

As Amended by House Committee

Session of 2023

HOUSE BILL No. 2105

By Committee on Financial Institutions and Pensions

1-19

1 AN ACT concerning financial institutions; relating to earned wage access
2 services; enacting the Kansas earned wage access services act;
3 establishing the administration of such act by the office of the state
4 bank commissioner; providing for registration, bond requirements;
5 duties, prohibited acts, reports, records retention, orders, civil fines,
6 **criminal** penalties and fees.

7
8 *Be it enacted by the Legislature of the State of Kansas:*

9 Section 1. Sections 1 through 16, and amendments thereto, shall be
10 known and may be cited as the Kansas earned wage access services act.

11 Sec. 2. As used in sections 1 through 16, and amendments thereto:

12 (a) "Act" means the Kansas earned wage access services act.

13 (b) "Commissioner" means the state bank commissioner or the deputy
14 commissioner of the consumer and mortgage lending division of the office
15 of the state bank commissioner.

16 (c) "Consumer" means an individual who is a resident of this state. A
17 **provider may use the mailing address provided by a consumer to**
18 **determine such consumer's state of residence for purposes of this act.**

19 (d) **"Consumer directed wage access services" means the business**
20 **of delivering proceeds to a consumer prior to the date on which an**
21 **obligor is obligated to pay salary, wages, compensation or other**
22 **income to such consumer based on the consumer's representations and**
23 **the provider's reasonable determination of the consumer's earned but**
24 **unpaid income.**

25 (e) **"Director" means a member of the registrant's or applicant's**
26 **board of directors.**

27 (f) "Earned but unpaid income" means wages, compensation or
28 income that a consumer has represented, and that a provider has
29 reasonably determined, to have been earned or to have accrued to the
30 benefit of the consumer but, at the time of the payment of proceeds, have
31 not been paid to the consumer by an obligor.

32 ~~(e)(g) "Earned wage access services" means the business of~~
33 ~~delivering proceeds to consumers prior to the next date on which an~~
34 ~~obligor is obligated to pay salary, wages, compensation or other income to~~
35 ~~a consumer.~~ **providing consumer directed wage access services or**
36 **employer-integrated wage access services, or both.**

1 **(h) "Employer-integrated wage access services" means the**
 2 **business of delivering proceeds to a consumer prior to the date on**
 3 **which an obligor is obligated to pay salary, wages, compensation or**
 4 **other income to such consumer, when the provider has verified the**
 5 **earned but unpaid income of the consumer through time and**
 6 **attendance or earnings data for the relevant pay period, using**
 7 **information provided by an obligor or a service provider of the**
 8 **obligor.**

9 ~~(i)~~ **(i)** "Mandatory payment" means an amount determined by a
 10 provider that must be paid by a consumer to such provider as a condition
 11 of receiving or repaying proceeds.

12 ~~(g)~~ "Nationwide mortgage licensing system and registry" means a
 13 mortgage licensing system developed and maintained by the conference of
 14 state bank supervisors and the American association of residential
 15 mortgage regulators for the licensing and registration of licensed mortgage
 16 loan originators and other financial service providers.

17 ~~(h)~~ **(j)** "Nonmandatory payment" means an amount
 18 paid by a consumer or an obligor to a provider that does not meet the
 19 definition of a mandatory payment. "Nonmandatory payment" includes,
 20 but is not limited to **Examples of permissible non-mandatory payments**
 21 **include:**

22 (1) A fee imposed by a provider for delivery or expedited delivery of
 23 proceeds to a consumer so long as a provider offers the consumer at least
 24 one option to receive proceeds at no cost to the consumer;

25 (2) an amount paid by an obligor to a provider on a consumer's behalf
 26 that entitles the consumer to receive proceeds at no cost to the consumer;

27 (3) a subscription or membership fee imposed by a provider for a
 28 group of services that include earned wage access services so long as the
 29 provider offers the consumer at least one option to receive proceeds at no
 30 cost to the consumer; or

31 (4) a tip or gratuity paid by a consumer to a provider so long as the
 32 provider offers the consumer at least one option to receive proceeds at no
 33 cost to the consumer.

