed to require the payment of any fees required by this article by attorneys or collection agencies who receive the same for collection purposes.

Sec. 25. K.S.A. 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 (5) of K.S.A. 16a-6-104, and amendments thereto, for each business location for that year.

(2) Persons required to file notification who are sellers, lessors or lenders shall pay an additional fee at the time and in the manner stated in subsection (1), in an amount established pursuant to subsection (5) of K.S.A. 16a-6-104, and amendments thereto, ~~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 (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.

Sec. 26. K.S.A. 9-2201, 9-2202, 9-2207, 9-2212, 9-2216a, 9-2220, 16a-1-303, 16a-2-301, 16a-2-302, 16a-2-303, 16a-2-304, 16a-3-308, 16a-6-104, 16a-6-108, 16a-6-117, 16a-6-201, 16a-6-203 and 16a-6-413 and K.S.A. 2008 Supp. 9-2203, 9-2205, 9-2209, 9-2211 and 9-2216 are hereby repealed.

Sec. 27. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 27, 2009.
