

**SENATE BILL No. 242**

By Committee on Financial Institutions and Insurance

2-12

1 AN ACT concerning financial institutions; relating to consumer and  
2 mortgage lending; consolidating certain mortgage lending provisions  
3 and removing duplicate provisions from the uniform consumer credit  
4 code and incorporating such provisions into the Kansas mortgage  
5 business act; amending K.S.A. 16-207d, 16a-1-108, 16a-1-301, 16a-2-  
6 103, 16a-2-201, 16a-2-202, 16a-2-401, 16a-5-201 and 40-1209 and  
7 K.S.A. 2020 Supp. 9-2201, 9-2202, 9-2203, 9-2205, 9-2208, 9-2209, 9-  
8 2211, 9-2212, 9-2216a, 9-2220, 16-207, 16a-2-301, 16a-2-302, 16a-2-  
9 310, 16a-3-308, 16a-6-104 and 16a-6-108 and repealing the existing  
10 sections; also repealing K.S.A. 16a-2-307, 16a-3-207 and 16a-3-308a  
11 and K.S.A. 2020 Supp. 16a-1-303 and 16a-2-303a.  
12

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

14 New Section 1. (a) A mortgage servicer shall credit a payment to the  
15 consumer's account on the date of receipt, except when a delay in crediting  
16 does not result in a finance charge or other charge.

17 (b) Notwithstanding the provisions of subsection (a), if a mortgage  
18 servicer accepts a payment that does not conform to the requirements  
19 delivered to the consumer for the consumer to follow in making payments,  
20 then the mortgage servicer shall credit the payment within five days after  
21 receipt.

22 (c) This section shall be a part of and supplemental to the Kansas  
23 mortgage business act.

24 New Sec. 2. (a) Any writing or signature required by the  
25 Kansas mortgage business act may be provided or executed in an  
26 electronic form under the uniform electronic transactions act, K.S.A. 16-  
27 1601 et seq., and amendments thereto.

28 (b) If the consumer agrees in writing to the use of electronic methods  
29 instead of United States mail, any requirement under this act to mail a  
30 document may be satisfied by sending the document by electronic  
31 methods. When a document is sent by electronic methods, the time of  
32 sending and receipt shall be governed by the provisions of K.S.A. 16-  
33 1615, and amendments thereto.

34 (c) This section shall be a part of and supplemental to the Kansas  
35 mortgage business act.

36 New Sec. 3. (a) The provisions of sections 3 through 12, and

1 amendments thereto, shall apply only to covered transactions.

2 (b) This section shall be a part of and supplemental to the Kansas  
3 mortgage business act.

4 New Sec. 4. (a) A mortgage company shall not make a covered  
5 transaction with an interest in land as security, with an amount financed of  
6 \$5,000 or less, in which the annual percentage rate exceeds the code  
7 mortgage rate. A security interest taken in violation of this section is void.

8 (b) This section shall be a part of and supplemental to the Kansas  
9 mortgage business act.

10 New Sec. 5. (a) A consumer may not waive or agree to forego rights  
11 or benefits under sections 4 through 12, and amendments thereto, relating  
12 to covered transactions, except in the following instances:

13 (1) When the following claims are settled by agreement if disputed in  
14 good faith:

15 (A) Any claim by a consumer against a mortgage company for any  
16 violation of sections 4 through 12, and amendments thereto, including for  
17 a civil penalty; and

18 (B) any claim against a consumer for default or breach of a duty  
19 imposed by sections 3 through 12, and amendments thereto.

20 (2) When a claim against a consumer is settled for less value than the  
21 amount claimed.

22 (b) A settlement in which the consumer waives or agrees to forego  
23 rights or benefits under sections 4 through 12, and amendments thereto, is  
24 invalid if the court as a matter of law finds the settlement to have been  
25 unconscionable at the time it was made. The competence of the consumer,  
26 any deception or coercion practiced upon the consumer, the nature and  
27 extent of the legal advice received by the consumer and the value of the  
28 consideration are relevant to the issue of unconscionability.

29 (c) A consumer may not authorize any person to confess judgement  
30 on a claim arising out of a covered transaction. An authorization in  
31 violation of this subsection is void.

32 (d) This section shall be a part of and supplemental to the Kansas  
33 mortgage business act.

34 New Sec. 6. (a) Except as otherwise provided in sections 4 through  
35 12, and amendments thereto, if a mortgage company has violated any  
36 provision of sections 4 through 12, and amendments thereto, relating to  
37 covered transactions, the consumer shall have a cause of action to recover  
38 from the mortgage company or person liable to the consumer:

39 (1) Actual damages; and

40 (2) except for a class action, a penalty in an amount determined by  
41 the court of not less than \$750 nor more than \$7,500.

42 (b) An action under this section based on closed-end covered  
43 transaction violations shall be brought within one year of the last-

1 scheduled payment due date stated in the agreement. An action under this  
2 section based on open-end covered transaction violations shall be brought  
3 within two years from the date of occurrence.

4 (c) If a person has violated K.S.A. 9-2203, and amendments thereto,  
5 in originating a covered transaction, the covered transaction is void. The  
6 consumer shall not be obligated to pay the amount financed or the finance  
7 charge and shall have a right to recover any finance charge paid from  
8 either the person violating this act or from the consumer's mortgage  
9 servicer.

10 (d) A consumer shall not be obligated to pay a charge on a covered  
11 transaction in excess of that allowed by sections 4 through 12, and  
12 amendments thereto. A consumer has a right of refund for twice the excess  
13 charges from the person who made the excess charge or from the  
14 consumer's mortgage servicer. A consumer may demand a refund payment  
15 check or application to the outstanding obligation. After a reasonable time  
16 after demand, if the demand is refused, the consumer may recover twice  
17 the excess charge from the person liable or the creditor and, except for a  
18 class action, the penalty described in subsection (a).

19 (e) A mortgage company shall have no liability for a penalty as  
20 described in this section if, within 60 days after discovering the error, the  
21 mortgage company corrects the error through refund or adjustment and  
22 notifies the consumer of the error. This immunity shall not apply if an  
23 action has already been instituted or the consumer has provided written  
24 notice of the violation. If the violation is a contractual provision prohibited  
25 by the Kansas mortgage business act, providing a corrected copy of the  
26 writing containing the error shall be sufficient notification and correction.

27 (f) If the mortgage company establishes by a preponderance of the  
28 evidence that a violation is unintentional or the result of a good faith error  
29 of law or fact notwithstanding the maintenance of procedures reasonably  
30 adopted to avoid any such violation or error, no liability shall be imposed  
31 under this section.

32 (g) A mortgage company that complies in good faith with a written  
33 administrative guidance document shall not be subject to any penalty  
34 under this section for any act or omission in conformity with such written  
35 administrative guidance document.

36 (h) Except as otherwise provided as described in subsection (c) and  
37 sections 4 and 5, and amendments thereto, no violation of the provisions of  
38 sections 4 through 12, and amendments thereto, shall impair any right on a  
39 debt.

40 (i) The mortgage company shall reimburse the consumer's reasonable  
41 attorney fees and costs of the action if the proceeding finds that the  
42 mortgage company has violated any provision of sections 4 through 12,  
43 and amendments thereto. Reasonable attorney fees shall be determined by

1 the value of the time expended by the attorney and not by the amount of  
2 the recovery on behalf of the consumer.

3 (j) This section shall not apply to attorneys or collection agencies that  
4 did not purchase the mortgage loan.

5 (k) This section shall be a part of and supplemental to the Kansas  
6 mortgage business act.

7 New Sec. 7. (a) The consumer may prepay in full the unpaid balance  
8 of a covered transaction at any time without penalty.

9 (b) This section shall be a part of and supplemental to the Kansas  
10 mortgage business act.

11 New Sec. 8. (a) The periodic finance charge for a covered transaction  
12 may not exceed 18% per annum, subject to the limitations on prepaid  
13 finance charges set forth in this section. This subsection shall not apply to:

14 (1) A loan secured by a first mortgage that constitutes a covered  
15 transaction because the loan-to-value ratio exceeds 100% at the time the  
16 loan is made; and

17 (2) a covered transaction for which the finance charge is governed by  
18 K.S.A. 16-207(e)(4), and amendments thereto.

19 (b) If a loan secured by a first mortgage constitutes a covered  
20 transaction because the loan-to-value ratio exceeds 100% at the time the  
21 loan is made, then the periodic finance charge for the loan shall not exceed  
22 that authorized by K.S.A. 16-207(a), and amendments thereto. Such loan  
23 shall be subject to the limitations on prepaid finance charges set forth in  
24 this section and may be charged in addition to the finance charges  
25 permitted under K.S.A. 16-207(a), and amendments thereto.

26 (c) This section shall not limit or restrict the method of calculating the  
27 finance charge, if the rate and the amount of the finance charge does not  
28 exceed that permitted by this section.

29 (d) A prepaid finance charge on a covered transaction shall be limited  
30 to an amount not to exceed 8% of the amount financed, if the aggregate  
31 amount of prepaid finance charges payable to the mortgage company or  
32 any person related to such company does not exceed 5% of the amount  
33 financed. Prepaid finance charges permitted under this subsection shall be  
34 in addition to finance charges permitted under subsection (a). Prepaid  
35 finance charges permitted under this subsection shall be fully earned when  
36 paid and are non-refundable, unless the parties agree otherwise in writing.

37 (e) If, within 12 months after the date of the original covered  
38 transaction, a mortgage company or a person related to such company  
39 refinances a covered transaction with respect to which a prepaid finance  
40 charge was payable to the same person, then the following shall apply:

41 (1) If a prepaid finance charge with respect to the original covered  
42 transaction was payable to the mortgage company, then the aggregate  
43 amount of prepaid finance charges payable to the mortgage company or

1 any person related to such company with respect to the new covered  
2 transaction may not exceed 5% of the additional amount financed.

3 (2) As used in this subsection, "additional amount financed" means  
4 the difference between:

5 (A) The amount financed for the new covered transaction, less the  
6 amount of all closing costs incurred in connection with the new covered  
7 transaction that are not included in the prepaid finance charges for the new  
8 covered transaction; and

9 (B) the unpaid principal balance of the original covered transaction.

10 (f) This section shall be a part of and supplemental to the Kansas  
11 mortgage business act.

12 New Sec. 9. (a) In addition to the finance charge permitted by  
13 sections 4 through 12, and amendments thereto, for covered transactions, a  
14 mortgage company may contract for and receive the following additional  
15 charges for covered transactions:

16 (1) Closing costs incurred in connection with the covered transaction  
17 that are not included in the prepaid finance charges for the covered  
18 transaction;

19 (2) late fees permitted under section 10, and amendments thereto;

20 (3) charges for other benefits, including insurance, conferred on the  
21 consumer if the benefits are of value to the consumer and if the charges  
22 are:

23 (A) Reasonable in relation to the benefits;

24 (B) of a type that is not for credit; and

25 (C) excluded as permissible additional charges from the finance  
26 charge by rules and regulations adopted by the commissioner; and

27 (4) a service charge for an insufficient payment method not to exceed  
28 \$30, subject to the conditions below:

29 (A) Notice shall be given to a customer providing an insufficient  
30 payment method either by:

31 (i) First class mail addressed to the consumer's last known address; or

32 (ii) a clear notice of the insufficient payment method charge on the  
33 consumer's regular monthly statement.

34 (B) If the consumer does not pay the amount of the insufficient  
35 payment plus the service charge to the mortgage company within 14 days  
36 from notice, the mortgage company may add the service charge to the  
37 outstanding balance of the preexisting indebtedness of the consumer to  
38 draw interest at the contract rate applicable to the preexisting indebtedness.

39 (b) (1) With respect to an open-end covered transaction, a mortgage  
40 company may charge the following fees in an amount not to exceed that  
41 agreed to by the consumer:

42 (A) Fees on a monthly or annual basis;

43 (B) over-limit fees; and

1 (C) cash advance fees.

2 (2) The fees permitted under this subsection shall be in addition to  
3 any finance charge or other charge allowed under sections 4 through 12,  
4 and amendments thereto.

5 (c) A mortgage company may charge a borrower up to \$5 per  
6 payment when the borrower makes a single installment payment through  
7 electronic methods for a covered transaction, including when the borrower  
8 authorizes the mortgage company, verbally or in writing, to initiate the  
9 payment, no charge shall be assessed:

10 (1) If a late fee is assessed on the same installment payment; and

11 (2) when the consumer has agreed in writing to make all scheduled  
12 installment payments through the use of electronic methods.

13 (d) This section shall be a part of and supplemental to the Kansas  
14 mortgage business act.

15 New Sec. 10. (a) The parties may contract for a late fee on any  
16 installment not paid in full within 10 days after its scheduled or deferred  
17 due date in an amount not exceeding 5% of the unpaid amount of the  
18 installment or \$25, whichever is less.

19 (b) A late fee shall be assessed only once on an installment however  
20 long it remains in default. A late fee may be assessed after 10 days after its  
21 scheduled or deferred due date or at any time thereafter.

22 (c) No late fee shall be assessed on an installment that is paid in full  
23 within 10 days after its scheduled or deferred installment due date even if  
24 an earlier maturing installment or a late fee on an earlier installment may  
25 not have been paid in full.

26 (d) Payments are applied to installments in the order in which such  
27 payments fall due. When assessing late fees, a payment that was made  
28 prior to the due date of the next installment payment shall be applied to the  
29 previous installment.

30 (e) This section shall be a part of and supplemental to the Kansas  
31 mortgage business act.

32 New Sec. 11. (a) A covered transaction shall not provide for the  
33 negative amortization of principal or a balloon payment, except for an  
34 open-end transaction, incurred to acquire or construct the consumer's  
35 principal residence or a reverse mortgage.