34 ~~(i)~~ **(k)** "Nonrecourse" means a provider shall not compel or attempt to
 35 compel repayment by a consumer of outstanding proceeds or
 36 ~~nonmandatory~~ **non-mandatory** payments owed by such consumer to such
 37 provider through any of the following means:

38 (1) A civil suit against the consumer in a court of competent
 39 jurisdiction;

40 (2) use of a third party to pursue collection of outstanding proceeds or
 41 ~~nonmandatory~~ **non-mandatory** payments on the provider's behalf; or

42 (3) sale of outstanding amounts to a third-party collector or debt
 43 buyer.

1 ~~(j)~~**(l)** "Obligor" means an employer or other person who is
2 contractually or legally obligated to pay a consumer earned but unpaid
3 income on an hourly, project-based, piecework or other basis, including
4 where the consumer is acting as an independent contractor. "Obligor" does
5 not include a service provider of an obligor or another third party that has
6 an obligation to make any payment to a consumer based solely on the
7 consumer's agency relationship with the obligor.

8 ~~(k)~~**(m)** "**Officer**" means a person who participates or has
9 authority to participate, other than in the capacity of a director, in
10 major policymaking functions of the registrant or applicant, whether
11 or not the person has an official title. "**Officer**" includes, but is not
12 limited to, the chief executive officer, chief financial officer, chief
13 operations officer, chief legal officer, chief credit officer, chief
14 compliance officer and every vice president.

15 **(n)** "Outstanding proceeds" means a payment of proceeds to a
16 consumer by a provider that has not yet been repaid to such provider.

17 ~~(h)~~**(o)** "**Owner**" means an individual who holds, directly or
18 indirectly, at least 10% or more of a class of voting securities or the
19 power to direct the management or policies of a registrant or an
20 applicant.

21 **(p)** "**Partner**" means a person that has the right to receive upon
22 dissolution, or has contributed, 10% or more of the capital of a
23 partnership of the registrant or applicant.

24 **(q)** "Person" means any corporation, partnership, association or other
25 commercial entity.

26 ~~(m)~~**(r)** "Proceeds" means a payment of funds to a consumer by a
27 provider that is based on earned but unpaid income.

28 ~~(n)~~**(s)** "Provider" means a person who is in the business of offering
29 and providing earned wage access services to consumers.

30 ~~(o)~~**(t)** "Registrant" means a person who is registered with the
31 commissioner as an earned wage access services provider.

32 Sec. 3. (a) No person shall engage in or hold such person out as
33 willing to engage in any earned wage access services business with a
34 consumer without registering with the commissioner. Any person required
35 to be registered as an earned wage access services provider shall submit to
36 the commissioner an application for registration on forms prescribed and
37 provided by the commissioner. Such application for registration shall
38 include:

39 (1) The applicant's name, business address, telephone number and, if
40 any, website address;

41 (2) the name and address of each owner, officer, director, member or
42 partner of the applicant;

43 (3) a description of the ownership interest of any officer, director,

1 member, partner, agent or employee of the applicant in any affiliate or
2 subsidiary of the applicant or in any other entity that provides any service
3 to the applicant or any consumer relating to the applicant's earned wage
4 access services business; and

5 (4) any other information the commissioner may deem necessary to
6 evaluate the financial responsibility, financial condition, character,
7 qualifications and fitness of the applicant.

8 (b) Each application for registration shall be accompanied by a
9 nonrefundable fee that shall be established by rules and regulations
10 adopted by the commissioner.

11 (c) The commissioner shall approve an application and shall issue a
12 nontransferable and nonassignable registration to the applicant when the
13 commissioner:

14 (1) Receives the complete application and fee required by this
15 section; and

16 (2) determines the financial responsibility, financial condition,
17 character, qualifications and fitness warrants a belief that the business of
18 the applicant will be conducted competently, honestly, fairly and in
19 accordance with all applicable state and federal laws.

20 (d) Each earned wage access services registration issued under this
21 section shall expire on ~~April 30~~ **December 31** of each year. A registration
22 shall be renewed by filing a complete renewal application with the
23 commissioner at least 30 calendar days prior to the expiration of the
24 registration. Such renewal application shall contain all information the
25 commissioner requires to determine the existence and effect of any
26 material change from the information contained in the applicant's original
27 application, annual reports or prior renewal applications. Each renewal
28 application shall be accompanied by a nonrefundable renewal fee that shall
29 be established by rules and regulations adopted by the commissioner.

