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**REVISOR *of* STATUTES**

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**MEMORANDUM**

To: Chairman Longbine and the Senate Committee on Financial Institutions and Insurance

From: Office of Revisor of Statutes

Date: February 13, 2024

Subject: **SB 495, Modifying certain terms, definitions, deadlines and provisions contained in the uniform consumer credit code and transferring certain mortgage provisions from the uniform consumer credit code to the Kansas mortgage business act.**

SB 495 amends provisions in the uniform consumer credit code (UCCC), provisions of the Kansas mortgage business act (KMBA) and makes coordinating amendments to statutes implicated in the move of mortgage provisions from the UCCC to the KMBA.

- New sections 1-14 of the bill are the new KMBA provisions created by the movement of the mortgage provisions from the UCCC to the KMBA.
- Many new definitions created in the KMBA to support the new provisions (K.S.A. 9-2201).
- Creates a new exemption for certain business entities from the licensing requirement of the KMBA (K.S.A. 9-2202).
- Coordinating amendments to K.S.A. 16-207 and 16-207d relating to moving the mortgage provisions.

Other than the mortgage provisions moving, substantive amendments to the statutes include:

- Requiring books and records requested by the commissioner for inspection and examination be provided within three business days of the written request (K.S.A. 16a-2-304).
- Allows a consumer who is unable to repay a payday loan when due may elect once every 12 months to repay the payday loan through the use of an extended payment plan (K.S.A. 16a-2-404).
- Establishes the required disclosure of a credit card surcharge (K.S.A. 16a-2-403)
- Corrections made to internal references based on statutory movements and changes.

- Electronic signatures and writings are allowed per K.S.A. 16-1601 when the consumer agrees in writing to the use of electronic methods instead of U.S. Mail. (Provision appears in KMBA AND UCCC)

Non-substantive changes to the UCCC, KMBA and other statutes include:

- Updating terms throughout the affected acts:  
"Person required to file notification" vs "Consumer credit filer"  
"Delinquency charges" vs "late fees"
- Hyphenating "open-end" and "closed-end"
- Striking parentheses around statutory references"
- Abbreviating the statutory citation for the UCCC

<u>Section #</u>	<u>New or Existing?</u>	<u>Statute Number</u>	<u>Context</u>	<u>Provision</u>
1	New	TBD	Addition to KMBA	In calculating periods of time, calendar days are used. The day of the act, event or default from which the designated period shall be included in the computation.
2	New	TBD	Addition to KMBA	Any writing or signature required may be provided in electronic form; if consumer agrees in writing, anything required to be sent by US Mail can be sent electronically.
3	New	TBD	Addition to KMBA	Sections 3-14 apply only to covered transactions, as defined in K.S.A. 9-2201. (l) "Covered transaction" means a mortgage loan that: (1) Is a subordinate mortgage; (2) has a loan-to-value ratio at the time when made that exceeds 100%, except for any loan guaranteed by a federal government agency of the United States; or (3) in the case of section 11, and amendments thereto, the annual percentage rate of the loan exceeds the code mortgage rate.
4	New	TBD	Addition to KMBA	A mortgage company shall not make a covered transaction with an interest in land as security with an amount financed of \$5,000 or less in which the annual percentage rate of the loan exceeds the code mortgage rate.
5	New	TBD	Addition to KMBA	A consumer may only waive or forego rights or benefits under sections 3-14 in the following circumstances if the claims settled by agreement in good faith: (A) By a consumer against a mortgage company for any violation of sections 3-14; (B) against a consumer for default or breach of sections 3-14.
6	New	TBD	Addition to KMBA	Except as otherwise provided in sections 3-14, if a mortgage company has violated any provision of sections 3-14, the consumer shall have a cause of action against the mortgage company or liable person actual damages and a penalty, with certain limitations.
7	New	TBD	Addition to KMBA	The consumer may prepay the unpaid balance of a covered transaction at any time without penalty.
8	New	TBD	Addition to KMBA	The periodic finance charge for a covered transaction shall not exceed 18% per annum. If a first mortgage constitutes a covered transaction, then the periodic finance charge shall not exceed the authorized rate pursuant to K.S.A. 16-207(a).
9	New	TBD	Addition to KMBA	In addition to the finance charge permitted by sections 3 through 14, and amendments thereto, for covered transactions, a mortgage company may contract for and receive other additional charges for such covered transactions.
10	New	TBD	Addition to KMBA	The parties to a covered transaction may contract for a late fee on any installment not paid in full within 10 calendar days after its scheduled or deferred due date in an amount not to exceed 5% of the unpaid amount of the installment or \$25, whichever is less. (b) As an alternative to the late fee set forth in subsection (a), the parties to a covered transaction may contract for a late fee not to exceed \$10 on any installment not paid in full within 10 calendar days after its scheduled or deferred due date, except that if the scheduled payment amount is \$25 or less, the maximum late fee shall be \$5.