36 (b) This section shall be a part of and supplemental to the Kansas  
37 mortgage business act.

38 New Sec. 12. (a) This section shall not apply to a mortgage company  
39 that is exempt pursuant to the provisions of K.S.A. 9-2202(a), and  
40 amendments thereto.

41 (b) Before making a covered transaction, a mortgage company shall  
42 obtain the appraised value of the real estate to be encumbered. If, based  
43 upon the appraisal, the loan-to-value ratio of the covered transaction

1 exceeds 100%, then the mortgage company shall deliver to the consumer  
2 not less than three days before the loan is made:

3 (1) A free copy of the appraisal; and

4 (2) a written notice regarding high loan-to-value mortgages and the  
5 availability of consumer credit counseling.

6 (c) If within three days after receiving the notice, the consumer elects  
7 not to enter into the covered transaction, then the mortgage company shall  
8 promptly refund to the consumer any application fees or other amounts  
9 paid by the consumer to the mortgage company, except:

10 (1) Bona fide out-of-pocket costs incurred before the consumer  
11 elected not to enter into the covered transaction, provided that such costs  
12 were paid or are payable to unrelated persons; and

13 (2) a bona fide appraisal fee paid or payable to the mortgage company  
14 or a related person.

15 (d) This section shall be a part of and supplemental to the Kansas  
16 mortgage business act.

17 Sec. 13. K.S.A. 2020 Supp. 9-2201 is hereby amended to read as  
18 follows: 9-2201. As used in this act:

19 (a) *"Amount financed" means the net amount of credit provided to the*  
20 *consumer or on the consumer's behalf. The amount financed shall be*  
21 *calculated as provided in rules and regulations adopted by the*  
22 *commissioner.*

23 (b) *"Annual percentage rate" means the finance charge expressed as*  
24 *a yearly rate, calculated in accordance with the actuarial method. The*  
25 *annual percentage rate shall be calculated as provided in rules and*  
26 *regulations adopted by the commissioner.*

27 (c) *"Application" means the submission of a consumer's financial*  
28 *information, including the consumer's name, income and social security*  
29 *number to obtain a credit report, the property address, an estimate of the*  
30 *value of the property and the mortgage loan amount sought, for the*  
31 *purpose of obtaining an extension of credit.*

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

34 ~~(1) Is located in this state;~~

35 ~~(2) is not located in a personal residence;~~

36 ~~(3) has regular hours of operation;~~

37 ~~(4) is accessible to the public;~~

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

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

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

42 ~~(e)(d) "Appraised value" means, with respect to any real estate at any~~  
43 ~~time:~~

1       (1) *The total appraised value of the real estate, as reflected in the*  
2 *most recent records of the tax assessor of the county in which the real*  
3 *estate is located;*

4       (2) *the fair market value of the real estate, as reflected in a written*  
5 *appraisal of the real estate performed by a Kansas licensed or certified*  
6 *appraiser within the past 12 months; or*

7       (3) *in the case of a nonpurchase-money real estate transaction, the*  
8 *estimated market value as determined through a method acceptable to the*  
9 *commissioner. In determining the acceptability of the method, the*  
10 *commissioner shall consider the reliability and impartiality of the method*  
11 *under the circumstances. The commissioner may consider industry*  
12 *standards or customs. A method shall not be acceptable if the resulting*  
13 *value is predetermined or when the fee to be paid to the method provider*  
14 *is contingent upon the property valuation reached or upon the*  
15 *consequences resulting from the property valuation reached.*

16       (e) *"Balloon payment" means any required payment that is more than*  
17 *twice as large as the average of all earlier scheduled payments.*

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

21       (g) *"Closed-end covered transaction" means a covered transaction*  
22 *that is not an open-end covered transaction.*

23       (h) *"Closing costs" means:*

24       (1) *The actual fees paid to a public official or agency of the state or*  
25 *federal government for filing, recording or releasing any instrument*  
26 *relating to the debt; and*

27       (2) *bona fide and reasonable expenses incurred by the mortgage*  
28 *company in connection with the making, closing, disbursing, extending,*  
29 *readjusting or renewing the debt that are payable to third parties not*  
30 *related to the mortgage company, except that a reasonable fee for an*  
31 *appraisal made by the mortgage company or related party is permissible.*

32       (i) (1) *"Code mortgage rate" means the greater of:*

33       (A) *12%; or*

34       (B) *the sum of:*

35       (i) *The required net yield published by the federal national mortgage*  
36 *association for 60-day mandatory delivery whole-loan commitments for*  
37 *30-year fixed-rate mortgages with actual/actual remittance on the first day*  
38 *for which the required net yield was published in the previous month; and*

39       (ii) *5%.*

40       (2) *If the reference rate referred to in subparagraph (B)(i) is*  
41 *discontinued, becomes impractical to use or is otherwise not readily*  
42 *ascertainable for any reason, the commissioner may designate a*  
43 *comparable replacement reference rate and, upon publishing notice of the*



1 same, such replacement reference rate shall be come the reference rate  
2 referred to in subparagraph (B)(i). The secretary of state shall publish  
3 notice of the code mortgage rate not later than the second issue of the  
4 Kansas register published each month.

5 ~~(d)~~(j) "Commissioner" means the state bank commissioner or  
6 designee, who shall be the deputy commissioner of the consumer and  
7 mortgage lending division of the office of the state bank commissioner.

8 (k) "Consumer" means an individual to whom credit is offered or  
9 granted under this act.

10 (l) "Covered transaction" means a mortgage loan that:

11 (1) Is a subordinate mortgage;

12 (2) has a loan-to-value ratio at the time when made exceeds 100%,  
13 except for any loan guaranteed by a government program; or

14 (3) subject to the provisions of section 11, and amendments thereto,  
15 the annual percentage rate of the loan exceeds the code mortgage rate.

16 (m) "Finance charge" means all charges payable directly or  
17 indirectly by the consumer and imposed directly or indirectly by the  
18 mortgage company as an incident to or as a condition of the extension of  
19 credit. The finance charge shall be calculated as provided in rules and  
20 regulations adopted by the commissioner.

21 ~~(e)~~(n) "Individual" means a human being.

22 (o) "Insufficient payment method" means any instrument as defined  
23 in K.S.A. 84-3-104, and amendments thereto, drawn on a financial  
24 institution for the payment of money and delivered in payment, in whole or  
25 in part, of preexisting indebtedness of the drawer or the maker; and which  
26 is refused payment by the drawee because the drawer or maker does not  
27 have sufficient funds in or credits with the drawee to pay the amount of the  
28 instrument upon presentation.

29 (p) "Installment" means a periodic payment required or permitted by  
30 agreement in connection with a covered transaction.

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

33 (r) "Licensed mortgage company" means a mortgage company that  
34 has been licensed as required by this act.

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

37 ~~(h)~~(t) "Loan originator" means an individual:

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

40 (2) whose conduct of mortgage business is the responsibility of the  
41 licensee;

42 (3) who takes a residential mortgage loan application or offers or  
43 negotiates terms of a residential mortgage loan for compensation or gain or

1 in the expectation of compensation or gain; and

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

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

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

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

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

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

29 (v) "*Loan-to-value ratio*" means a fraction expressed as a percentage  
30 at any time:

31 (1) *The numerator of which is the aggregate unpaid principal*  
32 *balance of all loans secured by a mortgage; and*

33 (2) *the denominator of which is the appraised value of the real estate.*

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

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

1       (†)(y) "Mortgage loan" means a loan or agreement to extend credit  
 2 made to one or more individuals—~~which~~ *that* is secured by a first or  
 3 subordinate mortgage, deed of trust, contract for deed or other similar  
 4 instrument or document representing a security interest or lien, except as  
 5 provided for in K.S.A. 60-1101 through 60-1110, and amendments thereto,  
 6 upon any lot intended for residential purposes or a one-to-four family  
 7 dwelling as defined in 15 U.S.C. § 1602(w), located in this state, occupied  
 8 or intended to be occupied for residential purposes by the owner, including  
 9 the renewal or refinancing of any such loan.

10       (‡)(z) "Mortgage servicer" means any person engaged in mortgage  
 11 servicing.

12       (†)(aa) "Mortgage servicing" means collecting payment, remitting  
 13 payment for another or the right to collect or remit payment of any of the  
 14 following: Principal; interest; tax; insurance; or other payment under a  
 15 mortgage loan.

16       (†)(bb) "Nationwide mortgage licensing system and registry" means a  
 17 mortgage licensing system developed and maintained by the conference of  
 18 state bank supervisors and the American association of residential  
 19 mortgage regulators for the licensing and registration of mortgage loan  
 20 originators.

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

23       (dd) *"Open-end covered transaction" means a covered transaction in*  
 24 *which a mortgage company:*

25       (1) *Reasonably contemplates repeated transactions;*

26       (2) *may impose a finance charge on an outstanding unpaid balance*  
 27 *from time-to-time; and*

28       (3) *extends an amount of credit to the consumer during the term of*  
 29 *the mortgage loan, up to any set limit, that is generally made available to*  
 30 *the extent that any outstanding balance is repaid.*

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

34       (ff) *"Prepaid finance charge" means any finance charge paid*  
 35 *separately before or at consummation of a transaction or withheld from*  
 36 *the proceeds of the credit at any time.*

37       (†)(gg) "Primary market" means the market wherein mortgage  
 38 business is conducted, including activities conducted by any person who  
 39 assumes or accepts any mortgage business responsibilities of the original  
 40 parties to the transaction.

41       (hh) *"Principal" or "principal of a mortgage loan" means the total of*  
 42 *the amount financed and the prepaid finance charges, except that prepaid*  
 43 *finance charges shall not be added to the amount financed to the extent*

1 *that such prepaid finance charges are paid separately by the consumer.*

2 ~~(s)~~(ii) "Principal place of business" means a licensed place of  
3 business where mortgage business is conducted, ~~which~~ *that* has been  
4 designated by a licensee as the primary headquarters from which all  
5 mortgage business and administrative activities are managed and directed.

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

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

10 (ll) *"Related person" with respect to a person means:*

11 (1) *A person directly or indirectly controlling, controlled by or under*  
12 *common control of another person;*

13 (2) *an officer or director employed by the person performing similar*  
14 *functions with another person;*

15 (3) *a relative by blood, adoption or marriage of a person within the*  
16 *fourth degree of relationship; or*

17 (4) *an individual who shares the same home with such person.*

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

21 Sec. 14. K.S.A. 2020 Supp. 9-2202 is hereby amended to read as  
22 follows: 9-2202. The following are exempt from the licensing  
23 requirements of this act:

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

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

33 (c) the United States of America, the state of Kansas, any other state,  
34 or any agency or instrumentality of any governmental entity;

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

40 (e) not-for-profit entities that provide mortgage loans in conjunction  
41 with a mission of building or rehabilitating affordable homes to low-  
42 income consumers; *and*

43 (f) *business entities with no employees when a related, licensed*

1 *mortgage company acts as a proxy for the entity by conducting all*  
2 *mortgage business on behalf of the entity and by including all such*  
3 *mortgage business in the proxy's reports to the commissioner, but the*  
4 *entity and the proxy are jointly and severally liable for violations of this*  
5 *act by the proxy.*

6 Sec. 15. K.S.A. 2020 Supp. 9-2203 is hereby amended to read as  
7 follows: 9-2203. (a) Mortgage business shall only be conducted in this  
8 state at or from a mortgage company licensed by the commissioner as  
9 required by this act. A licensee shall be responsible for all mortgage  
10 business conducted on their behalf by loan originators or other employees.

11 (b) Mortgage business involving loan origination shall only be  
12 conducted in this state by an individual who has first been registered with  
13 the commissioner as a loan originator as required by this act and maintains  
14 a valid unique identifier issued by the nationwide mortgage licensing  
15 system and registry, if operational at the time of registration.

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

19 (d) Nothing under this act shall require a licensee to obtain any other  
20 license under any other act for the sole purpose of conducting non-  
21 depository mortgage business.

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

28 (f) No prosecution for any crime under this act may be commenced  
29 more than five years after the alleged violation. A prosecution is  
30 commenced when a complaint or information is filed, or an indictment  
31 returned, and a warrant thereon is delivered to the sheriff or other officer  
32 for execution, except that no prosecution shall be deemed to have been  
33 commenced if the warrant so issued is not executed without unreasonable  
34 delay.

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

37 Sec. 16. K.S.A. 2020 Supp. 9-2205 is hereby amended to read as  
38 follows: 9-2205. (a) A license or registration shall become effective as of  
39 the date specified in writing by the commissioner.

40 ~~(b) A license shall be renewed annually by filing with the~~  
41 ~~commissioner, at least 30 days prior to the expiration of the license, a~~  
42 ~~renewal application, containing information the commissioner requires to~~  
43 ~~determine the existence of material changes from the information~~

1 ~~contained in the applicant's original license application or prior renewal~~  
2 ~~applications~~ *Each license and registration shall expire on December 31 of*  
3 *each year. A license or registration shall be renewed by filing with the*  
4 *commissioner a complete renewal application and nonrefundable renewal*  
5 *fee by December 1 of each year.*

6 (c) ~~A registration shall be renewed annually by filing with the~~  
7 ~~commissioner, at least 30 days prior to the expiration of the registration, a~~  
8 ~~renewal application, containing information the commissioner requires to~~  
9 ~~determine the existence of material changes from the information~~  
10 ~~contained in the applicant's original registration application or prior~~  
11 ~~renewal applications, including the completion of any continuing~~  
12 ~~education requirements~~ *Renewal applications received after December 1*  
13 *of each year may be assessed a late fee.*

14 (d) ~~Each renewal application shall be accompanied by a~~  
15 ~~nonrefundable fee which shall be established by rules and regulations~~  
16 ~~pursuant to K.S.A. 9-2209, and amendments thereto~~ *An expired license or*  
17 *registration may be reinstated through the last day of February of each*  
18 *year, with the same force and effect as if the license or registration had not*  
19 *expired and had, at all times, remained in full force and effect, by filing a*  
20 *reinstatement application and paying the appropriate application and late*  
21 *fees.*

22 (e) Any renewal or reinstatement application received by the  
23 commissioner after the expiration date of the current license or registration  
24 last day of February of each year shall be treated as an original application  
25 and shall be subject to all reporting and fee requirements contained in  
26 K.S.A. 9-2204, and amendments thereto.

