

## **KMBA and UCCC Modernization—Amendments, Relocation of Mortgage Business Provisions; Senate Sub. for HB 2247**

**Senate Sub. for HB 2247** removes and relocates mortgage-related provisions from the Kansas Uniform Consumer Credit Code (UCCC or Code) to the Kansas Mortgage Business Act (KMBA), adds law supplemental to the KMBA and to the UCCC, amends contract rate law, and makes several amendments to the UCCC.

The bill will take effect and be in force from and after January 1, 2025, and its publication in the statute book.

[*Note:* Kansas law regulating the conduct of mortgage business was enacted by 1996 SB 665 and codified in the Kansas Banking Code, chapter 9, article 22 of the *Kansas Statutes Annotated*. The Act was designated as the Kansas Mortgage Business Act (KMBA) by 1999 SB 241. Enacted in 1973, the Kansas Uniform Consumer Credit Code (UCCC) applies to all aspects of consumer credit, addressing transactions for personal, family, and household purposes. In general, transactions greater than \$25,000 are outside the scope of the UCCC, but any transaction may become a consumer credit transaction if the parties to the agreement choose to do so.]

### ***Kansas Mortgage Business Act (Chapter 9, Article 22)—Mortgage Provisions from the Uniform Consumer Credit Code (New Sections 1–14)***

The bill incorporates mortgage business provisions from the UCCC, which will apply only to covered transactions as defined in the KMBA (KSA 9-2201) and further specifies continuing provisions of the KMBA (e.g., mortgage business licensure and compliance, authority of the State Bank Commissioner [Commissioner]) will apply to licensed mortgage companies.

#### ***Provisions Applicable to Covered Transactions under the KMBA (New Sections 3–14)***

The bill defines a “covered transaction” (as referenced in new sections 3–14 and amendment to KSA 9-2201, section 17), to mean a mortgage loan that:

- Is a subordinate mortgage;
- Has a loan-to-value ratio at the time when made that exceeds 100 percent, except for any loan guaranteed by a federal government agency of the United States; or
- In the case of certain covered transactions (outlined in section 11), when the annual percentage rate (APR) of the loan exceeds the Code mortgage rate.

Among the provisions transferred from the UCCC, the bill provides that:

- A mortgage company could not make a covered transaction with an interest in land as security with an amount financed of \$5,000 or less in which the APR

exceeds the mortgage rate; any security interest taken in violation of this section shall be void (New Section 4).

- A consumer could not waive or agree to forgo rights or benefits relating to covered transactions (as specified in sections 3–14) except for the following claims, which could be settled by agreement if disputed in good faith:
  - By a consumer against a mortgage company for any violation of the bill's covered transactions provisions (sections 3–14); or
  - Against a consumer for default or for breach of a duty imposed by the covered transactions provisions (sections 3–14) [New Section 5].
  
- If a mortgage company, except as otherwise provided in the new provisions (sections 3–14), has violated any provisions pertaining to covered transactions, the consumer shall have a cause of action to recover from the mortgage company or person liable to the consumer actual damages and, except for a class action, a penalty in an amount determined by the court of \$750 to \$7,500. The bill provides further criteria regarding consideration of actions, including the timing to bring an action, a consumer's obligation to pay the amount financed or a charge, penalty liability when a mortgage company corrects an error, and a mortgage company's compliance with a written administrative document (New Section 6).
  
- The consumer could prepay in full the unpaid balance of a covered transaction at any time without penalty (New Section 7).
  
- The periodic finance charge for a covered transaction could not exceed 18 percent per annum, subject to the limitations provided. The periodic finance charge provisions do not apply to:
  - Loans secured by a first mortgage that constitute a covered transaction by virtue of the loan-to-value ratio that exceeds 100 percent at the time the loan is made; or
  - Covered transactions where the finance charge is governed by a contract rate provision added to KSA 16-207 by this bill, pertaining to a note secured by a real estate mortgage or a contract for deed.
    - The bill also limits prepaid finance charges on covered transactions to an amount not to exceed 8 percent of the amount financed, provided that the aggregate amount of prepaid finance charges payable to the mortgage company does not exceed 5 percent.
    - The bill further specifies when the finance charge limitations would not apply to a covered transaction for which the finance charge is governed under KSA 16-207 (New Section 8).