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11	New	TBD	Addition to KMBA	A covered transaction shall not provide for the negative amortization of principal or a balloon payment when the loan-to-value ratio at the time such covered transaction was made exceeds 100% or when the annual percentage rate of the loan exceeds the code mortgage rate unless such covered transaction is open-end, incurred to acquire or construct the consumer's principal residence or a reverse mortgage.
12	New	TBD	Addition to KMBA	Before making a covered transaction, a mortgage company shall obtain the appraised value of the real estate to be encumbered.
13	New	TBD	Addition to KMBA	An agreement of the parties to a covered transaction with respect to default on the part of the consumer shall be enforceable only under certain circumstances.
14	New	TBD	Addition to KMBA	After a consumer has been in default for 10 days for failure to make a required payment in a covered transaction payable in installments, a mortgage company may give the consumer the notice described in this section.
15	New	TBD	Addition to UCCC	Exemptions from the supervised loan licensing requirement: A supervised financial organization; the FDIC acting in its corporate capacity or as receiver; an attorney who is forwarded contracts for collection.
16	New	TBD	Addition to UCCC	Any writing or signature required by this act may be provided or executed using an electronic format pursuant to K.S.A. 16- 1601 et seq., and amendments thereto
17	Existing	9-2201	KMBA	Definitions added to banking code to support the relocation of mortgage provisions from UCCC to KMBA.
18	Existing	9-2202	KMBA	Statute lists the exemptions from the licensing requirement for the KMBA; adds "business entities with no employees when a related, licensed mortgage company acts as a proxy for the entity by conducting all mortgage business on behalf of the entity and including all such mortgage business in the proxy's reports to the commissioner.
19	Existing	9-2203	KMBA	Adds "entities that are exempt from licensure" to those parties that may conduct mortgage business in the state.
20	Existing	9-2208	KMBA	Adds a provisions stating that the licensee shall provide each consumer a notice that contains information prescribed by the commissioner, by the time that the earliest of three events occurs.
21	Existing	9-2209	KMBA	Adds a provision stating that the grant of powers made to the commissioner pursuant to the statute does not affect the remedies available to consumers under the KMBA or under other principles of law or equity.
22	Existing	9-2212	KMBA	Adds a provision stating that no person required to be licensed or exempt from licensure under the act shall fail to disburse the proceeds of a mortgage loan upon the satisfaction of all conditions to the disbursement and the expiration of all applicable waiting periods unless the parties agree in writing.
23	Existing	9-2216	KMBA	Provisions relating to the retention of records, inspection, security, preservation, etc. No substantive changes.
24	Existing	9-2216a	KMBA	Authorizes the commissioner to apply funds received from late penalties to a consumer education fund. Makes provisions relating to a licensee's business and operations confidential and not subject to the Kansas open records act.