27 (f) *Any funds received from late penalties under this section shall be*  
28 *remitted by the commissioner to the state treasurer in accordance with the*  
29 *provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of*  
30 *each such remittance, the state treasurer shall credit the entire amount to*  
31 *funds as designated by the commissioner including a consumer education*  
32 *fund, to be expended for such purpose as directed by the commissioner.*

33 Sec. 17. K.S.A. 2020 Supp. 9-2208 is hereby amended to read as  
34 follows: 9-2208. (a) Each licensee shall make available the evidence of  
35 licensure of each licensed location in a way that reasonably assures  
36 recognition by consumers and members of the general public.

37 (b) ~~Prior to entering into any contract for the provision of services or~~  
38 ~~prior to the licensee receiving any compensation or promise of~~  
39 ~~compensation for a mortgage loan the licensee shall acquire from the~~  
40 ~~consumer a signed acknowledgment containing such information as the~~  
41 ~~commissioner may prescribe by rule and regulation. The signed~~  
42 ~~acknowledgment shall be retained by the licensee and a copy shall be~~  
43 ~~provided to the consumer~~ *The licensee shall provide each consumer a*

1 *notice, containing such information as the commissioner may prescribe by*  
2 *rules and regulations, before the earliest of the following:*

3 (1) *The time of entering into any contract with a consumer for the*  
4 *provision of services for a mortgage loan;*

5 (2) *the time of receiving any compensation or promise of*  
6 *compensation from or on behalf of a consumer for a mortgage loan; and*

7 (3) *15 days after accepting a transfer of mortgage servicing.*

8 (c) All solicitations and published advertisements concerning  
9 mortgage business directed at Kansas residents, including those on the  
10 internet or by other electronic means, shall contain the name and license  
11 number or unique identifier of the licensee on record with the  
12 commissioner. Each licensee shall maintain a record of all solicitations or  
13 advertisements for a period of 36 months. For the purpose of this  
14 subsection, "advertising" does not include business cards or promotional  
15 items.

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

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

23 Sec. 18. K.S.A. 2020 Supp. 9-2209 is hereby amended to read as  
24 follows: 9-2209. (a) The commissioner may exercise the following  
25 powers:

26 (1) Adopt rules and regulations as necessary to carry out the intent  
27 and purpose of this act and to implement the requirements of applicable  
28 federal law;

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

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

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

43 (5) exchange any information regarding the administration of this act

1 with any agency of the United States or any state which regulates the  
2 licensee or registrant or administers statutes, rules and regulations or  
3 programs related to mortgage business and to enter into information  
4 sharing arrangements with other governmental agencies or associations  
5 representing governmental agencies which are deemed necessary or  
6 beneficial to the administration of this act;

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

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

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

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

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

30 (11) require fingerprinting of any applicant, registrant, licensee,  
31 members thereof if a copartnership or association, or officers and directors  
32 thereof if a corporation, or any agent acting on their behalf, or other person  
33 as deemed appropriate by the commissioner. The commissioner or the  
34 commissioner's designee, may submit such fingerprints to the Kansas  
35 bureau of investigation, federal bureau of investigation or other law  
36 enforcement agency for the purposes of verifying the identity of such  
37 persons and obtaining records of their criminal arrests and convictions. For  
38 the purposes of this section and in order to reduce the points of contact  
39 which the federal bureau of investigation may have to maintain with the  
40 individual states, the commissioner may use the nationwide mortgage  
41 licensing system and registry as a channeling agent for requesting  
42 information from and distributing information to the department of justice  
43 or any governmental agency;



1 (12) refer such evidence as may be available concerning any violation  
2 of this act or of any rule and regulation or order hereunder to the attorney  
3 general, or in consultation with the attorney general to the proper county or  
4 district attorney, who may in such prosecutor's discretion, with or without  
5 such a referral, institute the appropriate criminal proceedings under the  
6 laws of this state;

7 (13) issue and apply to enforce subpoenas in this state at the request  
8 of a comparable official of another state if the activities constituting an  
9 alleged violation for which the information is sought would be a violation  
10 of the Kansas mortgage business act if the activities had occurred in this  
11 state;

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

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

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

28 (17) receive and act on complaints, take action designed to obtain  
29 voluntary compliance with the provisions of the Kansas mortgage business  
30 act or commence proceedings on the commissioner's own initiative;

31 (18) provide guidance to persons and groups on their rights and duties  
32 under the Kansas mortgage business act;

33 (19) enter into any informal agreement with any mortgage company  
34 for a plan of action to address violations of law. The adoption of an  
35 informal agreement authorized by this paragraph shall not be subject to the  
36 provisions of K.S.A. 77-501 et seq., and amendments thereto, or K.S.A.  
37 77-601 et seq., and amendments thereto. Any informal agreement  
38 authorized by this paragraph shall not be considered an order or other  
39 agency action, and shall be considered confidential examination material  
40 pursuant to K.S.A. 9-2217, and amendments thereto. All such examination  
41 material shall also be confidential by law and privileged, shall not be  
42 subject to the open records act, K.S.A. 45-215 et seq., and amendments  
43 thereto, shall not be subject to subpoena and shall not be subject to

1 discovery or admissible in evidence in any private civil action. ~~The~~  
2 ~~provisions of this paragraph shall expire on July 1, 2021, unless the~~  
3 ~~legislature reviews and reenacts this provision pursuant to K.S.A. 45-229,~~  
4 ~~and amendments thereto, prior to July 1, 2021; and~~

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

8 (b) For the purpose of any examination, investigation or proceeding  
9 under this act, the commissioner or any officer designated by the  
10 commissioner may administer oaths and affirmations, subpoena witnesses,  
11 compel such witnesses' attendance, adduce evidence and require the  
12 production of any matter which is relevant to the examination or  
13 investigation, including the existence, description, nature, custody,  
14 condition and location of any books, documents or other tangible things  
15 and the identity and location of persons having knowledge of relevant  
16 facts, or any other matter reasonably calculated to lead to the discovery of  
17 relevant information or items.

18 (c) In case of contumacy by, or refusal to obey a subpoena issued to  
19 any person, any court of competent jurisdiction, upon application by the  
20 commissioner, may issue to that person an order requiring the person to  
21 appear before the commissioner, or the officer designated by the  
22 commissioner, there, to produce documentary evidence if so ordered or to  
23 give evidence touching the matter under investigation or in question. Any  
24 failure to obey the order of the court may be punished by the court as a  
25 contempt of court.

26 (d) No person is excused from attending and testifying or from  
27 producing any document or record before the commissioner or in  
28 obedience to the subpoena of the commissioner or any officer designated  
29 by the commissioner or in any proceeding instituted by the commissioner,  
30 on the ground that the testimony or evidence, documentary or otherwise,  
31 required of the person may tend to incriminate the person or subject the  
32 person to a penalty or forfeiture. No individual may be prosecuted or  
33 subjected to any penalty or forfeiture for or on account of any transaction,  
34 matter or thing concerning which such person is compelled, after claiming  
35 privilege against self-incrimination, to testify or produce evidence,  
36 documentary or otherwise, except that the individual so testifying shall not  
37 be exempt from prosecution and punishment for perjury committed in so  
38 testifying.

39 (e) Except for refund of an excess charge, no liability is imposed  
40 under the Kansas mortgage business act for an act done or omitted in  
41 conformity with a rule and regulation or written administrative  
42 ~~interpretation~~ *guidance document* of the commissioner in effect at the time  
43 of the act or omission, notwithstanding that after the act or omission, the

1 rule and regulation or written administrative ~~interpretation~~ *guidance*  
 2 *document* may be determined by judicial or other authority to be invalid  
 3 for any reason.

4 (f) *The grant of powers to the commissioner in this article shall not*  
 5 *affect remedies available to consumers under K.S.A. 9-2201 et seq., and*  
 6 *amendments thereto, or under other applicable law.*

7 Sec. 19. K.S.A. 2020 Supp. 9-2211 is hereby amended to read as  
 8 follows: 9-2211. (a) Each applicant or licensee ~~who maintains a bona fide~~  
 9 ~~office~~ shall file with the commissioner a surety bond in the amount of not  
 10 less than ~~\$50,000~~ *\$100,000*, in a form acceptable to the commissioner,  
 11 issued by an insurance company authorized to conduct business in this  
 12 state, securing the applicant's or licensee's faithful performance of all  
 13 duties and obligations of a licensee meeting the following requirements:

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

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

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

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

32 (1) ~~File with the commissioner a surety bond in the amount of not~~  
 33 ~~less than \$100,000, in a form acceptable to the commissioner, issued by an~~  
 34 ~~insurance company authorized to conduct business in this state, securing~~  
 35 ~~the applicant's or licensee's faithful performance of all duties and~~  
 36 ~~obligations of a licensee meeting the requirements set forth in subsections~~  
 37 ~~(a)(1), (a)(2) and (a)(3) of this section; and~~

38 (2) ~~submit evidence that establishes, to the commissioner's~~  
 39 ~~satisfaction, that the applicant or licensee is solvent and shall at all times~~  
 40 ~~maintain a minimum positive net worth of \$50,000. Evidence of solvency~~  
 41 ~~and net worth shall include the submission of a balance sheet of the~~  
 42 ~~applicant or a consolidated financial statement of the entity that owns or~~  
 43 ~~controls the applicant accompanied by a written statement by an~~

1 independent certified public accountant attesting that the balance sheet or  
2 the consolidated financial statement has been reviewed in accordance with  
3 generally accepted accounting principles. Should the applicant or licensee  
4 choose a different accounting system other than generally accepted  
5 accounting principles, the burden to demonstrate that the accounting  
6 principles meet or exceed the generally accepted accounting principles  
7 shall be on the applicant or licensee using the alternate accounting  
8 principle method.

9 Sec. 20. K.S.A. 2020 Supp. 9-2212 is hereby amended to read as  
10 follows: 9-2212. No person required to be licensed or registered under this  
11 act shall directly or indirectly:

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

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

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

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

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

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

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

31 (f) engage in any transaction, practice or business conduct that is not  
32 in good faith, or that operates a fraud upon any person in connection with  
33 conducting mortgage business;

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

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

43 (i) advertise, display, distribute, broadcast or televise, or cause or

1 permit to be advertised, displayed, distributed, broadcast or televised, in  
 2 any manner, any false, misleading or deceptive statement or representation  
 3 with regard to rates, terms or conditions for a mortgage loan;

4 *(j) fail to disburse the proceeds of a mortgage loan upon the*  
 5 *satisfaction of all conditions to the disbursement and the expiration of all*  
 6 *applicable rescission, cooling-off or other waiting periods required by*  
 7 *law, unless the parties otherwise agree in writing;*

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

13 ~~(k)~~*(l) transfer, assign or attempt to transfer or assign, a license or*  
 14 *registration to any other person, or assist or ~~aid~~ aid and abet any person*  
 15 *who does not hold a valid license or registration under this act in engaging*  
 16 *in the conduct of mortgage business who is not properly licensed or*  
 17 *registered, unless such person is exempt under K.S.A. 9-2202, and*  
 18 *amendments thereto;*

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

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

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

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

37 Sec. 21. K.S.A. 2020 Supp. 9-2216a is hereby amended to read as  
 38 follows: 9-2216a. (a) Each licensee shall annually, on or before April 1,  
 39 file a written report with the commissioner containing the information that  
 40 the commissioner may reasonably require concerning the licensee's  
 41 business and operations during the preceding calendar year. The report  
 42 shall be made in the form prescribed by the commissioner, which may  
 43 include reports filed with the nationwide mortgage licensing system and

1 registry. Any licensee who fails to file the report required by this section  
 2 with the commissioner by April 1 shall be subject to a late penalty of \$100  
 3 for each day after April 1 the report is delinquent, but in no event shall the  
 4 aggregate of late penalties exceed \$5,000. The commissioner may relieve  
 5 any licensee from the payment of any penalty, in whole or in part, for good  
 6 cause. *Any funds received from late penalties under this section shall be*  
 7 *remitted by the commissioner to the state treasurer in accordance with the*  
 8 *provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of*  
 9 *each such remittance, the state treasurer shall credit the entire amount to*  
 10 *funds as designated by the commissioner including a consumer education*  
 11 *fund, to be expended for such purpose as directed by the commissioner.*  
 12 The filing of the annual written report required under this section shall  
 13 satisfy any other reports required of a licensee under this act.

14 (b) Information contained in the annual report shall be confidential  
 15 and may be published only in composite form. ~~The provisions of this~~  
 16 ~~subsection shall expire on July 1, 2022, unless the legislature reviews and~~  
 17 ~~re-enacts this provision prior to July 1, 2022.~~

18 Sec. 22. K.S.A. 2020 Supp. 9-2220 is hereby amended to read as  
 19 follows: 9-2220. (a) The provisions of K.S.A. 9-2201 through 9-2220, and  
 20 amendments thereto, ~~and K.S.A. 9-2216a, and amendments thereto, and~~  
 21 ~~sections 1 through 12, and amendments thereto,~~ shall be known and may  
 22 be cited as the Kansas mortgage business act.