30 (e) If the commissioner fails to issue a registration within 60 calendar
31 days after a filed application is deemed complete by the commissioner, the
32 applicant may make written request for a hearing. Upon receipt of such
33 written request for a hearing, the commissioner shall conduct a hearing in
34 accordance with the Kansas administrative procedure act.

35 Sec. 4. Each applicant or registrant shall file with the commissioner a
36 surety bond in a form acceptable to the commissioner. Such surety bond
37 shall be issued by a surety or insurance company authorized to conduct
38 business in this state, securing the applicant's or registrant's faithful
39 performance of all duties and obligations of a registrant. The surety bond
40 shall:

41 (a) Be payable to the office of the state bank commissioner;

42 (b) provide that the bond may not be terminated without 30 calendar
43 days' prior written notice to the commissioner, that such termination shall

1 not affect the surety's liability for violations of this act occurring prior to
2 the effective date of cancellation, and principal and surety shall be and
3 remain liable for a period of two years from the date of any action or
4 inaction of principal that gives rise to a claim under the bond;

5 (c) provide that the bond shall not expire for two years after the date
6 of surrender, revocation or expiration of the applicant's or registrant's
7 registration, whichever occurs first;

8 (d) be available for:

9 (1) The recovery of expenses, fines and fees levied by the
10 commissioner under this act; and

11 (2) payment of losses or damages that are determined by the
12 commissioner to have been incurred by any consumer as a result of the
13 applicant's or registrant's failure to comply with the requirements of this
14 act; and

15 (e) be in the amount of ~~\$25,000~~ **\$100,000**.

16 Sec. 5. A provider that is registered in the state of Kansas shall be
17 subject to the following requirements:

18 (a) The registrant shall provide all proceeds on a non-recourse basis
19 and shall treat non-mandatory payments as non-recourse payment
20 obligations.

21 (b) Before providing a consumer with earned wage access services,
22 the registrant shall provide a consumer with a written paper or electronic
23 document, which may be included as part of the contract to provide earned
24 wage access services, that meets all of the following requirements:

25 (1) Informs the consumer of the terms and conditions of the earned
26 wage access services;

27 (2) **clearly and conspicuously describes how the consumer may**
28 **obtain proceeds at no cost to such consumer;**

29 (3) includes a ~~statement~~ **clear disclosure** that the commissioner has
30 jurisdiction over the earned wage access services performed by the
31 registrant and provides ~~both a phone number and a website through which~~
32 ~~consumers can submit~~ **the commissioner's phone number and website**
33 **for submitting** complaints about the provider's earned wage access
34 services to the commissioner;

35 ~~(3)~~(4) is written in a font and using language intended to be easily
36 understood by a layperson; and

37 ~~(4)~~(5) discloses any non-mandatory payments that may be directly
38 imposed by the registrant in connection with the provision of earned wage
39 access services.

40 (c) The registrant shall provide proceeds to a consumer via any means
41 mutually agreed upon by the consumer and registrant.

42 (d) In any case in which the registrant will seek repayment of
43 proceeds from a consumer, the registrant shall inform the consumer when

1 the registrant will make such registrant's first attempt to seek repayment of
2 such proceeds from the consumer.

3 (e) A registrant that seeks ~~repayment of proceeds~~ **to use pre-**
4 **authorized electronic transfers** from a consumer's depository institution
5 account shall comply with all applicable NACHA rules.

6 (f) A registrant shall permit a consumer to cancel participation in an
7 earned wage access service at any time without incurring a charge for
8 doing so.

9 Sec. 6. No person required to be registered under this act shall:

10 (a) Impose a mandatory payment on a consumer that directly relates
11 to the provision of earned wage access services;

12 (b) charge a late fee, interest or any other penalty or charge for failure
13 to repay outstanding proceeds;

14 (c) ~~make the offering of earned wage access services, either in seek~~
15 **repayment of proceeds in an amount that exceeds the amount of a**
16 **consumer's earned but unpaid income and any applicable non-**
17 **mandatory payment;**