- In addition to the finance charge permitted in provisions pertaining to covered transactions (sections 3–14), a mortgage company is permitted to contract for and receive additional charges (e.g., closing costs that are not included in the prepaid finance charge, permitted late fees, and charges for other benefits, including insurance) (New Section 9).
- The parties to a covered transaction are permitted to contract for a late fee on any installment not paid in full within 10 calendar days after its scheduled or deferred due date in an amount not to exceed 5 percent of the unpaid amount of the installment or \$25, whichever is less. The bill permits an alternative to this late fee, by allowing the parties to contract for a late fee not to exceed \$10 on any unpaid installment after its scheduled or deferred due date, except that if the scheduled payment is \$25 or less, the maximum late fee would be \$5 (New Section 10).
- A covered transaction could not provide for the negative amortization of principal or a balloon payment when the loan-to-value ratio at the time such covered transaction was made exceeds 100 percent or when the loan's APR exceeds the Code mortgage rate unless this covered transaction is open-end, incurred to acquire or construct the consumer's principal residence, or a reverse mortgage (New Section 11).
- A mortgage company, before making a covered transaction, will be required to obtain the appraised value of the real estate to be encumbered; the bill provides notice requirements for mortgage companies when the loan-to-value ratio exceeds 100 percent (New Section 12).
- An agreement of the parties to a covered transaction with respect to default on the part of the consumer will be enforceable only under certain circumstances, including when the consumer fails to make a payment as required by the agreement (New Section 13).
- After a consumer has been in default for 10 days for failure to make a required payment in a covered transaction (payable in installments), a mortgage company may give the consumer written notice. The bill requires such notice to include a brief description of the covered transaction, the consumer's right to cure the default, and the consumer's possible liability for the reasonable costs of collection (New Section 14).

*Computation of Time; Submission of Writing or Signature in Electronic Format (New Sections 1–2)*

The bill requires calendar days to be used in computing any period of time and include Saturdays, Sundays, and legal holidays in that computation. The bill specifies that any writing or signature required by this act may be provided or executed in an electronic form. The bill provides that, if the consumer agrees to use of electronic methods instead of U.S. mail, any requirement to mail a document may be satisfied by sending the document by electronic methods.

## ***Kansas Mortgage Business Act—Amendments (Sections 17–25)***

The bill amends nine statutes within the KMBA as follows:

- **Mortgage business; definitions.** Adds definitions relating to mortgage business from the UCCC (Section 17);
- **Exempt from licensure.** Adds a licensure exemption for business entities with no employees when a related, licensed mortgage company acts as a proxy for the entity and includes such mortgage business in the proxy's report to the Commissioner (Section 18);
- **License required to conduct mortgage business; registration for a loan originator.** Adds “entities that are exempt from licensure” to those parties authorized to conduct mortgage business in Kansas (Section 19);
- **License; display; signed acknowledgment; advertising or solicitation disclosure.** Removes language pertaining to signed acknowledgments and requires a licensee to provide each consumer a notice, containing information the Commissioner may prescribe by rules and regulations, by the time the earliest of three events occurs: entering a contract, receiving compensation from a consumer, or accepting a transfer of mortgage servicing (Section 20);
- **State Bank Commissioner; powers and duties.** Updates provisions regarding administrative guidance documents to reference the Rules and Regulations Filing Act and states that the grant of powers to the Commissioner in this article does not affect remedies available to consumers under the KMBA or under other principles of law or equity (Section 21);
- **Prohibited acts for persons licensed or registered under Act.** Adds a prohibition on persons required to be licensed or registered, stating that no such person should fail to disburse the proceeds of a mortgage loan upon the satisfaction of all conditions to the disbursement and the expiration of all applicable rescission, cooling-off, or other waiting period required by law, unless the parties otherwise agree in writing (Section 22);
- **Retention of records; time period; inspection, security, preservation of records.** Makes only technical changes (Section 23);
- **Annual written report; penalty; information confidential.** Adds a provision to allow the Commissioner to apply any funds received from late penalties to a consumer education fund, to be expended as directed by the Commissioner. The bill also adds a provision regarding expiration of public records confidentiality for certain annual reports that will expire on July 1, 2030, unless the Legislature reviews and reenacts these provisions (Section 24); and
- **Citation of act; severability.** Amends the citation of the KMBA to include sections 1–14 of this bill (Section 25).