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25	Existing	9-2220	KMBA	Amending the citation of the Kansas mortgage business act to include sections 1-14.
26	Existing	16-207	Contracts & Promises / Interest and Charges	Adds several new transactions to which the 15% interest receivable limitation, pursuant to subsection (a) does not apply.
27	Existing	16-207d	Contracts & Promises / Interest and Charges	Strikes the rule and reg making authority of the consumer credit commissioner and the savings and loan commissioner.
28	Existing	16a-1-101	UCCC - general provisions	Citation to the UCCC
29	Existing	16a-1-102	UCCC - general provisions	Purposes and rules of construction - updates to language; simplify provisions
30	Existing	16a-1-103	UCCC - general provisions	States that the UCCC takes precedence in consumer credit transactions, the UCC and other provisions of law.
31	Existing	16a-1-104	UCCC - general provisions	States that the UCCC is meant to be construed as a general act intended as unified coverage of its subject matter, no part of it should be construed to be implicitly repealed by subsequent legislation.
32	Existing	16a-1-107	UCCC - general provisions	States that a consumer may not waive or agree to forego rights or benefits under the UCCC, except for certain circumstances.
33	Existing	16a-1-108	UCCC - general provisions	Effect of act on powers of organization
34	Existing	16a-1-109	UCCC - general provisions	States that the parties to a sale, lease or loan that is not a consumer credit transaction may agree in a writing that the transaction is subject to the provisions of the UCCC .
35	Existing	16a-1-201	UCCC - Scope and Jdx	States the conditions under which a consumer credit transaction can be said to have been made in Kansas. Adds a provision stating that: Except as provided in subsection (5), a consumer credit transaction made in a state outside of Kansas to a person who was not a resident of Kansas when the sale, lease, loan or modification was made is valid and enforceable in Kansas according to its terms to the extent that it is valid and enforceable under the laws of the state applicable to the transaction. Adds another provision stating that the UCCC does not apply if the consumer is not a resident at the time of a consumer credit transaction and the parties have agreed that the laws of the consumer's residence applies.
36	Existing	16a-1-202	UCCC - Scope and Jdx	Exclusions to the UCCC
37	Existing	16a-1-301	UCCC - definitions	New definitions added: "agent," "applicant," "assignment," "balloon payment," "closed-end credit," "consumer credit filer," "consumer credit insurance," "director," "installment," "license," "licensee," "licensing," "member," "nationwide mortgage licensing system and registry," "officer," "open-end credit," "regularly engaged," and "threshold amount."

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38	Existing	16a-2-103	UCCC - finance charges and related provisions	Strikes one method of calculating the finance charge on a consumer loan secured by a first or second lien real estate mortgage where the contract rate is divided by 360 and then multiplied by the outstanding principal amount and 30 assumed days between scheduled due dates.
39	Existing	16a-2-104	UCCC - finance charges and related provisions	Specifies when a creditor shall credit a payment to the consumer's account.
40	Existing	16a-2-201	UCCC - finance charges and related provisions	Strikes one of the occasions when a seller can charge a prepaid finance charge.
41	Existing	16a-2-202	UCCC - finance charges and related provisions	Strikes the provision stating that the section does not apply to a sale of interest in land
42	Existing	16a-2-301	UCCC - finance charges and related provisions	States that unless a person is exempt from licensing pursuant to section 16, the person shall not engage in making supervised loans, taking assignments directly or indirectly, including through the use of supervised loans servicing contracts and either collecting payments from debtors arising from supervised loans or enforcing rights against debtors arising from supervised loans. States that if a person is engaged in such activities, the person shall promptly apply for a license and may for 3 months collect and enforce without a license, so long as the application has not been denied.
43	Existing	16a-2-302	UCCC - Consumer loans and supervised lenders	Lists provisions pertaining to licenses to make supervised loans. A license shall become effective as of the date specified in writing and expire on December 31 of each year. Also describes when the administrator shall consider an application for a license abandoned, provisions for renewal of licenses and licensure reinstatement. Requires that a licensee notify the administrator within 10 business days of the occurrence of any of three events: closing or relocation of the place of business; change in the licensee's name, legal entity status; or the addition or loss of any owner, officer, member or director.
44	Existing	16a-2-303	UCCC - Consumer loans and supervised lenders	States the circumstances under which the administrator may deny an application or renewal of license, revoke or suspend a supervised loan license.
45	Existing	16a-2-304	UCCC - Consumer loans and supervised lenders	Provision added to state that all books, records and any other documents shall be made available for examination and inspection by the administrator or the administrator's designee. Records shall be delivered to the administrator within 3 business days of demand.
46	Existing	16a-2-308	UCCC - Consumer loans and supervised lenders	Supervised loans not made pursuant to open-end credit or lender credit cards issued by a supervised lender and in which the amount financed is \$1,000 or less and the principal of which is payable in more than a single payment must be scheduled to be payable in substantially equal installments at equal periodic intervals except to the extent that the schedule of payments is adjusted to the seasonal or irregular income of the debtor and over a period of not more than 25 months.