18 (d) **condition** the amount of proceeds a consumer is eligible to
19 request or the frequency with which **a consumer is eligible to request**
20 ~~proceeds are provided to a consumer, contingent~~ on whether the consumer
21 makes any non-mandatory payments or on the size of any non-mandatory
22 payments that the consumer may make to that registrant in connection with
23 the provision of earned wage access services. This subsection shall not be
24 construed to prohibit a non-mandatory payment equal to a percentage of
25 proceeds provided;

26 ~~(d)~~(e) **solicit a consumer to make a non-mandatory payment after**
27 **informing the consumer that such consumer's request for proceeds**
28 **was accepted;**

29 (f) charge a deferral fee or any other charge in connection with
30 deferring the collection of any outstanding proceeds beyond the original
31 scheduled repayment date;

32 ~~(e)~~(g) **accept credit of any kind as payment from a consumer of**
33 **outstanding proceeds or non-mandatory payments;**

34 (h) solicit a consumer to delay repayment of outstanding proceeds for
35 the purpose of increasing the total non-mandatory payments that the
36 registrant may collect;

37 ~~(f)~~(i) report a consumer's payment or failed repayment of outstanding
38 proceeds to a consumer credit reporting agency or a debt collector;

39 ~~(g)~~(j) require a credit score to determine a consumer's eligibility for
40 earned wage access services; ~~or~~

41 ~~(h)~~(k) **require a credit report for purposes other than verifying a**
42 **consumer's identity; or**

43 (l) provide, sell or otherwise disclose to any third party, including an

1 obligor, any non-public personal information collected from or about a
2 consumer except as necessary to provide earned wage access services to
3 such consumer or in accordance with a consumer's written consent.

4 Sec. 7. (a) A registrant that provides proceeds to a consumer in
5 accordance with this act shall not be subject to the provisions of the
6 uniform consumer credit code in connection with such registrant's earned
7 wage access services.

8 (b) Non-mandatory payments paid by a consumer to a registrant in
9 accordance with this act shall not be considered finance charges ~~for the~~
10 ~~purposes of applying the federal truth in lending act to the earned wage~~
11 ~~access services provided by such registrant.~~

12 Sec. 8. (a) (1) On or before April 1 of each year, each registrant shall
13 file with the commissioner an annual report relating to earned wage access
14 services provided by the registrant in this state during the preceding
15 calendar year. The annual report shall be on a form prescribed by the
16 commissioner.

17 (2) The information contained in the annual report shall be
18 confidential and shall not be subject to the open records act, K.S.A. 45-215
19 et seq., and amendments thereto. **The commissioner may publish**
20 **aggregate annual report information for multiple registrants in**
21 **composite form.** The provisions of this paragraph shall expire on July 1,
22 2028, unless the legislature reviews and acts to continue such provisions
23 pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2028.

24 (b) Within ~~30~~ **15** calendar days of any of the following events, a
25 registrant shall file a written report with the commissioner describing the
26 event and such event's expected impact on the registrant's business:

27 (1) The filing for bankruptcy or reorganization by the registrant;

28 (2) the institution of a revocation, suspension or other proceeding
29 against the registrant by a governmental authority that is related to the
30 registrant's earned wage access services business in any state;

31 (3) **the addition or loss of any owner, officer, partner or director**
32 **of the registrant;**

33 (4) a felony conviction of the registrant or any of such registrant's
34 owners, officers, principals, directors or partners; ~~or~~

35 ~~(4)(5)~~ a change in the registrant's name or legal entity status; **or**

36 (6) **the closing or relocation of the registrant's principal place of**
37 **business.**

38 (c) If a registrant fails to make any report to the commissioner as
39 required by this section, the commissioner may require the registrant to
40 pay a late penalty of \$100 for each day such report is overdue.

41 Sec. 9. (a) Each registrant shall maintain and preserve complete and
42 adequate business records, including a general ledger containing all assets,
43 liabilities, capital, income and expense accounts for a period of three

1 years.

2 (b) Each registrant shall maintain and preserve complete and
3 adequate records of each earned wage access services contract during the
4 term of the contract and for a period of five years from the date on which
5 the registrant last provides proceeds to the consumer.

6 (c) If the registrant's records are located outside this state, the
7 registrant shall provide the records to the commissioner within three
8 calendar days or, at the commissioner's discretion, pay reasonable and
9 necessary expenses for the commissioner or commissioner's designee to
10 examine them at the place where such records are maintained. The
11 registrant may provide such records electronically to the commissioner in
12 a manner prescribed by the commissioner.