***Applicability to KMBA and UCCC [Contracts and Promises; Interest and Charges; Ch. 16, Art. 2] (Sections 26 and 27)***

The bill also updates language in statutes pertaining to contracts and promises, and not in the KMBA or UCCC, to clarify and incorporate provisions pertaining to mortgage business (KMBA) and consumer credit (UCCC).

***Contract Rate; Interest (Section 26)***

The bill adds these loans and transactions to continuing provisions in which the prescribed interest receivable limitation of 15 percent does not apply (KSA 16-207):

- A covered transaction subject to usury provisions of the KMBA;
- A consumer credit transaction subject to usury provisions of the UCCC;
- Loans made by a qualified plan to an individual participant in such plan or to a member of the family of such individual participant;
- A note secured by a real estate mortgage or a contract for deed for real estate when the note or contract for deed permits adjustment of the interest rate, the term of the loan, or the amortization schedule; or
- A business or agricultural transaction.

***Rules and Regulations; Loans Secured by Real Estate (Section 27)***

The bill removes the rulemaking authority assigned to the Consumer Credit Commissioner and the Savings and Loan Commissioner (the State Bank Commissioner and Credit Union Administrator will retain authorization to jointly adopt rules and regulations governing certain loans) [KSA 16-207d]. [Note: Powers, duties, and functions of both offices were transferred to the Office of the State Bank Commissioner, from the office of the Consumer Credit Commissioner in 1999 and from the office of the Savings and Loan Commissioner in 1993.]

***Uniform Consumer Credit Code [Chapter 16a, Articles 1–9]—Supervised Loan Licensing Exemption; Submission of Writing or Signature in Electronic Format (New Sections 15–16)***

The bill exempts the following from the supervised loan licensing requirements of the UCCC:

- A supervised financial organization;
- The Federal Deposit Insurance Corporation acting in its corporate capacity or as receiver; or

- An attorney who is forwarded contracts for collection.

The bill also specifies that any writing or signature required by this act may be provided or executed in an electronic form. If the consumer agrees to use of electronic methods instead of U.S. mail, any requirement to mail a document may be satisfied by sending the document by electronic methods.

### ***Uniform Consumer Credit Code—Amendments (Sections 28–118)***

The UCCC comprises the following articles in Chapter 16a (articles 7–8 are reserved):

- Article 1: General Provisions and Definitions;
- Article 2: Finance Charges and Related Provisions;
- Article 3: Regulation of Agreements and Practices;
- Article 4: Insurance;
- Article 5: Remedies and Penalties;
- Article 6: Administration; and
- Article 9: Effective Date and Repealer.

[*Note:* Several amendments to the UCCC are technical in nature. This bill summary reviews only substantive changes to the UCCC.]

#### ***Article 1: General Provisions and Definitions (Sections 28–37)***

The bill amends Article 1 provisions as follows.

**Short title, construction, general provisions (Part 1).** The bill updates the UCCC citation and states the UCCC takes precedence in consumer credit transactions, the Uniform Commercial Code, and other specified principles of law and equity.

**Scope and jurisdiction (Part 2).** The bill updates language pertaining to a written agreement to include electronic or physical signature. The bill also adds a condition to the list of activities constituting a consumer credit transaction made in Kansas to include:

- Excepting certain limitations for creditors' remedies, a consumer credit transaction made in a state outside of Kansas to a person who was not a resident of Kansas when the sale, lease, loan, or modification was made is valid and enforceable in Kansas according to its terms to the extent that it is valid and enforceable under the laws of the state applicable to the transaction.
  - The bill further states that the UCCC's oversight of the consumer credit transaction will not apply if the consumer is not a resident of Kansas at the time of the transaction and the parties have agreed that the law of the consumer's residence applies.

**Definitions (Part 3).** The bill adds or modifies several definitions. In addition, definitions relating to mortgage business are removed from this section. The new definition of “threshold amount” means:

- An amount equal to at least \$69,500 as of July 1, 2024, and adjusted effective January 1 of each subsequent year by an annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers [CPI-W] that was effective on June 1 of the preceding year. [*Note:* This threshold amount mirrors the current dollar threshold and annual percentage increase using the CPI-W provided for in the Truth in Lending Act (Regulation Z).]