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

26 Sec. 23. K.S.A. 16a-1-108 is hereby amended to read as follows: 16a-  
 27 1-108. (1) K.S.A. 16a-1-101 through 16a-9-102, and amendments thereto,  
 28 prescribes maximum charges for all creditors, except lessors and those  
 29 excluded ~~( pursuant to K.S.A. 16a-1-202, and amendments thereto),~~  
 30 extending consumer credit including consumer credit sales ~~(subsection~~  
 31 ~~(14) of pursuant to K.S.A. 16a-1-301(11), and amendments thereto),~~ and  
 32 consumer loans ~~(subsection (17) of pursuant to K.S.A. 16a-1-301(14), and~~  
 33 ~~amendments thereto),~~ and displaces existing limitations on the powers of  
 34 those creditors based on maximum charges.

35 (2) With respect to sellers of goods or services, small loan companies,  
 36 licensed lenders, consumer and sales finance companies, industrial banks  
 37 and loan companies; and commercial banks and trust companies, this act  
 38 displaces existing limitations on their powers based solely on amount or  
 39 duration of credit.

40 (3) Except as provided in subsection (1) and in the article on effective  
 41 date and repealer ~~(, article 9),~~ K.S.A. 16a-1-101 through 16a-9-102, and  
 42 amendments thereto, does not displace limitations on powers of credit  
 43 unions, savings banks, savings and loan associations, or other thrift

1 institutions whether organized for the profit of shareholders or as mutual  
2 organizations.

3 (4) Except as provided in subsections (1) and (2) and in the article on  
4 effective date and repealer-~~( article 9)~~, K.S.A. 16a-1-101 through 16a-9-  
5 102, and amendments thereto, does not displace:

6 (a) Limitations on powers of supervised financial organizations  
7 ~~(subsection (44) of K.S.A. 16a-1-301(44), and amendments thereto)~~, with  
8 respect to the amount of a loan to a single borrower, ~~the ratio of a loan to~~  
9 ~~the value of collateral, the duration of a loan secured by an interest in land,~~  
10 or other similar restrictions designed to protect deposits; or

11 (b) limitations on powers an organization is authorized to exercise  
12 under the laws of this state or the United States.

13 Sec. 24. K.S.A. 16a-1-301 is hereby amended to read as follows: 16a-  
14 1-301. In addition to definitions appearing in subsequent articles, in K.S.A.  
15 16a-1-101 through 16a-9-102, and amendments thereto:

16 (1) "Actuarial method" means the method of allocating payments  
17 made on a debt between the principal and the finance charge pursuant to  
18 which a payment is applied, assuming no delinquency charges or other  
19 additional charges are then due, first to the accumulated finance charge  
20 and then to the unpaid principal balance. When a finance charge is  
21 calculated in accordance with the actuarial method, the contract rate is  
22 applied to the unpaid principal balance for the number of days the  
23 principal balance is unpaid. At the end of each computational period, or  
24 fractional computational period, the unpaid principal balance is increased  
25 by the amount of the finance charge earned during that period and is  
26 decreased by the total payment, if any, made during the period after the  
27 deduction of any delinquency charges or other additional charges due  
28 during the period.

29 (2) "Administrator" means the deputy commissioner of the consumer  
30 and mortgage lending division appointed by the bank commissioner  
31 pursuant to K.S.A. 75-3135, and amendments thereto.

32 (3) "Agreement" means the bargain of the parties in fact as found in  
33 their language or by implication from other circumstances including  
34 course of dealing or usage of trade or course of performance.

35 (4) "Amount financed" means the net amount of credit provided to  
36 the consumer or on the consumer's behalf. The amount financed shall be  
37 calculated as provided in rules and regulations adopted by the  
38 administrator pursuant to K.S.A. 16a-6-117, and amendments thereto.

39 (5) "Annual percentage rate" means the finance charge expressed as a  
40 yearly rate, as calculated in accordance with the actuarial method. The  
41 annual percentage rate shall be calculated as provided in rules and  
42 regulations adopted by the administrator pursuant to K.S.A. 16a-6-117,  
43 and amendments thereto.

1       (6) ~~"Appraised value" means, with respect to any real estate at any~~  
2 ~~time:~~

3       (a) ~~The total appraised value of the real estate, as reflected in the most~~  
4 ~~recent records of the tax assessor of the county in which the real estate is~~  
5 ~~located;~~

6       (b) ~~the fair market value of the real estate, as reflected in a written~~  
7 ~~appraisal of the real estate performed by a Kansas licensed or certified~~  
8 ~~appraiser within the past 12 months; or~~

9       (c) ~~in the case of a nonpurchase money real estate transaction, the~~  
10 ~~estimated market value as determined through an automated valuation~~  
11 ~~model acceptable to the administrator. As used in this paragraph (c),~~  
12 ~~"automated valuation model" means an automated system that is used to~~  
13 ~~derive a property value through the use of publicly available property~~  
14 ~~records and various analytic methodologies such as comparable sales~~  
15 ~~prices, home characteristics and historical home price appreciations.~~  
16 ~~Automated valuation models must be validated by an independent credit~~  
17 ~~rating agency. An automated valuation model provider shall not accept a~~  
18 ~~property valuation assignment when the assignment itself is contingent~~  
19 ~~upon the automated valuation model provider reporting a predetermined~~  
20 ~~property valuation, or when the fee to be paid to the automated valuation~~  
21 ~~model provider is contingent upon the property valuation reached or upon~~  
22 ~~the consequences resulting from the property valuation assignment.~~

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

25       (8)(7) "Cash price" of goods; *or* services; ~~or an interest in land~~ means  
26 the price at which they are offered for sale by the seller to cash buyers in  
27 the ordinary course of business and may include:

28       (a) The cash price of accessories or services related to the sale, such  
29 as delivery, installation, alterations, modifications, and improvements; and

30       (b) taxes to the extent imposed on a cash sale of the goods; *or*  
31 services; ~~or interest in land~~. The cash price stated by the seller to the buyer  
32 in a disclosure statement is presumed to be the cash price.

33       (9)(8) "Closed end credit" means a consumer loan or a consumer  
34 credit sale which is not incurred pursuant to open end credit.

35       (10) ~~"Closing costs" with respect to a debt secured by an interest in~~  
36 ~~land includes:~~

37       (a) ~~The actual fees paid a public official or agency of the state or~~  
38 ~~federal government, for filing, recording or releasing any instrument~~  
39 ~~relating to the debt; and~~

40       (b) ~~bona fide and reasonable expenses incurred by the lender in~~  
41 ~~connection with the making, closing, disbursing, extending, readjusting or~~  
42 ~~renewing the debt which are payable to third parties not related to the~~  
43 ~~lender, except that reasonable fees for an appraisal made by the lender or~~



1 related party are permissible.

2 ~~(11) "Code mortgage rate" means the greater of:~~

3 ~~(a) 12%; or~~

4 ~~(b) the sum of:~~

5 ~~(i) The yield on 30-year fixed rate conventional home mortgage loans~~  
 6 ~~committed for delivery within 61 to 90 days accepted under the federal~~  
 7 ~~home loan mortgage corporation's or any successor's daily offerings for~~  
 8 ~~sale on the last day on which commitments for such mortgages were~~  
 9 ~~received in the previous month; and~~

10 ~~(ii) 5%.~~

11 ~~If the reference rate referred to in subparagraph (i) of paragraph (b) is~~  
 12 ~~discontinued, becomes impractical to use, or is otherwise not readily~~  
 13 ~~ascertainable for any reason, the administrator may designate a~~  
 14 ~~comparable replacement reference rate and, upon publishing notice of the~~  
 15 ~~same, such replacement reference rate shall become the reference rate~~  
 16 ~~referred to in subparagraph (i) of paragraph (b). The secretary of state shall~~  
 17 ~~publish notice of the code mortgage rate not later than the second issue of~~  
 18 ~~the Kansas register published each month.~~

19 ~~(12)(9) "Conspicuous" means a term or clause is conspicuous when it~~  
 20 ~~is so written that a reasonable person against whom it is to operate ought~~  
 21 ~~to have noticed it. Whether a term or clause is conspicuous or not is for~~  
 22 ~~decision by the trier of fact.~~

23 ~~(13)(10) "Consumer" means the buyer, lessee, or debtor to whom~~  
 24 ~~credit is granted in a consumer credit transaction.~~

25 ~~(14)(11) "Consumer credit sale":~~

26 ~~(a) Except as provided in paragraph (b), a "consumer credit sale" is~~  
 27 ~~means a sale of goods; or services; or an interest in land in which:~~

28 ~~(i) Credit is granted either by a seller who regularly engages as a~~  
 29 ~~seller in credit transactions of the same kind or pursuant to a credit card~~  
 30 ~~other than a lender credit card;;~~

31 ~~(ii) the buyer is a person other than an organization;;~~

32 ~~(iii) the goods; or services; or interest in land are purchased primarily~~  
 33 ~~for a personal, family or household purpose;;~~

34 ~~(iv) either the debt is by written agreement payable in more than four~~  
 35 ~~installments or a finance charge is made; and~~

36 ~~(v) with respect to a sale of goods or services, the amount financed~~  
 37 ~~does not exceed \$25,000.~~

38 ~~(b) A "consumer credit sale" does not include:~~

39 ~~(i) A sale in which the seller allows the buyer to purchase goods or~~  
 40 ~~services pursuant to a lender credit card; or~~

41 ~~(ii) a sale of an interest in land, unless the parties agree in writing to~~  
 42 ~~make the transaction subject to the uniform consumer credit code.~~

43 ~~(15)(12) "Consumer credit transaction" means a consumer credit sale,~~

1 consumer lease, or consumer loan or a modification thereof including a  
2 refinancing, consolidation, or deferral.

3 ~~(16)~~(13) "Consumer lease" means a lease of goods:

4 (a) Which a lessor regularly engaged in the business of leasing makes  
5 to a person, other than an organization, who takes under the lease primarily  
6 for a personal, family or household purpose;

7 (b) in which the amount payable under the lease does not exceed  
8 \$25,000;

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

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

11 ~~(17)~~(14) "Consumer loan":

12 (a) Except as provided in paragraph (b), a "consumer loan"~~is means~~ a  
13 loan made by a person regularly engaged in the business of making loans  
14 in which:

15 (i) The debtor is a person other than an organization;

16 (ii) the debt is incurred primarily for a personal, family or household  
17 purpose;

18 (iii) either the debt is payable by written agreement in more than four  
19 installments or a finance charge is made; and

20 (iv) ~~either the amount financed does not exceed \$25,000 or the debt is~~  
21 ~~secured by an interest in land.~~

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

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

25 ~~(A) The loan-to-value ratio of the loan at the time when made~~  
26 ~~exceeds 100%; or~~

27 ~~(B) in the case of subsection (1) of K.S.A. 16a-3-308a, and~~  
28 ~~amendments thereto, the annual percentage rate of the loan exceeds the~~  
29 ~~code mortgage rate; or~~

30 (ii) a loan made by a qualified plan, as defined in section 401 of the  
31 internal revenue code, to an individual participant in such plan or to a  
32 member of the family of such individual participant.

33 ~~(18)~~(15) "Credit" means the right granted by a creditor to a debtor to  
34 defer payment of debt or to incur debt and defer its payment.

35 ~~(19)~~(16) "Credit card" means any card, plate or other single credit  
36 device that may be used from time to time to obtain credit. Since this  
37 involves the possibility of repeated use of a single device, checks and  
38 similar instruments that can be used only once to obtain a single credit  
39 extension are not credit cards.

40 ~~(20)~~(17) "Creditor" means a person who regularly extends credit in a  
41 consumer credit transaction which is payable by a written agreement in  
42 more than four installments or for which the payment of a finance charge  
43 is or may be required and is the person to whom the debt arising from the

1 consumer credit transaction is initially payable on the face of the evidence  
 2 of indebtedness or, if there is no such evidence of indebtedness, by written  
 3 agreement. In the case of credit extended pursuant to a credit card, the  
 4 creditor is the card issuer and not another person honoring the credit card.

5 ~~(21)~~(18) "Earnings" means compensation paid or payable to an  
 6 individual or for such individual's account for personal services rendered  
 7 or to be rendered by such individual, whether denominated as wages,  
 8 salary, commission, bonus, or otherwise, and includes periodic payments  
 9 pursuant to a pension, retirement, or disability program.

10 ~~(22)~~(19) "Finance charge" means all charges payable directly or  
 11 indirectly by the consumer and imposed directly or indirectly by the  
 12 creditor as an incident to or as a condition of the extension of credit. The  
 13 finance charge shall be calculated as provided in rules and regulations  
 14 adopted by the administrator pursuant to K.S.A. 16a-6-117, and  
 15 amendments thereto.

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

18 ~~(24)~~(20) "Goods" includes goods not in existence at the time the  
 19 transaction is entered into and merchandise certificates, but excludes  
 20 money, chattel paper, documents of title, and instruments.

21 ~~(25)~~(21) Except as otherwise provided, "lender" includes an assignee  
 22 of the lender's right to payment but use of the term does not in itself  
 23 impose on an assignee any obligation of the lender with respect to events  
 24 occurring before the assignment.

25 ~~(26)~~(22) "Lender credit card" means a credit card issued by a  
 26 supervised lender.