13 Sec. 10. The commissioner may deny, suspend, revoke or refuse to
14 renew a registration issued pursuant to this act if the commissioner finds,
15 after notice and opportunity for a hearing conducted in accordance with
16 the provisions of the Kansas administrative procedure act, that:

17 (a) The applicant or registrant has repeatedly or willfully violated any
18 provision of this act, any rules and regulations adopted thereunder or any
19 order lawfully issued by the commissioner pursuant to this act;

20 (b) the applicant or registrant has failed to file and maintain the surety
21 bond required under this act;

22 (c) the applicant or registrant is insolvent;

23 (d) the applicant or registrant has filed with the commissioner any
24 document or statement containing any false representation of a material
25 fact or omitting to state a material fact;

26 (e) the applicant, registrant or any officer, director, member, owner,
27 partner, ~~or principal or debt management counselor thereof~~ **of the**
28 **applicant or registrant** has been convicted of any crime;

29 (f) the applicant or registrant fails to keep and maintain sufficient
30 records to permit an audit satisfactorily disclosing to the commissioner the
31 applicant's or registrant's compliance with the provisions of this act;

32 (g) the applicant, registrant or an employee of the applicant or
33 registrant has been the subject of any disciplinary action by the
34 commissioner or any other state or federal regulatory agency;

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

39 (i) the applicant or registrant has engaged in any deceptive business
40 practice;

41 (j) facts or conditions exist that would have justified the denial of the
42 registration or renewal had such facts or conditions existed or been known
43 to exist at the time the application for registration or renewal was made; or

1 (k) the applicant or registrant has refused to furnish information
2 required by the commissioner within a reasonable period of time as
3 established by the commissioner.

4 Sec. 11. (a) The commissioner shall administer the provisions of this
5 act. In addition to other powers granted by this act, the commissioner,
6 within the limitations provided by law, may exercise the following powers:

7 (1) Adopt, amend and revoke rules and regulations as necessary to
8 carry out the intent and purpose of this act;

9 (2) make any investigation and examination of the operations, books
10 and records of an earned wage access services provider as the
11 commissioner deems necessary to aid in the enforcement of this act;

12 (3) have free and reasonable access to the offices, places of business
13 and all records of the registrant that ~~relate to the earned wage access~~
14 ~~services-business~~ **will enable the commissioner to determine whether**
15 **the registrant is complying with the provisions of this act.** The
16 commissioner may designate persons, including comparable officials of
17 the state in which the records are located, to inspect the records on the
18 commissioner's behalf;

19 (4) establish, charge and collect fees from applicants or registrants for
20 reasonable costs of investigation, examination and administration of this
21 act, in such amounts as the commissioner may determine to be sufficient to
22 meet the budget requirements of the commissioner for each fiscal year.
23 The commissioner may maintain an action in any court to recover such
24 costs;

25 (5) order any registrant or person to cease any activity or practice that
26 the commissioner deems to be deceptive, dishonest, a violation of this act,
27 or of any other state or federal law, or unduly harmful to the interests of
28 the public;

29 (6) exchange any information regarding the administration of this act
30 with any agency of the United States or any state that regulates the
31 applicant or registrant or administers statutes, rules and regulations or
32 programs related to earned wage access services laws;

33 (7) disclose to any person or entity that an applicant's or registrant's
34 application or registration has been denied, suspended, revoked or refused
35 renewal;

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

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

43 (10) delegate the authority to sign any orders, official documents or

1 papers issued under or related to this act to the deputy of consumer and
2 mortgage lending division of the office of the state bank commissioner;

3 ~~(11) require fingerprinting of any registrant, agent acting on behalf of~~
4 ~~a registrant or other person as deemed appropriate by the commissioner, or~~
5 ~~the commissioner's designee. The commissioner, or commissioner's~~
6 ~~designee, may submit such fingerprints to the Kansas bureau of~~
7 ~~investigation, federal bureau of investigation or any other law enforcement~~
8 ~~agency for the purposes of verifying the identity of such persons and~~
9 ~~obtaining records of their criminal arrests and convictions; (A) require~~
10 **fingerprinting of any officer, partner or director of an applicant or**
11 **registrant. Such fingerprints may be submitted to the Kansas bureau**
12 **of investigation and the federal bureau of investigation for a state and**
13 **national criminal history record check. The fingerprints shall be used**
14 **to identify the person and to determine whether the person has a**
15 **record of arrests and convictions in this state or other jurisdictions.**
16 **The commissioner may use information obtained from fingerprinting**
17 **and the criminal history for purposes of verifying the identification of**
18 **the person and in the official determination of the qualifications and**
19 **fitness of the persons associated with the applicant. Whenever the**
20 **commissioner requires fingerprinting, any associated costs shall be**
21 **paid by the applicant or the parties to the application.**