*Article 2: Finance Charges and Related Provisions (Sections 38–60)*

The bill amends Article 2 provisions as follows:

**General provisions.** The bill removes the prescribed finance charge computation for consumer loans secured by a first or second lien real estate mortgage, which may be computed using a specified amortization method (the contract rate is divided by 360 and the resulting rate is then multiplied by the outstanding principal amount and 30 assumed days between scheduled due dates).

**Consumer credit sales, maximum finance charges (closed-end sales).** The bill removes one of the permitted types of sale in which a seller could charge a prepaid finance charge: a consumer credit sale secured by a security interest in a manufactured home (the current prepaid finance charge is limited to 5 percent of the amount financed for the sole purposes of reducing the interest rate of that sale).

**Consumer credit sales, maximum finance charges (open-end sales).** The bill removes a provision stating this section does not apply to a sale of interest in land.

**Consumer loans; supervised lenders.** The bill makes several amendments to Part 3 of Article 2, including:

- Authority to make supervised loans. Specifies that, unless a person is exempted by provisions created in the bill (new section 16), such person cannot engage in making supervised loans or taking assignments directly or indirectly. If the person is engaging in this business (taking assignments), the bill requires this person to promptly apply for a license and could, for three months, collect and enforce without such license, provided the person’s application has not been denied.
- License to make supervised loans. Provides that a license would become effective as of the date specified in writing by the Code Administrator. The bill specifies conditions for consideration of licensure abandonment, renewal, and reinstatement. The renewal fee will be established by rules and regulations. The bill also requires licensees to provide written notice, within ten business days, of certain events including the closure or relocation of any place of business. Licensees will also be required to maintain information pertaining to the name or

unique identifier of the licensee on record and a record of solicitations and advertising, for 36 months.

- Denial, revocation, or suspension of license. Updates organization of provisions pertaining to circumstances under which the Administrator may deny an application or renewal of license or revoke or suspend a supervised loan license. The bill provides for an administrative hearing, under the Kansas Administrative Procedure Act, upon the written request of an applicant or licensee.
- Records. Amends language to provide that all books, records, and any other documents required to be retained may be maintained in a photographic, reproduced, or electronic format. These documents must be made available for examination and inspection and must be delivered to the Administrator within three business days of the date such documents are requested.
- Regular schedule of payments; maximum loan term. Updates and replaces language to provide that supervised loans meeting certain criteria (that are not made pursuant to an open-end credit or lender credit cards issued by a supervised lender and in which the amount financed is \$1,000 or less and the principal is payable in more than a single payment) must be scheduled to be payable in substantially equal installments at equal periodic intervals except to the extent that the payment schedule is adjusted to the seasonal or irregular income of the debtor and over a period not to exceed 25 months.
- Prohibited acts by persons licensed or registered. Removes certain prohibitions on any person required to be a consumer credit filer, including compensation for making certain residential mortgage loans.

**Consumer loans; maximum finance charges.** The bill makes several amendments to Part 4 of Article 2, including:

- Finance charge for consumer loan. Changing the allowed finance charge on a closed-end loan (non-real estate) from a blended rate to a maximum (flat) rate of 36 percent. Prepaid finance charges will be limited to an amount not to exceed the lesser of 2 percent or \$300.
- Prohibiting surcharge on credit or debit cards. Amending provisions governing the surcharge on credit and debit cards to instead specify that no person or retailer doing business in a sales, service, or lease transaction with a customer may impose a surcharge on a customer who elects to use a credit card as payment unless such person or retailer discloses the amount of such surcharge through a clear and conspicuous notice to the customer at the point of entry or the point of sale and in advance of such transaction.
- Payday loans; finance charges; rights and duties. Adding a provision regarding repayment to state that a consumer who is unable to repay a payday loan when it is due may elect once every 12 months to repay the payday loan by means of an extended payment plan. This 12-month period will be measured from the date the



consumer pays in full an extended payment plan with the lender until the date that the consumer enters another extended payment plan. The bill outlines the process for a consumer to request such plan, its terms, and failure to pay an extended payment plan installment. The bill further specifies that no additional payday loan shall be made to the consumer during an extended payment plan.