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47	Existing	16a-2-309	UCCC - finance charges and related provisions	No substantive changes; consolidation of citation of UCCC
48	Existing	16a-2-310	UCCC - finance charges and related provisions	Strikes certain prohibitions on the actions of consumer credit filers.
49	Existing	16a-2-401	UCCC - Consumer loans and maximum finance charges	Establishes 36% as the maximum periodic finance charge on a consumer loan incurred pursuant to closed-end credit. Prepaid finance charges are limited to an amount not to exceed the lesser of 2% of the amount financed or \$300.
	Existing	16a-2-402	UCCC - finance charges and related provisions	No substantive changes; changes limited to hyphenating open-end
51	Existing	16a-2-403	UCCC - finance charges and related provisions	Disclosure of credit card surcharge imposed.
52	Existing	16a-2-404	UCCC - finance charges and related provisions	Payday lending statute. Adds a provision to state that a consumer who is unable to repay a payday loan when due may elect once every 12 months to repay the payday loan through the use of an extended payment plan.
53	Existing	16a-2-501	UCCC - consumer credit transactions; other charges and modifications	A creditor may contract for and receive certain additional charges in connection with a consumer credit transaction. A service charge for an insufficient payment method shall not exceed \$30, subject to limitations contained in the section and certain notices must be supplied to a consumer providing an insufficient payment method by US mail or clear notice of the insufficient payment method charge on the consumer's regular monthly statement.
54	Existing	16a-2-502	UCCC - consumer credit transactions; other charges and modifications	No late fee may be assessed when such a fee or charge is attributable solely to failure of the consumer to pay a late fee on an earlier installment and the payment is otherwise a periodic payment received on the due date, or within 10 calendar days after its scheduled or deferred installment due date.
55	Existing	16a-2-504	UCCC - consumer credit transactions; other charges and modifications	Language stricken that would allow a creditor to contract for and receive a finance charge based on the amount financed
56	Existing	16a-2-505	UCCC - consumer credit transactions; other charges and modifications	Language stricken that would have allowed a consumer and a creditor to consolidate two balances into one single schedule of payments.

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57	Existing	16a-2-506	UCCC - consumer credit transactions; other charges and modifications	New language added: If a consumer credit transaction agreement requires a consumer to insure or preserve the collateral and the consumer fails to do so, after providing the consumer prior notification and a reasonable opportunity to perform, the creditor may pay for the performance of insuring or preserving the collateral on the consumer's behalf and may add the payment to the unpaid debt balance.
58	Existing	16a-2-507	UCCC - consumer credit transactions; other charges and modifications	With respect to a consumer credit transaction, the agreement may provide for the payment by the debtor of reasonable costs of collection paid to outside parties, including, but not limited to, court costs, attorney fees and collection agency fees. Reasonable collection costs and attorney fees pursuant to subsection (a) shall be considered separate from reasonable expenses incurred on realizing a security interest pursuant to K.S.A. 16a-3-402.
59	Existing	16a-2-508	UCCC - consumer credit transactions; other charges and modifications	No substantive changes
60	Existing	16a-2-510	UCCC - consumer credit transactions; other charges and modifications	No substantive changes
61	Existing	16a-3-201	UCCC - Regulation of agreements and practices	Correction of internal reference.
62	Existing	16a-3-202	UCCC - Regulation of agreements and practices	New provision stating that notice must be provided to the consumer when a written agreement that requires or provides for the signature of the consumer.
63	Existing	16a-3-203	UCCC - Regulation of agreements and practices	If the payment is received by the assignor of a consumer credit contract for the benefit of the assignee, the date of payment shall be deemed to be the day payment is received by the assignor.
64	Existing	16a-3-204	UCCC - Regulation of agreements and practices	No substantive changes
65	Existing	16a-3-205	UCCC - Regulation of agreements and practices	No substantive changes
66	Existing	16a-3-206	UCCC - Regulation of agreements and practices	Correction of internal reference