27 ~~(27)~~(23) "Loan":

28 (a) Except as provided in paragraph (b), a "loan" includes:

29 (i) The creation of debt by the lender's payment of or agreement to  
 30 pay money to the debtor or to a third party for the account of the debtor;

31 (ii) the creation of debt either pursuant to a lender credit card or by a  
 32 cash advance to a debtor pursuant to a credit card other than a lender credit  
 33 card;

34 (iii) the creation of debt by a credit to an account with the lender upon  
 35 which the debtor is entitled to draw immediately; and

36 (iv) the forbearance of debt arising from a loan.

37 (b) ~~A~~"Loan" does not include the payment or agreement to pay  
 38 money to a third party for the account of a debtor if the debt of the debtor  
 39 arises from a sale or lease and results from use of either a credit card  
 40 issued by a person primarily in the business of selling or leasing goods or  
 41 services or any other credit card which may be used for the purchase of  
 42 goods or services and which is not a lender credit card.

43 ~~(28)~~ "Loan-to-value ratio", at any time for any loan secured by an

1 interest in real estate, means a fraction expressed as a percentage:

2 (a) ~~The numerator of which is the aggregate unpaid principal balance~~  
 3 ~~of all loans secured by a first mortgage or a second mortgage encumbering~~  
 4 ~~the real estate at such time; and~~

5 ~~(b) the denominator of which is the appraised value of the real estate.~~

6 (29)(24) "Merchandise certificate" means a writing issued by a seller  
 7 not redeemable in cash and usable in its face amount in lieu of cash in  
 8 exchange for goods or services.

9 (25) *"Nationwide mortgage licensing system and registry" means a*  
 10 *mortgage licensing system developed and maintained by the conference of*  
 11 *state bank supervisors and the American association of residential*  
 12 *mortgage regulators for the licensing and registration of licensed*  
 13 *mortgage loan originators and other financial service providers.*

14 (30)(26) "Official fees" means:

15 (a) Fees and charges prescribed by law which actually are or will be  
 16 paid to public officials for determining the existence of or for perfecting,  
 17 releasing, or satisfying a security interest related to a consumer credit sale,  
 18 consumer lease, or consumer loan; or

19 (b) premiums payable for insurance in lieu of perfecting a security  
 20 interest otherwise required by the creditor in connection with the sale,  
 21 lease, or loan; if the premium does not exceed the fees and charges  
 22 described in paragraph (a) ~~which~~ that would otherwise be payable.

23 (31)(27) "Open end credit" means an arrangement pursuant to which:

24 (a) A creditor may permit a consumer, ~~from time to time~~ *time-to-time*,  
 25 to purchase goods or services on credit from the creditor or pursuant to a  
 26 credit card, or to obtain loans from the creditor or pursuant to a credit card;

27 (b) the unpaid balance of amounts financed and the finance and other  
 28 appropriate charges are debited to an account;

29 (c) the finance charge, if made, is computed on the outstanding  
 30 unpaid balances of the consumer's account from time to time; and

31 (d) the consumer has the privilege of paying the balances in  
 32 installments.

33 (32)(28) "Organization" means a corporation, limited liability  
 34 company, government or governmental subdivision or agency, trust, estate,  
 35 partnership, cooperative or association.

36 (33)(29) "Person" includes a natural person or an individual, and an  
 37 organization.

38 (34)(30) (a) "Person related to" with respect to an individual means:  
 39 (i) The spouse of the individual; (ii) a brother, brother-in-law, sister, or  
 40 sister-in-law of the individual; (iii) an ancestor or lineal descendant of the  
 41 individual or the individual's spouse, ~~and~~ or (iv) any other relative, by  
 42 blood, adoption or marriage, of the individual or such individual's spouse  
 43 who shares the same home with the individual.

1 (b) "Person related to" with respect to an organization means: (i) A  
2 person directly or indirectly controlling, controlled by or under common  
3 control with the organization; (ii) an officer or director of the organization  
4 or a person performing similar functions with respect to the organization  
5 or to a person related to the organization; (iii) the spouse of a person  
6 related to the organization, ~~and~~; *or* (iv) a relative by blood, adoption or  
7 marriage of a person related to the organization who shares the same home  
8 with such person.

9 ~~(35)~~(31) "Prepaid finance charge" means any finance charge paid  
10 separately in cash or by check before or at consummation of a transaction,  
11 or withheld from the proceeds of the credit at any time. Prepaid finance  
12 charges shall be calculated as provided in rules and regulations adopted by  
13 the administrator pursuant to K.S.A. 16a-6-117, and amendments thereto.

14 ~~(36)~~(32) "Presumed" or "presumption" means that the trier of fact  
15 must find the existence of the fact presumed unless and until evidence is  
16 introduced ~~which~~ *that* would support a finding of its nonexistence.

17 ~~(37)~~(33) "Principal" means the total of the amount financed and the  
18 prepaid finance charges, except that prepaid finance charges are not added  
19 to the amount financed to the extent such prepaid finance charges are paid  
20 separately in cash or by check by the consumer. The administrator may  
21 adopt rules and regulations regarding the determination or calculation of  
22 the principal or the principal balance pursuant to K.S.A. 16a-6-117, and  
23 amendments thereto.

24 ~~(38)~~(34) "Sale of goods" includes any agreement in the form of a  
25 bailment or lease of goods if the bailee or lessee agrees to pay as  
26 compensation for use a sum substantially equivalent to or in excess of the  
27 aggregate value of the goods involved and it is agreed that the bailee or  
28 lessee will become, or for no other or a nominal consideration has the  
29 option to become, the owner of the goods upon full compliance with such  
30 bailee's or lessee's obligations under the agreements.

31 ~~(39)~~—"Sale of an interest in land" includes a lease in which the lessee  
32 has an option to purchase the interest and all or a substantial part of the  
33 rental or other payments previously made by the lessee are applied to the  
34 purchase price.

35 ~~(40)~~(35) "Sale of services" means furnishing or agreeing to furnish  
36 services and includes making arrangements to have services furnished by  
37 another.

38 ~~(41)~~—"Second mortgage" means a second or other subordinate priority  
39 mortgage lien or similar real property security interest.

40 ~~(42)~~(36) "Seller": Except as otherwise provided, "seller" includes an  
41 assignee of the seller's right to payment but use of the term does not in  
42 itself impose on an assignee any obligation of the seller with respect to  
43 events occurring before the assignment *includes an assignee of the seller's*

1 *right to payment but use of the term does not in itself impose on an*  
 2 *assignee any obligation of the seller with respect to events occurring*  
 3 *before the assignment unless otherwise specified.*

4 ~~(43)~~(37) "Services" includes: (a) Work, labor, and other personal  
 5 services; (b) privileges with respect to transportation, hotel and restaurant  
 6 accommodations, education, entertainment, recreation, physical culture,  
 7 hospital accommodations, funerals, cemetery accommodations, ~~and the~~  
 8 ~~like~~; and (c) insurance.

9 ~~(44)~~(38) "Supervised financial organization" means a person, other  
 10 than an insurance company or other organization primarily engaged in an  
 11 insurance business:

12 (a) Organized, chartered, or holding an authorization certificate under  
 13 the laws of any state or of the United States which authorize the person to  
 14 make loans and to receive deposits, including a savings, share, certificate  
 15 or deposit account; and

16 (b) subject to supervision by an official or agency of such state or of  
 17 the United States.

18 ~~(45)~~(39) "Supervised lender" means a person authorized to make or  
 19 take assignments of supervised loans, either under a license issued by the  
 20 administrator (*pursuant to* K.S.A. 16a-2-301, and amendments thereto), or  
 21 as a supervised financial organization ~~(subsection (44) of pursuant to~~  
 22 K.S.A. 16a-1-301(38), and amendments thereto).

23 ~~(46)~~(40) "Supervised loan" means a consumer loan, including a loan  
 24 made pursuant to open end credit, with respect to which the annual  
 25 percentage rate exceeds 12%.

26 ~~(47)~~(41) "Written agreement" means an agreement such as a  
 27 promissory note, contract or lease that is evidence of or relates to the  
 28 indebtedness. A letter that merely confirms an oral agreement does not  
 29 constitute a written agreement for purposes of this subsection unless  
 30 signed by the person against whom enforcement is sought.

31 ~~(48)~~(42) "Written administrative interpretation" means any written  
 32 communication from the consumer credit commissioner ~~which that~~ is the  
 33 official interpretation as so stated in said written communication by the  
 34 consumer credit commissioner of the Kansas uniform consumer credit  
 35 code and rules and regulations pertaining thereto.

36 Sec. 25. K.S.A. 16a-2-103 is hereby amended to read as follows: 16a-  
 37 2-103. (1) The provisions of this section shall apply to all consumer loans  
 38 and all consumer credit sales.

39 (2) The finance charge on a consumer loan or consumer credit sale  
 40 shall be computed in accordance with the actuarial method using either the  
 41 <sup>365</sup>/<sub>365</sub> method or, if the consumer agrees in writing, the <sup>360</sup>/<sub>360</sub> method:

42 (a) The <sup>365</sup>/<sub>365</sub> method means a method of calculating the finance  
 43 charge whereby the contract rate is divided by 365 and the resulting daily

1 rate is multiplied by the outstanding principal amount and the actual  
2 number of days in the computational period.

3 (b) The  $^{360}/_{360}$  method means a method of calculating the finance  
4 charge whereby the contract rate is divided by 360 and the resulting daily  
5 rate is multiplied by the outstanding principal amount and the number of  
6 assumed days in the computational period. For the purposes of this  
7 subsection, a creditor may assume that a month has 30 days, regardless of  
8 the actual number of days in the month.

9 (c) If the documentation evidencing a consumer credit contract is  
10 silent regarding whether the  $^{365}/_{365}$  method or the  $^{360}/_{360}$  method applies, then  
11 the  $^{365}/_{365}$  method shall apply.

12 ~~(3) In addition to the methods listed under subsection 2, the~~  
13 ~~computation of finance charges on a consumer loan secured by a first or~~  
14 ~~second lien real estate mortgage may be computed using the following~~  
15 ~~amortization method: The contract rate is divided by 360 and the resulting~~  
16 ~~rate is multiplied by the outstanding principal amount and 30 assumed~~  
17 ~~days between scheduled due dates. For the purposes of this subsection, a~~  
18 ~~creditor shall assume there are 30 days in the computational period,~~  
19 ~~regardless of the actual number of days between due dates.~~

20 ~~(4)~~ The finance charge on a consumer loan or consumer credit sale  
21 may not be computed in accordance with the  $^{365}/_{360}$  method, whereby the  
22 contract rate is divided by 360 and the resulting daily rate is multiplied by  
23 the outstanding principal amount and the actual number of days in the  
24 computational period.

25 ~~(5)~~(4) Creditors may ignore the effect of a leap year in computing the  
26 finance charge.

27 ~~(6)~~(5) (a) Except for any portion of a loan made pursuant to a lender  
28 credit card which does not represent a cash advance, interest or other  
29 periodic finance charges on a consumer loan may accrue only on that  
30 portion of the principal which has been disbursed to or for the benefit of  
31 the consumer.

32 (b) On a consumer credit sale, interest or other periodic finance  
33 charges may accrue only on that portion of the principal ~~which~~ *that* relates  
34 to goods, ~~services or an interest in land, as the case may be, which has or~~  
35 ~~services that have~~ been shipped, delivered, furnished or otherwise made  
36 available to or for the benefit of the consumer or ~~has~~ *have* been disbursed  
37 to or for the benefit of the consumer.

38 ~~(7)~~(6) Subsection (2) does not apply to a consumer credit sale the  
39 finance charge for which is computed in accordance with ~~subsection (5)~~ of  
40 K.S.A. 16a-2-201(5), and amendments thereto.

41 ~~(8)~~(7) Notwithstanding any other provisions of this act, the finance  
42 charges on consumer loans or consumer credit sales originating prior to  
43 January 1, 1994, which computed such finance charges on a precomputed

1 basis, shall be subject to the conditions, limitations and restrictions  
 2 contained in the uniform consumer credit code as in effect on December  
 3 31, 1993, as such code relates to precomputed finance charges.

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

6 Sec. 26. K.S.A. 16a-2-201 is hereby amended to read as follows: 16a-  
 7 2-201. (1) This section applies only to a closed end consumer credit sale.

8 (2) A seller may charge a finance charge at any rate agreed to by the  
 9 parties, subject, however, to the limitations on prepaid finance charges set  
 10 forth in subsection (3).

11 (3) (a) A seller may charge a prepaid finance charge:

12 ~~(a) For a consumer credit sale secured by a security interest in a~~  
 13 ~~manufactured home as defined by 42 U.S.C. § 5402(6), in an amount not~~  
 14 ~~to exceed 5% of the amount financed for the sole purpose of reducing the~~  
 15 ~~interest rate of the consumer credit sale; or~~

16 ~~(b) for any other consumer credit sale, an amount not to exceed the~~  
 17 ~~lesser of 2% of the amount financed or \$100.~~

18 ~~(c)~~(b) A prepaid finance charge permitted under this subsection is in  
 19 addition to finance charges permitted under subsection (2). A prepaid  
 20 finance charge permitted under this subsection is fully earned when paid  
 21 and is nonrefundable, unless the parties agree otherwise in writing.

22 (4) If the sale is precomputed:

23 (a) The finance charge may be calculated on the assumption that all  
 24 scheduled payments will be made when due, and the fact that payments are  
 25 made either before or after the due date does not affect the amount of  
 26 finance charge which the creditor may charge or receive; and

27 (b) the effect of prepayment is governed by subsection (5).