**Consumer credit transactions, other charges and modifications.** The bill makes several amendments to Part 5 of Article 2, including:

- Additional charges. Defining “notice” as the term pertains to notice given to a consumer providing an insufficient method of payment. Provides for a service charge for an insufficient payment, not to exceed \$30. Allows a creditor to provide insurance and contract for and receive an additional charge for insurance written in connection with a transaction.
- Delinquency charges. Replacing references to “delinquency charges” with “late fees” and further states that no late fee may be assessed when such a fee or charge is attributable solely to failure of the consumer to pay a late fee on an earlier installment and the payment is otherwise a periodic payment received on the due date, or within ten calendar days after its scheduled or deferred installment due date.
- Finance charge on refinancing. Removing language that had permitted a creditor to contract for and receive a finance charge based on the amount financed resulting from the refinancing at a rate not exceeding the provisions on finance charges for certain loans (KSA 16a-2-201 or 16a-2-401), if a consumer loan is refinanced.
- Finance charge on consolidation. Removing language that would have permitted a consumer and a creditor to consolidate two unpaid balances into a single schedule of payments.
- Advances to perform covenants of consumer. Specifying that if a consumer credit transaction agreement requires a consumer to insure or preserve the collateral and the consumer fails to do so, after providing the consumer prior notification and a reasonable opportunity to perform, the creditor may pay for the performance of insuring or preserving the collateral on the consumer’s behalf and may add the payment to the unpaid debt balance.
- Recovery of collection costs and attorney fees. Providing that reasonable collection costs and attorney fees, with respect to a consumer credit transaction, shall be considered separate from reasonable expenses incurred on realizing a security interest (pursuant to KSA 16a-3-402).

*Article 3: Regulation of Agreements and Practices (Sections 61–81)*

**Disclosures.** The bill makes several amendments to Part 2 of Article 3, including:

- Consumer leases. Updating an internal reference (to KSA 16a-6-104).
- Notice to consumer. Adding a consumer notice stating a written agreement that requires or provides for the signature of a consumer and that evidences a consumer lease shall contain a clear, conspicuous, and printed notice to the consumer that such consumer should not sign the agreement before reading it and that such consumer is entitled to a copy of the agreement.
  - The following notice, if clearly and conspicuously printed, would comply with the above provision:
 

NOTICE TO CONSUMER: 1. Do not sign this agreement before you read it. 2. You are entitled to a copy of this agreement.
- Notice of assignment. Under notification of assignment of rights to payments, the bill adds a provision that if the payment is received by the assignor of a consumer credit contract for the benefit of the assignee, the date of payment shall be deemed to be the day payment is received by the assignor.
- Compliance with rules and regulations; truth in lending. Making clarifying amendments and updating an internal reference (to KSA 16a-6-104).

**Limitations on agreements and practices.** The bill makes several amendments to Part 3 of Article 3, including:

- Certain negotiable instruments prohibited. Providing, with respect to a consumer credit sale or consumer credit lease, the creditor shall only accept currently dated negotiable instruments as evidence of the obligation of the buyer or lessee. A creditor is prohibited from making the consumer credit sale contract or lease contract a negotiable instrument.
- Balloon payments. Clarifying the right to refinance, excepting those pursuant to open-end credit, for certain consumer credit transactions with a balloon payment, and removing reference to a note secured by a real-estate mortgage.
- Referral sales. Replacing provisions pertaining to a rebate, discount, or payment of value to a buyer with language providing that, in a consumer credit sale, no seller shall offer or give a rebate, discount, or otherwise pay value to the buyer in consideration of the buyer giving the seller the names of third parties, or otherwise assist the seller in making a sale to a third party when the earning of the rebate, discount, or other value is contingent upon an event subsequent to the time of sale. Similar language is provided for a consumer credit lease.

*Article 4: Insurance (Sections 82–96)*

The bill makes technical and clarifying amendments to provisions of Article 4 in parts 1–3 (insurance in general; consumer credit insurance; and property and liability insurance).

*Article 5: Remedies and Penalties (Sections 97–103)*

The bill amends Article 5 provisions as follows.