22 **(B) The commissioner shall not authorize receipt of a state and**
23 **national criminal history record check from a private entity unless the**
24 **Kansas bureau of investigation or the federal bureau of investigation**
25 **is unable to supply such state and national criminal history record**
26 **check through the Kansas central repository of criminal history**
27 **records or any subsequent repository system provided for by law. The**
28 **commissioner shall not disclose or use a state and national criminal**
29 **history record check for any purpose except as provided for in this**
30 **section. Unauthorized use of a state or national criminal history**
31 **record check shall constitute a class A nonperson misdemeanor.**

32 **(C) Each state and national criminal history record check shall be**
33 **confidential, not subject to the open records act, K.S.A. 45-215 et seq.,**
34 **and amendments thereto, and not be disclosed to any applicant or**
35 **registrant. The provisions of this subparagraph shall expire on July 1,**
36 **2028, unless the legislature reviews and acts to continue such**
37 **provisions pursuant to K.S.A. 45-229, and amendments thereto, prior**
38 **to July 1, 2028;**

39 (12) issue, amend and revoke written administrative guidance
40 documents in accordance with the applicable provisions of the Kansas
41 administrative procedure act; and

42 (13) enter into any informal agreement with any person for a plan of
43 action to address violations of this act.

1 (b) Examination reports and correspondence regarding such reports
2 made by the commissioner or the commissioner's designees shall be
3 confidential and shall not be subject to the provisions of the open records
4 act, K.S.A. 45-215 et seq., and amendments thereto. The commissioner
5 may release examination reports and correspondence regarding the reports
6 in connection with a disciplinary proceeding conducted by the
7 commissioner, a liquidation proceeding or a criminal investigation or
8 proceeding. Additionally, the commissioner may furnish to federal or other
9 state regulatory agencies or any officer or examiner thereof, a copy of any
10 or all examination reports and correspondence regarding the reports made
11 by the commissioner or the commissioner's designees. The provisions of
12 this subsection shall expire on July 1, 2028, unless the legislature reviews
13 and acts to continue such provisions pursuant to K.S.A. 45-229, and
14 amendments thereto, prior to July 1, 2028.

15 (c) For the purpose of any examination, investigation or proceeding
16 under this act, the commissioner or the commissioner's designee may
17 administer oaths and affirmations, subpoena witnesses, compel such
18 witnesses' attendance, introduce evidence and require the production of
19 any matter that is relevant to the examination or investigation, including
20 the existence, description, nature, custody, condition and location of any
21 books, documents or other tangible things and the identity and location of
22 persons having knowledge of relevant facts or any other matter reasonably
23 calculated to lead to the discovery of relevant information or items.

24 (d) The adoption of an informal agreement authorized by this section
25 shall not be subject to the provisions of the Kansas administrative
26 procedure act or the Kansas judicial review act. Any informal agreement
27 authorized by this subsection shall not be considered an order or other
28 agency action and shall be considered confidential examination material.
29 All such examination material shall be confidential by law and privileged,
30 shall not be subject to the provisions of the open records act, K.S.A. 45-
31 215 et seq., and amendments thereto, shall not be subject to subpoena and
32 shall not be subject to discovery or admissible in evidence in any private
33 civil action. The provisions of this subsection shall expire on July 1, 2028,
34 unless the legislature reviews and acts to continue such provisions
35 pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2028.