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67	Existing	16a-3-208	UCCC - Regulation of agreements and practices	Additional language added to state that no person shall advertise the size of any loan, security required for a loan, rate of change or other conditions of lending except with the full intent of making loans at those rates, or lower rates, and under those conditions or conditions more favorable to the consumer, to loan applicants who meet the standards or qualifications prescribed.
68	Existing	16a-3-209	UCCC - Regulation of agreements and practices	No substantive changes
69	Existing	16a-3-301	UCCC - Regulation of agreements and practices	No substantive changes
70	Existing	16a-3-302	UCCC - Regulation of agreements and practices	No substantive changes
71	Existing	16a-3-303	UCCC - Regulation of agreements and practices	No substantive changes
72	Existing	16a-3-304	UCCC - Regulation of agreements and practices	No substantive changes
73	Existing	16a-3-305	UCCC - Regulation of agreements and practices	No substantive changes
74	Existing	16a-3-306	UCCC - Regulation of agreements and practices	No substantive changes
75	Existing	16a-3-307	UCCC - Regulation of agreements and practices	In a consumer credit sale or consumer lease, the creditor shall only accept currently dated negotiable instruments as evidence of the obligation of the buyer or lessee. For purposes of this section, a creditor shall not make the consumer credit sale contract or consumer lease contract a negotiable instrument.
76	Existing	16a-3-308	UCCC - Regulation of agreements and practices	In a consumer credit transaction with a balloon payment, other than one pursuant to open-end credit, the consumer has shall have the right to refinance the amount of that payment at the time it is due without penalty. The terms of the refinancing shall be no less favorable to the consumer than the terms of the original transaction

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77	Existing	16a-3-309	UCCC - Regulation of agreements and practices	Provision replaced with the following language: In a consumer credit sale, no seller shall offer or give a rebate, discount or otherwise pay value to the buyer in consideration of the buyer giving the seller the names of third parties, or otherwise assist the seller in making a sale to a third party when the earning of the rebate, discount or other value is contingent upon an event subsequent to the time of the sale. (b) In a consumer lease, no lessor shall offer or give a rebate, discount or otherwise pay value to the lessee in consideration of the lessee giving to the lessor the names of third parties, or otherwise aiding the lessor in leasing to a third party when the earning of the rebate, discount or other value is contingent upon an event subsequent to the time of the lease. (2) If a buyer or lessee is induced by a violation of this section to enter into a consumer credit sale or consumer lease, the agreement shall be unenforceable by the seller or lessor and the buyer or lessee, at the buyer's or lessee's option, may rescind the agreement or retain the goods delivered and the benefit of any services performed, without any obligation to pay for them.
78	Existing	16a-3-402	UCCC - Regulation of agreements and practices	No substantive changes
79	Existing	16a-3-403	UCCC - Regulation of agreements and practices	No substantive changes
80	Existing	16a-3-404	UCCC - Regulation of agreements and practices	No substantive changes
81	Existing	16a-3-405	UCCC - Regulation of agreements and practices	No substantive changes
82	Existing	16a-4-102	UCCC - Insurance	No substantive changes
83	Existing	16a-4-104	UCCC - Insurance	No substantive changes
84	Existing	16a-4-105	UCCC - Insurance	No substantive changes
85	Existing	16a-4-106	UCCC - Insurance	No substantive changes
86	Existing	16a-4-107	UCCC - Insurance	No substantive changes
87	Existing	16a-4-108	UCCC - Insurance	No substantive changes