**Limitations on creditors' remedies.** The bill makes several amendments to Part 1 of Article 5, including:

- Extortionate extensions of credit. Updating provisions to remove reference to “at the time an extension of credit is made” as it pertains to any failure to make repayment that could result in the use of violence or other criminal means to cause harm to a person, reputation, or person’s property.
- Unconscionability; inducement by. Adding language to provide that the unconscionability of an act or practice is a question for the trier of fact.
- Cure of default. Providing that after a consumer has been in default for ten days for failure to make a required payment in a consumer credit transaction payable in installments, a creditor may give the consumer notice, as described in this section. Notice must be in writing and conspicuously state information including the creditor’s name, address, and telephone number; the amount of payment and date by which payment must be made to cure the default; and the consumer’s possible liability for the reasonable cost of collection.
  - The bill also provides that unless the consumer voluntarily surrenders the collateral to the creditor, the creditor may take possession of the collateral without judicial process only if possession can be taken without entry into a dwelling and without the use of force or other breach of the peace.

**Criminal penalties.** The bill amends Part 3 of Article 5 as follows.

- Intentional violations; penalties. Removes language in provisions pertaining to a conviction for an intentional violation that had prohibited imprisonment for the violation if the person proves such person had no knowledge of the rule and regulation or order. Also removes language pertaining to the criminal liability of a person that prohibited prosecution of a person with respect to the same violation may be maintained pursuant to this section and the federal Truth in Lending Act.

*Article 6: Administration (Sections 104—118)*

The bill amends Article 6 provisions as follows.

**Powers and functions of Administrator.** The bill makes several amendments to Part 1 of Article 6, including:

- Powers of administrator; reliance on rules and regulations; administrative interpretations; Nationwide Mortgage Licensing System and Registry. Clarifying provisions pertaining to the powers and duties of the Administrator, including

providing guidance to persons and groups on their rights and duties and establishing or supporting consumer education. The bill permits the Administrator to fund consumer education programs from operating funds in an amount up to one percent of operating funds.

- Examination and investigatory powers; costs. Providing that all examination material is confidential by law and privileged and not subject to the Kansas Open Records Act or subpoena and discovery, or admissible in evidence in any private civil action. The bill provides these disclosure provisions will expire on July 1, 2029, unless the Legislature reviews and reenacts such provisions prior to that date.

Further, the Administrator will be permitted to enter into an informal agreement at any time with a person to resolve a matter arising under this act, adopted rules and regulations, or an order issued pursuant to the act.

- Enforcement of act; cease and desist orders; penalties; appeals. Adding the refusal or failure to provide information requested by the Administrator to the listed acts or practices constituting a violation of this act.

**Powers and functions of Administrator.** The bill makes several amendments to Part 2 of Article 6, including:

- Applicability. Further clarifying persons or agreements that are not to be applicable to the provisions applying to a creditor engaged in this state entering into a consumer credit transaction and any person who accepts assignment of and undertakes collection of payments to exclude:
  - Supervised financial organizations; or
  - Supervised loan licensees or those registered to be licensed unless the entity:
    - Enters into consumer credit sales or consumer leases;
    - Assigns or accepts assignments of consumer credit sales or consumer leases; or
    - Attorneys or collection agencies that receive payment for collection purposes.
- Fees. Changing the deadline for consumer credit filers from April 30 to August 31. Under continuing law, consumer credit filers who are sellers, lessors, or lenders are required to pay an additional fee at this time.

**Administrative procedure and judicial review.** The bill makes amendments to Part 4 of Article 6, including:

- Applicability and scope. Providing that, subject to specific provisions found in KSA 16a-1-101 *et seq.* (the UCCC), the exercise of powers by the Administrator shall be subject to the adoption of rules and regulations pursuant to the Rules and Regulations Filing Act (codified at KSA 77-415 *et seq.*), the Kansas Administrative Procedure Act (KSA 77-501 *et seq.*), and the Kansas Judicial Review Act (KSA 77-601 *et seq.*).

### ***Insurance Code—Amendments (Section 119)***

The bill amends provisions governing mutual insurance companies (other than life) to update an internal reference (KSA 16-207).

### ***Repealed Statutes (Section 120)***

In addition to the statutes amended by the bill, the bill also repeals an additional 28 statutes within the UCCC.