28 (5) Rebate upon prepayment:

29 (a) Except as provided for in this section, upon prepayment in full of  
 30 a precomputed consumer credit transaction, the creditor shall rebate to the  
 31 consumer an amount not less than the amount of rebate provided in  
 32 subsection (b), ~~paragraph (1), or redetermine the earned finance charge as~~  
 33 ~~provided in subsection (b), paragraph (2), and rebate any other unearned~~  
 34 ~~charges including charges for insurance. The rebate for charges for~~  
 35 ~~insurance shall be as prescribed by statute, rules and regulations and~~  
 36 ~~administrative interpretations by the administrator. If the rebate otherwise~~  
 37 ~~required is less than \$1, no rebate need be made.~~

38 (b) The amount of rebate and redetermined earned finance charge  
 39 shall be as follows:

40 (1) The amount of rebate shall be determined by applying, according  
 41 to the actuarial method, the rate of finance charge which was required to  
 42 be disclosed in the transaction:

43 (i) Where no deferral charges have been made in a transaction, to the



1 unpaid balances for the actual time remaining as originally scheduled for  
2 the period following prepayment; and

3 (ii) where deferral charges have been made in a transaction, to the  
4 unpaid balances for the actual time remaining as extended by deferral for  
5 the period following prepayment.

6 The time remaining for the period following prepayment shall be either  
7 the full days following prepayment; or both the full days, counting the date  
8 of prepayment, between the prepayment date and the end of the  
9 computational period in which the prepayment occurs, and the full  
10 computational periods following the date of prepayment to the scheduled  
11 due date of the final installment of the transaction.

12 (2) The redetermined earned finance charge shall be determined by  
13 applying, according to the actuarial method, the rate of finance charge  
14 which was required to be disclosed in the transaction to the actual unpaid  
15 balances of the amount financed for the actual time the unpaid balances  
16 were outstanding as of the date of prepayment. Any delinquency or  
17 deferral charges collected before the date of prepayment do not become a  
18 part of the total finance charge for purposes of rebating unearned charges.

19 (c) Upon prepayment, but not otherwise, of a consumer credit  
20 transaction whether or not precomputed, other than a consumer lease, a  
21 consumer rental purchase agreement, or a transaction pursuant to open end  
22 credit:

23 (1) If the prepayment is in full, the creditor may collect or retain a  
24 minimum charge not exceeding \$5 in a transaction which had an amount  
25 financed of \$75 or less, or not exceeding \$7.50 and in a transaction which  
26 had an amount financed of more than \$75, if the finance charge earned at  
27 the time of prepayment is less than the minimum allowed pursuant to this  
28 subsection.

29 (2) If the prepayment is in part, the creditor may not collect or retain  
30 a minimum finance charge.

31 (d) For the purposes of this section, the following defined terms  
32 apply:

33 (1) "Computational period" means the interval between scheduled  
34 due dates of installments under the transaction if the intervals are  
35 substantially equal or, if the intervals are not substantially equal, one  
36 month if the smallest interval between the scheduled due dates of  
37 installments under the transaction is one month or more, and otherwise one  
38 week.

39 (2) The "interval" between specified dates means the interval between  
40 them including one or the other but not both of them. If the interval  
41 between the date of the transaction and the due date of the first scheduled  
42 installment does not exceed one month by more than fifteen days when the  
43 computational period is one month, or eleven days when the computational

1 period is one week, the interval may be considered by the creditor as one  
2 computational period.

3 (e) This section does not preclude the collection or retention by the  
4 creditor of delinquency charges.

5 (f) If the maturity is accelerated by any reason and judgment is  
6 obtained, the consumer is entitled to the same rebate as if payment had  
7 been made on the date maturity is accelerated.

8 (g) Upon prepayment in full of a precomputed consumer credit  
9 transaction by the proceeds of consumer credit insurance, the consumer or  
10 the consumer's estate is entitled to the same rebate as though the consumer  
11 had prepaid the agreement on the date the proceeds of the insurance are  
12 paid to the creditor, but no later than ten business days after satisfactory  
13 proof of loss is furnished to the creditor.

14 ~~(6) This section does not apply to a sale of an interest in land.  
15 Subsection (11) of K.S.A. 16a-2-401, and amendments thereto, governs  
16 the limitations on finance charges for a contract for deed to real estate  
17 where the parties agree in writing to make the transaction subject to the  
18 uniform consumer credit code.~~

19 Sec. 27. K.S.A. 16a-2-202 is hereby amended to read as follows: 16a-  
20 2-202. (1) With respect to a consumer credit sale made pursuant to open  
21 end credit, a seller may charge a finance charge at any rate agreed to by the  
22 parties.

23 (2) A charge may be made in each billing cycle which is a percentage  
24 of an amount no greater than:

25 (a) The average daily balance of the account, which is the sum of the  
26 actual amounts outstanding each day during the billing cycle divided by  
27 the number of days in the cycle; *or*

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

30 (3) If the billing cycle is monthly, the charges may not exceed  $\frac{1}{12}$  of  
31 the annual rate agreed to by the consumer. If the billing cycle is not  
32 monthly, the maximum charge is that percentage which bears the same  
33 relation to the applicable monthly percentage as the number of days in the  
34 billing cycle bears to 30. For purposes of this subsection, a variation of not  
35 more than four days from month to month is "the last day of the billing  
36 cycle."

37 (4) For any period in which a finance charge is due, the parties may  
38 agree on a minimum amount.

39 ~~(5) This section does not apply to a sale of an interest in land.  
40 Subsection (11) of K.S.A. 16a-2-401, and amendments thereto, governs  
41 the limitations on finance charges for a contract for deed to real estate  
42 where the parties agree in writing to make the transaction subject to the  
43 uniform consumer credit code.~~

1 Sec. 28. K.S.A. 2020 Supp. 16a-2-301 is hereby amended to read as  
 2 follows: 16a-2-301. (1) Unless a person is a supervised financial  
 3 organization; or has first obtained a license from the administrator  
 4 authorizing such person to make supervised loans; or is the federal deposit  
 5 insurance corporation acting in its corporate capacity or as receiver, such  
 6 person shall not engage in the business of:

7 (a) Making supervised loans;

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

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

18 ~~(2) Residential mortgage loan origination shall only be conducted in~~  
 19 ~~this state by an individual who has first been registered with the~~  
 20 ~~administrator as a residential mortgage loan originator and maintains a~~  
 21 ~~valid unique identifier issued by the nationwide mortgage licensing system~~  
 22 ~~and registry if operational at the time of registration.~~

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

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

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

31 Sec. 29. K.S.A. 2020 Supp. 16a-2-302 is hereby amended to read as  
 32 follows: 16a-2-302. (1) (a) The administrator shall receive and act on all  
 33 applications for licenses to make supervised loans ~~and all applications for~~  
 34 ~~residential mortgage loan originator registrations under this act.~~  
 35 ~~Applications shall be filed~~ *Any person required to be licensed pursuant to*  
 36 *this section shall submit an application* in the manner prescribed by the  
 37 administrator and shall contain the information the administrator may  
 38 require by rule and regulation to make an evaluation of the financial  
 39 responsibility, character and fitness of the applicant.

40 (b) Submitted with each application shall be a nonrefundable  
 41 application fee. ~~The application; and license and registration~~ fees shall be  
 42 in such amounts as are established pursuant to ~~subsection (5) of~~ K.S.A.  
 43 16a-6-104(5), and amendments thereto. The license year shall be the

1 calendar year. Each license shall be nonrefundable and nonassignable; and  
2 shall remain in force until surrendered, suspended or revoked.

3 (c) The administrator shall remit all moneys received under K.S.A.  
4 16a-1-101 ~~to through~~ 16a-6-414, ~~inclusive~~, and amendments thereto, to the  
5 state treasurer in accordance with the provisions of K.S.A. 75-4215, and  
6 amendments thereto. Upon receipt of each such remittance, the state  
7 treasurer shall deposit the entire amount in the state treasury. Of each  
8 deposit 10% shall be credited to the state general fund and the balance  
9 shall be credited to the bank commissioner fee fund. All expenditures from  
10 such fund shall be made in accordance with appropriation acts upon  
11 warrants of the director of accounts and reports issued pursuant to  
12 vouchers approved by the administrator or by a person or persons  
13 designated by the administrator.

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

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

30 (a) The applicant has filed with the administrator a proper surety  
31 bond of at least \$100,000 which has been approved by the administrator.  
32 The bond must provide within its terms that the bond shall not expire for  
33 two years after the date of the surrender, revocation or expiration of the  
34 subject license, whichever shall first occur. The required surety bond may  
35 not be canceled by the licensee without providing the administrator at least  
36 30 days' prior written notice, provided that such cancellation shall not  
37 affect the surety's liability for violations of the uniform consumer credit  
38 code occurring prior to the effective date of cancellation and principal and  
39 surety shall be and remain liable for a period of two years from the date of  
40 any action or inaction of the principal that gives rise to a claim under the  
41 bond; and

42 (b) the applicant provides evidence in a form and manner prescribed  
43 by the administrator that establishes the applicant will maintain a

1 satisfactory minimum net worth, as determined by the administrator, to  
2 engage in credit transactions of the nature proposed by the applicant. Such  
3 net worth requirements shall be established by the administrator pursuant  
4 to rule and regulation and shall not exceed \$500,000 for each applicant or  
5 licensee.

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

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

11 (b) any of the factors stated as grounds for denial, revocation or  
12 suspension of a license in K.S.A. 16a-2-303 ~~or K.S.A. 2020 Supp. 16a-2-~~  
13 ~~303a~~, and amendments thereto.

14 (4) Upon written request the applicant is entitled to a hearing on the  
15 question of license qualifications if: (a) The administrator has notified the  
16 applicant in writing that the application has been denied; or (b) the  
17 administrator has not issued a license within 60 days after the application  
18 for the license was filed. A request for a hearing may not be made more  
19 than 15 days after the administrator has mailed a writing to the applicant  
20 notifying the applicant that the application has been denied and stating in  
21 substance the administrator's findings supporting denial of the application.

22 (5) The administrator shall adopt rules and regulations regarding  
23 whether a licensee shall be required to obtain a single license for each  
24 place of business or whether a licensee may obtain a master license for all  
25 of its places of business, and in so doing the administrator may  
26 differentiate between licensees located in this state and licensees located  
27 elsewhere. Each license shall remain in full force and effect until  
28 surrendered, suspended or revoked.

29 (6) No licensee shall change the location of any place of business  
30 without giving the administrator at least 15 days prior written notice.

31 (7) A licensee may conduct the business of making loans for  
32 personal, family or household purposes only at or from any place of  
33 business for which the licensee holds a license and not under any other  
34 name than that in the license. Loans made pursuant to a lender credit card  
35 do not violate this subsection.

36 Sec. 30. K.S.A. 2020 Supp. 16a-2-310 is hereby amended to read as  
37 follows: 16a-2-310. (1) No person required to be licensed ~~or registered~~  
38 under this act shall directly or indirectly:

39 (a) Delay closing of a loan for the purpose of increasing interest,  
40 costs, fees or charges payable by the borrower;

41 (b) misrepresent the material facts or make false promises intended to  
42 influence, persuade or induce a consumer to enter into a loan;

43 (c) misrepresent to or conceal from an applicant for a loan, ~~a~~

1 mortgagor or a lender, material facts, terms or conditions of a transaction  
2 to which the person required to be licensed or registered is a party;

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

6 (e) ~~receive compensation for making a residential mortgage loan~~  
7 ~~where the licensee or registrant has otherwise acted as a real estate broker~~  
8 ~~or agent in connection with the sale of the real estate which secures the~~  
9 ~~mortgage transaction unless the person required to be licensed or~~  
10 ~~registered has provided written disclosure to the person from whom~~  
11 ~~compensation is collected that the person is receiving compensation both~~  
12 ~~for making the loan and for real estate broker or agent services;~~

13 (f) ~~engage in any fraudulent lending or underwriting practices;~~

14 (g) ~~(f)~~ advertise, display, distribute, broadcast or televise, or cause or  
15 permit to be advertised, displayed, distributed, broadcast or televised, in  
16 any manner, any false, misleading or deceptive statement or representation  
17 with regard to rates, terms or conditions for a loan;

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

23 (i) ~~(g)~~ transfer, assign or attempt to transfer or assign, a license or  
24 registration to any other person, or assist or *aid* and abet any person  
25 who does not hold a valid license or registration under this act in engaging  
26 in the conduct of mortgage business *requiring a license*;

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

31 (k) ~~(i)~~ solicit, advertise or enter into a contract for specific interest  
32 rates, points or other financing terms unless the terms are actually  
33 available at the time of soliciting, advertising or contracting;

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

41 (m) ~~(j)~~ fail to comply with the uniform consumer credit code, or rules  
42 and regulations promulgated thereunder, or fail to comply with any other  
43 state or federal law, including the rules and regulations promulgated

1 thereunder, applicable to any business authorized or conducted under the  
2 uniform consumer credit code.