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88	Existing	16a-4-109	UCCC - Insurance	No substantive changes
89	Existing	16a-4-110	UCCC - Insurance	No substantive changes
90	Existing	16a-4-111	UCCC - Insurance	No substantive changes
91	Existing	16a-4-112	UCCC - Insurance	No substantive changes
92	Existing	16a-4-201	UCCC - Insurance	No substantive changes
93	Existing	16a-4-202	UCCC - Insurance	No substantive changes
94	Existing	16a-4-203	UCCC - Insurance	No substantive changes
95	Existing	16a-4-301	UCCC - Insurance	No substantive changes
96	Existing	16a-4-304	UCCC - Insurance	No substantive changes
97	Existing	16a-5-103	UCCC - remedies and penalties	No substantive changes
98	Existing	16a-5-107	UCCC - remedies and penalties	Anti-loan-sharking provisions; if statements are made to the extent that it becomes an understanding that a delay in repayment could result in the use of violence or other criminal means the repayment of the extension of credit is unenforceable through the use of civil judicial processes against the consumer. If the extension of credit is made at an annual rate exceeding 36% and that the creditor had a reputation for the use of threat of use of violence, then there is prima facie evidence that the extension of credit was unenforceable.
99	Existing	16a-5-108	UCCC - remedies and penalties	The unconscionability of an act or practice is a question for the trier of fact.
100	Existing	16a-5-111	UCCC - remedies and penalties	After a consumer has been in default for 10 days for failure to make a required payment in a consumer credit transaction payable in installments, a creditor may give the consumer the notice described in this section. A creditor gives notice to the consumer under this section when the creditor delivers the notice to the consumer or delivers or mails the notice to the address of the consumer's residence. (2) The notice shall be in writing and shall conspicuously state the following: The name, address and telephone number of the creditor to which payment is to be made, a brief description of the credit transaction, the consumer's right to cure the default, the amount of payment and date by which payment must be made to cure the default, and the consumer's possible liability for the reasonable costs of collection, including, but not limited to, court costs, either attorney fees or collection agency fees and any other information required by the administrator as set forth by rules and regulations or by administrative interpretation

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101	Existing	16a-5-201	UCCC - remedies and penalties	No substantive changes
102	Existing	16a-5-203	UCCC - remedies and penalties	No substantive changes
103	Existing	16a-5-301	UCCC - remedies and penalties	Removal of the provision that no person may be imprisoned for the violation of the section if such person proves that such person had no knowledge of the rule or regulation or order. The criminal liability of a person under the section is in lieu of and not in addition to the creditor's criminal history under the federal truth in lending act.
104	Existing	16a-6-104	UCCC - Administration	Strikes some of the administrator's requirements of applicants, licensee, registrants for continuing education, requiring standardized examinations, reporting, adopting rules and regulations.
105	Existing	16a-6-105	UCCC - Administration	No substantive changes
106	Existing	16a-6-106	UCCC - Administration	Allows the administrator to enter into informal agreements at any time to resolve matters arising under the act, rules and regulations adopted pursuant to the act, or an order issued.
107	Existing	16a-6-108	UCCC - Administration	Adds refusal or failure to provide the administrator with information requested by the administrator to the list of acts or practices constituting a violation of the act.
108	Existing	16a-6-109	UCCC - Administration	No substantive changes
109	Existing	16a-6-110	UCCC - Administration	No substantive changes
110	Existing	16a-6-111	UCCC - Administration	No substantive changes
111	Existing	16a-6-112	UCCC - Administration	No substantive changes
112	Existing	16a-6-113	UCCC - Administration	No substantive changes
113	Existing	16a-6-115	UCCC - Administration	No substantive changes
114	Existing	16a-6-201	UCCC - Administration	Lists the entities exempt from the provisions of the section.
115	Existing	16a-6-202	UCCC - Administration	No substantive changes
116	Existing	16a-6-203	UCCC - Administration	Changes the deadline for consumer credit filers to file notifications from April 30 to August 31. Also requires consumer credit filers to pay additional fees if the consumer credit filers are also sellers, lessors or lenders

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117	Existing	16a-6-401	UCCC - Administration	Subject to specific provisions found in K.S.A. 16a-1-101 et seq., and amendments thereto, the exercise of powers by the administrator shall be subject to the adoption of rules and regulations pursuant to K.S.A. 77-401 et seq., and amendments thereto, the Kansas administrative procedure act, K.S.A. 77-501 et seq., and amendments thereto, and the Kansas judicial review act, K.S.A. 77-601 et seq., and amendments thereto
118	Existing	16a-4-403	UCCC - Insurance	No substantive changes
119	Existing	40-1209	Insurance - Mutual Insurance Co.	Correction of internal reference to K.S.A. 16-207(a).