36 Sec. 12. (a) If the commissioner determines after notice and
37 opportunity for a hearing pursuant to the Kansas administrative procedure
38 act that any person has engaged, is engaging or is about to engage in any
39 act or practice constituting a violation of any provision of this act, any
40 rules and regulations adopted or order issued thereunder, the commissioner
41 may issue an order requiring any or all of the following:

- 42 (1) That the person cease and desist from the unlawful act or practice;
- 43 (2) that the person pay a fine not to exceed ~~\$2,000~~ **\$5,000** per

1 incident for the unlawful act or practice;

2 (3) if any person is found to have violated any provision of this act
3 and such violation is committed against elder or disabled persons as
4 defined in K.S.A. 50-676, and amendments thereto, the commissioner may
5 impose an additional penalty not to exceed ~~\$2,000~~ **\$5,000** for each such
6 violation, in addition to any civil penalty otherwise provided by law;

7 (4) that the person to pay restitution for any loss arising from the
8 violation or requiring the person to disgorge any profits arising from the
9 violation. Such order may include the assessment of interest not to exceed
10 8% per annum from the date of the violation;

11 (5) that the person take such action as in the judgment of the
12 commissioner will carry out the purposes of this act; or

13 (6) that the person be barred from subsequently applying for
14 registration under this act.

15 (b) (1) If the commissioner makes written findings of fact that the
16 public interest will be irreparably harmed by delay in issuing an order
17 under subsection (a), the commissioner may issue an emergency cease and
18 desist order.

19 (2) Such emergency order, even if not an order within the meaning of
20 K.S.A. 77-502, and amendments thereto, shall be subject to the same
21 procedures as an emergency order issued under K.S.A. 77-536, and
22 amendments thereto.

23 (3) Upon the entry of such an emergency order, the commissioner
24 shall promptly notify the person subject to the order that such order has
25 been entered, the reasons for such order and that a hearing will be held
26 upon written request by such person.

27 (4) If such person requests a hearing or, in the absence of any request,
28 if the commissioner determines that a hearing should be held, the matter
29 shall be set for a hearing that shall be conducted in accordance with the
30 provisions of the Kansas administrative procedure act. Upon completion of
31 the hearing the commissioner shall, by written findings of fact and
32 conclusions of law, vacate, modify or make permanent the emergency
33 order.

34 (5) If no hearing is requested and none is ordered by the
35 commissioner, the emergency order shall remain in effect until such order
36 is modified or vacated by the commissioner.

37 **(6) Fines and penalties collected pursuant to paragraphs (2) and**
38 **(3) shall be designated for use by the commissioner for consumer**
39 **education.**

40 Sec. 13. (a) In case of failure or refusal to obey a subpoena issued to
41 any person, any court of competent jurisdiction, upon application by the
42 commissioner, may issue an order requiring such person to appear before
43 the commissioner, or the officer designated by the commissioner, to

1 produce documentary evidence if so ordered or to give evidence relating to
2 the matter under investigation or in question. Any failure to obey the order
3 of the court may be punished by the court as contempt of court.

4 (b) No person shall be excused from attending, testifying or
5 producing any document or record before the commissioner or in
6 obedience to the subpoena of the commissioner or the commissioner's
7 designee, or in any proceeding instituted by the commissioner, on the
8 ground that such testimony or evidence, documentary or otherwise,
9 required of the person may tend to incriminate the person or subject the
10 person to a penalty or forfeiture. No individual may be prosecuted or
11 subjected to any penalty or forfeiture for or on account of any transaction,
12 matter or thing concerning which such person is compelled, after claiming
13 privilege against self-incrimination, to testify or produce evidence,
14 documentary or otherwise, except that the individual so testifying shall not
15 be exempt from prosecution and punishment for perjury committed in so
16 testifying.

17 Sec. 14. It is unlawful for any person to violate the provisions of this
18 act, any rules and regulations adopted or any order issued under this act. A
19 conviction for an intentional violation is a class A nonperson misdemeanor.
20 A second or subsequent conviction of this section is a severity level 7,
21 nonperson felony. No person may be imprisoned for the violation of this
22 section if such person proves that such person had no knowledge of the
23 rules and regulations or order.

24 Sec. 15. The commissioner, attorney general or a county or district
25 attorney may bring an action in a district court to enjoin any violation of
26 this act or any rules and regulations adopted thereunder.

27 Sec. 16. All fees collected by the commissioner pursuant to this act
28 shall be subject to the provisions of K.S.A. 75-1308, and amendments
29 thereto.

30 Sec. 17. This act shall take effect and be in force from and after its
31 publication in the statute book.