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

5 Sec. 31. K.S.A. 16a-2-401 is hereby amended to read as follows: 16a-  
6 2-401. (1) For any consumer loan incurred pursuant to open end credit,  
7 including, without limitation, a loan pursuant to a lender credit card, a  
8 lender may charge a finance charge at any rate agreed to by the parties,  
9 subject, however, to the limitations on prepaid finance charges set forth in  
10 subsection ~~(6)(4)~~. ~~This subsection does not apply to a consumer loan~~  
11 ~~secured by a first mortgage or a second mortgage.~~

12 (2) For any consumer loan incurred pursuant to closed end credit, a  
13 lender may charge a periodic finance charge, calculated accordingly to the  
14 actuarial method, not to exceed: (a) 36% per annum on the portion of the  
15 unpaid balance ~~which that~~ is \$860 or less; and (b) 21% per annum on the  
16 portion of the unpaid balance ~~which that~~ exceeds \$860, subject, however  
17 to the limitations on prepaid finance charges set forth in subsection ~~(6)(4)~~.  
18 ~~This subsection does not apply to a consumer loan secured by a first~~  
19 ~~mortgage or a second mortgage.~~

20 (3) ~~For any consumer loan secured by a second mortgage or a~~  
21 ~~consumer loan secured by an interest in a manufactured home as defined~~  
22 ~~by 42 U.S.C. § 5402(6), a lender may charge a periodic finance charge,~~  
23 ~~calculated according to the actuarial method, not to exceed 18% per~~  
24 ~~annum, subject, however to the limitations on prepaid finance charges set~~  
25 ~~forth in subsection (6). This subsection does not apply if the lender and the~~  
26 ~~consumer agree in writing that the finance charge for the loan is governed~~  
27 ~~by K.S.A. 16-207(b), and amendments thereto.~~

28 (4) ~~If the parties to a consumer loan secured by a first mortgage or a~~  
29 ~~consumer loan secured by an interest in a manufactured home as defined~~  
30 ~~by 42 U.S.C. § 5402(6) agree in writing to make the transaction subject to~~  
31 ~~the uniform consumer credit code, then the periodic finance charge for the~~  
32 ~~loan, calculated according to the actuarial method, may not exceed 18%~~  
33 ~~per annum, subject, however to the limitations on prepaid finance charges~~  
34 ~~set forth in subsection (6).~~

35 (5) This section does not limit or restrict the manner of calculating the  
36 finance charge, whether by way of add-on, discount or otherwise, so long  
37 as the rate and the amount of the finance charge does not exceed that  
38 permitted by this section.

39 (6)(4) Prepaid finance charges on consumer loans are limited ~~as~~  
40 ~~follows:~~

41 (a) ~~For a consumer loan secured by a first mortgage or a second~~  
42 ~~mortgage, or a consumer loan secured by an interest in a manufactured~~  
43 ~~home as defined by 42 U.S.C. § 5402(6), prepaid finance charges in an~~

1 amount not to exceed 8% of the amount financed may be charged,  
2 provided that the aggregate amount of prepaid finance charges payable to  
3 the lender or any person related to the lender do not exceed 5% of the  
4 amount financed; and

5 (b) ~~for any other consumer loan, prepaid finance charges in to an~~  
6 amount not to exceed the lesser of 2% of the amount financed or \$100 ~~may~~  
7 ~~be charged.~~ Prepaid finance charges permitted under this subsection are in  
8 addition to finance charges permitted under subsection (1); ~~- and (2), (3)~~  
9 ~~and (4);~~ as applicable. Prepaid finance charges permitted under this  
10 subsection are fully earned when paid and are non-refundable, unless the  
11 parties agree otherwise in writing.

12 (7) The finance charge limitations in subsections (3) and (4) do not  
13 apply to a consumer loan the finance charge for which is governed by  
14 subsection (h) of K.S.A. 16-207, and amendments thereto.

15 (8) ~~If a loan secured by a first mortgage constitutes a "consumer loan"~~  
16 ~~under subsection (17) of K.S.A. 16a-1-301, and amendments thereto, by~~  
17 ~~virtue of the loan-to-value ratio exceeding 100% at the time the loan is~~  
18 ~~made, then the periodic finance charge for the loan shall not exceed that~~  
19 ~~authorized by subsection (b) of K.S.A. 16-207, and amendments thereto,~~  
20 ~~but the loan is subject to the limitations on prepaid finance charges set~~  
21 ~~forth in paragraph (a) of subsection (6), which prepaid finance charges~~  
22 ~~may be charged in addition to the finance charges permitted under~~  
23 ~~subsection (b) of K.S.A. 16-207, and amendments thereto.~~

24 (9)(5) If, within 12 months after the date of the original loan, a lender  
25 or a person related to the lender refinances a loan with respect to which a  
26 prepaid finance charge was payable to the same lender pursuant to  
27 subsection ~~(6)(4)~~, then the following apply:

28 (a) ~~If a prepaid finance charge with respect to the original loan was~~  
29 ~~payable to the lender pursuant to paragraph (a) of subsection (6), then the~~  
30 ~~aggregate amount of prepaid finance charges payable to the lender or any~~  
31 ~~person related to the lender with respect to the new loan may not exceed~~  
32 ~~5% of the additional amount financed.~~

33 (b) If a prepaid finance charge with respect to the original loan was  
34 payable to the lender pursuant to ~~paragraph (b) of subsection (6)(4)~~, then  
35 the aggregate amount of prepaid finance charges payable to the lender or  
36 any person related to the lender with respect to the new loan may not  
37 exceed the lesser of 2% of the additional amount financed or \$100.

38 (e)(b) For purposes of this subsection, "additional amount financed"  
39 means the difference between: (i) The amount financed for the new loan,  
40 less the amount of all ~~closing~~ costs incurred in connection with the new  
41 loan which are not included in the prepaid finance charges for the new  
42 loan; and (ii) the unpaid principal balance of the original loan.

43 ~~(10)(6)~~ For any period in which a finance charge is due on a



1 consumer loan pursuant to open end credit, the parties may agree on a  
2 minimum amount.

3 ~~(11) If the parties to a contract for deed to real estate agree in writing~~  
4 ~~to make the transaction subject to the uniform consumer credit code, then~~  
5 ~~the transaction is subject to the same limitations as set forth in subsections~~  
6 ~~(4) and (6) for a consumer loan secured by a first mortgage.~~

7 ~~(12)(7)~~ This section does not apply to a payday loan governed by  
8 K.S.A. 16a-2-404, and amendments thereto.

9 Sec. 32. K.S.A. 2020 Supp. 16a-3-308 is hereby amended to read as  
10 follows: 16a-3-308. With respect to a consumer credit transaction, other  
11 than one pursuant to open end credit if any scheduled payment is more  
12 than twice as large as the average of earlier scheduled payments, the  
13 consumer has the right to refinance the amount of that payment at the time  
14 it is due without penalty. The terms of the refinancing shall be no less  
15 favorable to the consumer than the terms of the original transaction. These  
16 provisions do not apply to the extent that the payment schedule is adjusted  
17 to the seasonal or irregular income of the consumer ~~or to a note secured by~~  
18 ~~a real estate mortgage.~~

19 Sec. 33. K.S.A. 16a-5-201 is hereby amended to read as follows: 16a-  
20 5-201. (1) If a creditor has violated the provisions of this act applying to  
21 collection of excess charges or enforcement of rights ~~(subsection (4) of~~  
22 ~~section pursuant to K.S.A. 16a-1-201), restrictions on interests in land as~~  
23 ~~security (section 16a-2-307), (4), and amendments thereto;~~ limitations on  
24 the schedule of payments or loan terms for supervised loans ~~(section~~  
25 ~~pursuant to K.S.A. 16a-2-308), and amendments thereto;~~ attorney's fees  
26 ~~(section pursuant to K.S.A. 16a-2-507), and amendments thereto;~~ security  
27 in sales and leases ~~(section pursuant to K.S.A. 16a-3-301), and~~  
28 ~~amendments thereto;~~ assignments of earnings ~~(section pursuant to K.S.A.~~  
29 ~~16a-3-305), and amendments thereto;~~ authorizations to confess judgment  
30 ~~(section pursuant to K.S.A. 16a-3-306), and amendments thereto;~~ certain  
31 negotiable instruments prohibited ~~(section pursuant to K.S.A. 16a-3-307),~~  
32 ~~and amendments thereto;~~ assignees subject to defenses ~~(section pursuant~~  
33 ~~to K.S.A. 16a-3-404), and amendments thereto;~~ credit card issuer subject to  
34 defenses ~~(section pursuant to K.S.A. 16a-3-403), and amendments thereto;~~  
35 or limitations on default charges ~~(section pursuant to K.S.A. 16a-3-402),~~  
36 ~~and amendments thereto,~~ the consumer has a cause of action to recover  
37 actual damages and in addition a right in an action other than a class action  
38 to recover from the person violating such provisions of this act a penalty in  
39 an amount determined by the court not less than \$100 nor more than  
40 \$1,000. With respect to violations arising from sales or loans made  
41 pursuant to open end credit, no action pursuant to this subsection may be  
42 brought more than two years after the violations occurred. With respect to  
43 violations arising from other consumer transactions, no action pursuant to

1 this subsection may be brought more than one year after the due date of  
2 the last scheduled payment of the agreement.

3 (2) If a creditor has violated the provisions of this act applying to  
4 authority to make supervised loans ~~(section pursuant to K.S.A. 16a-2-301),~~  
5 *and amendments thereto*, the loan is void and the consumer is not  
6 obligated to pay either the amount financed or finance charge. If the  
7 consumer has paid any part of the amount financed or of the finance  
8 charge, the consumer has a right to recover the payment from the person  
9 violating this act or from an assignee of that person's rights who  
10 undertakes direct collection of payments or enforcement of rights arising  
11 from the debt. With respect to violations arising from loans made pursuant  
12 to open end credit, no action pursuant to this subsection may be brought  
13 more than two years after the violation occurred. With respect to violations  
14 arising from other loans, no action pursuant to this subsection may be  
15 brought more than one year after the due date of the last scheduled  
16 payment of the agreement pursuant to which the charge was paid. Persons  
17 subject to the penalties in this subsection shall not include attorneys or  
18 collection agencies who do not purchase a consumer obligation.

19 (3) A consumer is not obligated to pay a charge in excess of that  
20 allowed by this act, and if the consumer has paid an excess charge the  
21 consumer has a right to a refund of twice the excess charge. A refund may  
22 be made by reducing the consumer's obligation by twice the amount of the  
23 excess charge. If the consumer has paid an amount in excess of the lawful  
24 obligation under the agreement, the consumer may recover twice the  
25 excess amount from the person who made the excess charge or from an  
26 assignee of that person's rights who undertakes direct collection of  
27 payments from or enforcement of rights against debtors arising from the  
28 debt. Persons subject to the penalties in this subsection shall not include  
29 attorneys or collection agencies who do not purchase a consumer  
30 obligation.

31 (4) If a creditor has contracted for or received a charge in excess of  
32 that allowed by this act, or if a consumer is entitled to a refund and a  
33 person liable to the consumer refuses to make a refund within a reasonable  
34 time after demand, the consumer may recover from the creditor or the  
35 person liable in an action other than a class action a penalty in an amount  
36 determined by the court not less than \$100 or more than \$1,000. With  
37 respect to excess charges arising from sales or loans made pursuant to  
38 open end credit, no action pursuant to this subsection may be brought more  
39 than two years after the time the excess charge was made. With respect to  
40 excess charges arising from other consumer credit transactions no action  
41 pursuant to this subsection may be brought more than one year after the  
42 due date of the last scheduled payment of the agreement pursuant to which  
43 the charge was made. Persons subject to the penalties in this subsection

1 shall not include attorneys or collection agencies who do not purchase a  
2 consumer obligation.

3 (5) Except as otherwise provided, no violation of the provisions of  
4 K.S.A. 16a-1-101 through 16a-9-102, and amendments thereto, impairs  
5 rights on a debt.

6 (6) A creditor has no liability for a penalty under subsection (1) or  
7 subsection (4) if within 15 days after discovering an error, and prior to the  
8 institution of an action under this section or the receipt of written notice of  
9 the error, the creditor notifies the person concerned of the error and  
10 corrects the error. If the violation consists of a prohibited agreement,  
11 giving the consumer a corrected copy of the writing containing the error is  
12 sufficient notification and correction. If the violation consists of an excess  
13 charge, correction shall be made by an adjustment or refund.

14 (7) If the creditor establishes by a preponderance of evidence that a  
15 violation is unintentional or the result of a bona fide error of law or fact  
16 notwithstanding the maintenance of procedures reasonably adapted to  
17 avoid any such violation or error, no liability is imposed under subsections  
18 (1), (2), and (3), the validity of the transaction is not affected, and no  
19 liability is imposed under subsection (4) except for refusal to make a  
20 refund.

21 (8) In an action in which it is found that a creditor has violated any  
22 provision of K.S.A. 16a-1-101 through 16a-9-102, and amendments  
23 thereto, the court shall award to the consumer the costs of the action and to  
24 the consumer's attorneys their reasonable fees. Reasonable attorney's fees  
25 shall be determined by the value of the time reasonably expended by the  
26 attorney and not by the amount of the recovery on behalf of the consumer.

27 (9) A creditor who in good faith complies with a written  
28 administrative interpretation shall not be subject to any penalties under this  
29 section for any act done or omitted in conformity with such written  
30 administrative interpretation.

31 Sec. 34. K.S.A. 2020 Supp. 16a-6-104 is hereby amended to read as  
32 follows: 16a-6-104. This act shall be administered by the consumer credit  
33 commissioner of Kansas who is also referred to as the administrator. (1) In  
34 addition to other powers granted by this act, the administrator within the  
35 limitations provided by law may:

36 (a) Receive and act on complaints, take action designed to obtain  
37 voluntary compliance with the provisions of K.S.A. 16a-1-101 ~~to~~ *through*  
38 16a-9-102, ~~inclusive~~, and amendments thereto, or commence proceedings  
39 on the administrator's own initiative;

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

43 (c) establish programs for the education of consumers with respect to

1 credit practices and problems and as a condition in settlements of  
2 investigations or examinations, the administrator may receive a payment  
3 designated for consumer education to be expended as directed by the  
4 administrator for such purpose;

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

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

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

18 (g) maintain offices within this state; and

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

23 (i) examine periodically at intervals the administrator deems  
24 appropriate the loans, business and records of every licensee~~–registrant~~ or  
25 person filing notification pursuant to K.S.A. 16a-6-201 through 16a-6-203,  
26 and amendments thereto, except licensees~~–which~~ *that* are supervised  
27 financial organizations. The official or agency responsible for the  
28 supervision of each supervised financial organization shall examine the  
29 loans, business and records of each such organization in the manner and  
30 periodically at intervals prescribed by the administrator. In addition, for  
31 the purpose of discovering violations of K.S.A. 16a-1-101 through 16a-9-  
32 102, and amendments thereto, or securing information lawfully required,  
33 the administrator or the official or agency to whose supervision the  
34 organization is subject to K.S.A. 16a-6-105, and amendments thereto, may  
35 at any time investigate the loans, business and records of any supervised  
36 lender. For examination purposes the administrator shall have free and  
37 reasonable access to the offices, places of business and records of the  
38 lender~~–registrant~~ or person filing notification and the administrator may  
39 control access to any documents and records of a licensee~~–registrant~~ or  
40 person filing notification under examination;

41 (j) refer such evidence as may be available concerning violations of  
42 this act or of any rule and regulation or order to the attorney general or the  
43 proper county or district attorney, who may in the prosecutor's discretion,

1 with or without such a reference, institute the appropriate criminal  
2 proceedings under this act. Upon receipt of such reference, the attorney  
3 general or the county attorney or district attorney may request that a duly  
4 employed attorney of the administrator prosecute or assist in the  
5 prosecution of such violation on behalf of the state. Upon approval of the  
6 administrator, such employee shall be appointed special prosecutor for the  
7 attorney general or the county attorney or district attorney to serve without  
8 compensation from the attorney general or the county attorney or district  
9 attorney. Such special prosecutor shall have all the powers and duties  
10 prescribed by law for assistant attorneys general or assistant county or  
11 district attorneys, and such other powers and duties as are lawfully  
12 delegated to such special prosecutors by the attorney general or the county  
13 attorney or district attorney;

14 (k) if deemed necessary by the administrator, require fingerprinting of  
15 any applicant, licensee, members thereof if a copartnership or association,  
16 or officers and directors thereof if a corporation, or any agent or other  
17 person acting on their behalf. The administrator, or the administrator's  
18 designee, may submit such fingerprints to the Kansas bureau of  
19 investigation, federal bureau of investigation, or other law enforcement  
20 agency for the purposes of verifying the identity of such persons and  
21 obtaining records of their criminal arrests and convictions. For purposes of  
22 this section and in order to reduce the points of contact which the federal  
23 bureau of investigation may have to maintain with the individual states,  
24 the administrator may use the nationwide mortgage licensing system and  
25 registry as a channeling agent for requesting information from and  
26 distributing information to the department of justice or any governmental  
27 agency;

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

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

41 ~~(n) require that any applicant, licensee, registrant or other person~~  
42 ~~successfully pass a standardized examination designed to establish such~~  
43 ~~person's knowledge of residential mortgage loan origination transactions~~

1 and all applicable state and federal law. Such examinations shall be created  
 2 and administered by the administrator or the administrator's designee and  
 3 may be made a condition of application approval;

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

8 ~~(f)~~<sup>(n)</sup> establish relationships or contracts with the nationwide  
 9 mortgage licensing system and registry or other entities to collect and  
 10 maintain records and process transaction fees or other fees related to  
 11 applicants, licensees, registrants or other persons subject to the act and to  
 12 take such other actions as may be reasonably necessary to participate in  
 13 the nationwide mortgage licensing system and registry. The administrator  
 14 shall regularly report violations of law, as well as enforcement actions and  
 15 other relevant information, to the nationwide mortgage licensing system  
 16 and registry, and make publicly available the proposed budget, fees, and  
 17 audited financial statements of the nationwide mortgage licensing system  
 18 and registry as may be prepared by the nationwide mortgage licensing  
 19 system and registry and provided to the administrator; or

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

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

32 ~~(i)~~<sup>(o)</sup> require any licensee or registrant to file reports with the  
 33 nationwide mortgage licensing system and registry in the form prescribed  
 34 by the administrator or the administrator's designee.

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

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

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

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

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

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

20 Sec. 35. K.S.A. 2020 Supp. 16a-6-108 is hereby amended to read as  
21 follows: 16a-6-108. (1) If the administrator determines after notice and  
22 opportunity for a hearing that any person has engaged, is engaging or is  
23 about to engage in any act or practice constituting a violation of any  
24 provision of this act or any rule and regulation, order or administrative  
25 interpretation hereunder, the administrator by order may require that such  
26 person cease and desist from the unlawful act or practice and take such  
27 affirmative action as in the judgment of the administrator will carry out the  
28 purposes of this act.

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

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

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

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

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

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

26 (4) Any person aggrieved by a final order of the administrator may  
 27 obtain a review of the order in accordance with the provisions of the  
 28 Kansas judicial review act.

29 Sec. 36. K.S.A. 2020 Supp. 16-207 is hereby amended to read as  
 30 follows: 16-207. (a) Subject to the following provision, the parties to any  
 31 bond, bill, promissory note or other instrument of writing for the payment  
 32 or forbearance of money may stipulate therein for interest receivable upon  
 33 the amount of such bond, bill, note or other instrument of writing, at a rate  
 34 not to exceed 15% per annum unless otherwise specifically authorized by  
 35 law.

36 (b) No penalty shall be assessed against any party for prepayment of  
 37 any home loan evidenced by a note secured by a real estate mortgage  
 38 where such prepayment is made more than six months after execution of  
 39 such note.

40 (c) The lender may collect from the borrower:

41 (1) The actual fees paid a public official or agency of the state, or  
 42 federal government, for filing, recording or releasing any instrument  
 43 relating to a loan subject to the provisions of this section; and



1 (2) reasonable expenses incurred by the lender in connection with the  
2 making, closing, disbursing, extending, readjusting or renewing of loans  
3 subject to the provisions of this section.

4 (d) Any person so contracting for a greater rate of interest than that  
5 authorized by this section shall forfeit all interest so contracted for in  
6 excess of the amount authorized under this section; and in addition thereto  
7 shall forfeit a sum of money, to be deducted from the amount due for  
8 principal and lawful interest, equal to the amount of interest contracted for  
9 in excess of the amount authorized by this section and such amounts may  
10 be set up as a defense or counterclaim in any action to enforce the  
11 collection of such obligation and the borrower shall also recover a  
12 reasonable attorney fee.

13 (e) ~~The interest rates prescribed in subsection (a) shall not apply to a~~  
14 ~~business or agricultural loan. For the purpose of this section unless a loan~~  
15 ~~is made primarily for personal, family or household purposes, the loan~~  
16 ~~shall be considered a business or agricultural loan. For the purpose of this~~  
17 ~~subsection, a business or agricultural loan shall include credit sales and~~  
18 ~~notes secured by contracts for deed to real estate.~~

19 ~~(f) Loans made by a qualified plan, as defined in section 401 of the~~  
20 ~~internal revenue code, to an individual participant in such plan or to a~~  
21 ~~member of the family of such individual participant, are not subject to the~~  
22 ~~interest rates prescribed in subsection (a).~~

23 ~~(g) The interest rates prescribed in subsection (a) shall not apply to a~~  
24 ~~note secured by a real estate mortgage or a contract for deed to real estate~~  
25 ~~where the note or contract for deed permits adjustment of the interest rate,~~  
26 ~~the term of the loan or the amortization schedule.~~

27 ~~(h) A first mortgage loan incurred for personal, family or household~~  
28 ~~purposes may be subject to certain provisions of the uniform consumer~~  
29 ~~credit code, K.S.A. 16a-1-101 to 16a-9-102, and amendments thereto, as~~  
30 ~~follows:~~

31 ~~(1) Certain high loan-to-value first mortgage loans are subject to the~~  
32 ~~provisions of the uniform consumer credit code, other than its usury~~  
33 ~~provisions. Examples of provisions of the uniform consumer credit code~~  
34 ~~applicable to high loan-to-value first mortgage loans include, but are not~~  
35 ~~limited to: Limitations on prepaid finance charges; mandatory appraisals;~~  
36 ~~required disclosures; restrictions on balloon payments and negative~~  
37 ~~amortization; limitations on late fees and collection costs; and mandatory~~  
38 ~~default notices and cure rights.~~

39 ~~(2) Certain high interest rate first mortgage loans are subject to~~  
40 ~~certain provisions of the uniform consumer credit code, including, without~~  
41 ~~limitation, provisions which impose restrictions on balloon payments and~~  
42 ~~negative amortization.~~

43 ~~(3) If the parties to a first mortgage loan agree in writing to make the~~

1 transaction subject to the uniform consumer credit code, than all applicable  
 2 provisions of the uniform consumer credit code, including its usury  
 3 provisions, apply to the loan.

4 This subsection is for informational purposes only and does not limit or  
 5 expand the scope of the uniform consumer credit code.

6 (i) ~~Subsections (b), (c) and (d) do not apply to a first mortgage loan if:~~

7  
 8 (1) ~~The parties agree in writing to make the transaction subject to the~~  
 9 ~~uniform consumer credit code, K.S.A. 16a-1-101 to 16a-9-102, and~~  
 10 ~~amendments thereto; or~~

11 (2) ~~the loan is a high loan-to-value first mortgage loan subject to any~~  
 12 ~~provision of the uniform consumer credit code.~~

13 In the case of a loan described in paragraphs (1) or (2), the applicable  
 14 provisions of the uniform consumer credit code shall govern the loan in  
 15 lieu of subsections (b), (c) and (d). The provisions of subsection (a) shall  
 16 not apply to:

17 (1) A covered transaction subject to the usury provisions of the  
 18 Kansas mortgage business act, K.S.A. 9-2201, et seq., and amendments  
 19 thereto;

20 (2) *a consumer credit transaction subject to the usury provisions of*  
 21 *the uniform consumer credit code, K.S.A. 16a-1-101 et seq., and*  
 22 *amendments thereto;*

23 (3) *loans made by a qualified plan, as defined by the internal revenue*  
 24 *code, to an individual participant in such plan or to a member of the*  
 25 *family of such individual participant;*

26 (4) *a note secured by a real estate mortgage or a contract for deed to*  
 27 *real estate where the note or contract for deed permits adjustment of the*  
 28 *interest rate, the term of the loan or the amortization schedule; or*

29 (5) *a business or agricultural transaction. For purposes of this*  
 30 *section, a "business or agricultural transaction" means a loan, including a*  
 31 *note secured by a contract for deed to real estate or a credit sale, that is*  
 32 *made primarily for purposes other than personal, family or household*  
 33 *purposes.*

34 (f) *The provisions of subsections (b), (c) and (d) shall not apply to:*

35 (1) *A covered transaction under the Kansas mortgage business act,*  
 36 *K.S.A. 9-2201 et seq., and amendments thereto; or*

37 (2) *a consumer credit transaction under the uniform consumer credit*  
 38 *code, K.S.A. 16a-1-101 et seq., and amendments thereto.*

39 Sec. 37. K.S.A. 16-207d is hereby amended to read as follows: 16-  
 40 207d. The state bank commissioner, ~~consumer credit commissioner,~~  
 41 ~~savings and loan commissioner~~ and credit union administrator shall jointly  
 42 adopt rules and regulations for the purpose of governing loans made  
 43 primarily for personal, family or household purposes and made under the

1 provisions of ~~subsection (h)~~ of K.S.A. 16-207(e)(4), and any amendments  
2 thereto, and ~~subsection (8)~~ of K.S.A. 16a-2-401(8), and any amendments  
3 thereto. Such rules and regulations shall be published in only one place in  
4 the Kansas administrative regulations as directed by the state rules and  
5 regulations board.

6 Sec. 38. K.S.A. 40-1209 is hereby amended to read as follows: 40-  
7 1209. Any director, officer or member of any such company, or any other  
8 person, may advance to such company any sum or sums of money  
9 necessary for the purposes of its business or to enable it to comply with  
10 any of the requirements of the laws of this state, and such moneys and  
11 such interest thereon as may have been agreed upon, not exceeding an  
12 amount equal to 1 1/2 percentage points below the maximum rate of interest  
13 prescribed by ~~subsection (b)~~ of K.S.A. 16-207(a), and amendments  
14 thereto, for real estate transactions. The rate of interest to be applied to any  
15 specific certificate of indebtedness shall be calculated using the most  
16 immediate prior month's usury rate published by the secretary of state in  
17 the Kansas register. The sum or sums of money advanced pursuant to this  
18 authorization and any interest thereon shall be payable only out of the  
19 surplus remaining after providing for all reserves and other liabilities, and  
20 shall not otherwise be a liability or claim against the company or any of its  
21 assets. No commission or promotion expenses shall be paid in connection  
22 with the advance of any such money to the company, and the amount of  
23 such advance shall be reported in each annual statement ~~Provided,~~  
24 ~~however,~~ Such certificates of indebtedness shall not be issued nor retired  
25 and no interest thereon shall be paid without the approval of the  
26 commissioner of insurance who must be satisfied that all requirements of  
27 the law have been met.

28 Sec. 39. K.S.A. 16-207d, 16a-1-108, 16a-1-301, 16a-2-103, 16a-2-  
29 201, 16a-2-202, 16a-2-307, 16a-2-401, 16a-3-207, 16a-3-308a, 16a-5-201  
30 and 40-1209 and K.S.A. 2020 Supp. 9-2201, 9-2202, 9-2203, 9-2205, 9-  
31 2208, 9-2209, 9-2211, 9-2212, 9-2216a, 9-2220, 16-207, 16a-1-303, 16a-  
32 2-301, 16a-2-302, 16a-2-303a, 16a-2-310, 16a-3-308, 16a-6-104 and 16a-  
33 6-108 are hereby repealed.

34 Sec. 40. This act shall take effect and be in force from and after its  
35 publication in the statute book.