

SENATE BILL No. 369

By Committee on Financial Institutions and Insurance

1-27

1 AN ACT concerning the Kansas mortgage business act; relating to the
2 state bank commissioner; amending K.S.A. 9-2206 and K.S.A. 2015
3 Supp. 9-2201, 9-2202, 9-2203, 9-2205, 9-2208, 9-2209, 9-2211, 9-
4 2212, 9-2216 and 9-2216a and repealing the existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2015 Supp. 9-2201 is hereby amended to read as
8 follows: 9-2201. As used in this act:

9 (a) *"Application" means the submission of a consumer's financial*
10 *information, including the consumer's name, income and social security*
11 *number to obtain a credit report, the property address, an estimate of the*
12 *value of the property and the mortgage loan amount sought, for the*
13 *purpose of obtaining an extension of credit.*

14 ~~(a)~~ (b) *"Bona fide office" means an applicant's or licensee's principal*
15 *place of business with an office that:*

- 16 (1) Is located in this state;
17 (2) is not located in a personal residence;
18 (3) has regular hours of operation;
19 (4) is accessible to the public;
20 (5) is leased or owned by the licensee and serves as an office for the
21 transaction of the licensee's mortgage business;
22 (6) is separate from any office of another registrant; and
23 (7) is accessible to all of the licensee's books, records and documents.

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

27 ~~(c)~~ (d) *"Commissioner" means the state bank commissioner or*
28 *designee, who shall be the deputy commissioner of the consumer and*
29 *mortgage lending division of the office of the state bank commissioner.*

30 (e) *"Individual" means a human being.*

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

33 ~~(e)~~ (g) *"Licensee" means a person who is licensed by the*
34 *commissioner as a mortgage company.*

35 ~~(f)~~ (h) *"Loan originator" means an individual:*

- 36 (1) Who engages in mortgage business on behalf of a single mortgage

1 company;

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

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

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

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

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

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

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

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

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

39 ~~(i)~~ (j) "Mortgage business" means engaging in, or holding out to the
40 public as willing to engage in, for compensation or gain, or in the
41 expectation of compensation or gain, directly or indirectly, the business of
42 making, originating, servicing, soliciting, placing, negotiating, acquiring,
43 selling~~or~~, arranging for others, *or holding the rights to* or offering to

1 solicit, place, negotiate, acquire, sell or arrange for others, mortgage loans
2 in the primary market.

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

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

15 (m) "Mortgage servicer" means any person engaged in mortgage
16 servicing.

17 (n) "Mortgage servicing" means collecting payment, remitting
18 payment for another or the right to collect or remit payment of any of the
19 following: Principal; interest; tax; insurance; or other payment under a
20 mortgage loan.

21 (o) "Nationwide mortgage licensing system and registry" means a
22 mortgage licensing system developed and maintained by the conference of
23 state bank supervisors and the American association of residential
24 mortgage regulators for the licensing and registration of mortgage loan
25 originators.

26 (p) "Not-for-profit" means a business entity that is granted tax
27 exempt status by the internal revenue service.

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

31 ~~(m)~~ (r) "Primary market" means the market wherein ~~mortgage loans~~
32 ~~are originated between a lender and a borrower, whether or not through a~~
33 ~~mortgage broker or other means~~ *mortgage business is conducted including*
34 *activities conducted by any person who assumes or accepts any mortgage*
35 *business responsibilities of the original parties to the transaction.*

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

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

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

1 ~~(g)~~ (v) "Unique identifier" means a number or other identifier
2 assigned by protocols established by the nationwide mortgage licensing
3 system and registry.

4 Sec. 2. K.S.A. 2015 Supp. 9-2202 is hereby amended to read as
5 follows: 9-2202. The following are exempt from the licensing
6 requirements of this act:

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

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

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

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

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

25 (e) *not-for-profit entities that provide mortgage loans in conjunction*
26 *with a mission of building or rehabilitating affordable homes to low-*
27 *income consumers.*

28 Sec. 3. K.S.A. 2015 Supp. 9-2203 is hereby amended to read as
29 follows: 9-2203. (a) Mortgage business shall only be conducted in this
30 state at or from a mortgage company licensed by the commissioner as
31 required by this act. A licensee shall be responsible for all mortgage
32 business conducted on their behalf by loan originators or other employees.

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

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

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

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

6 ~~(e)~~ (f) No prosecution for any crime under this act may be
7 commenced more than five years after the alleged violation. A prosecution
8 is commenced when a complaint or information is filed, or an indictment
9 returned, and a warrant thereon is delivered to the sheriff or other officer
10 for execution, except that no prosecution shall be deemed to have been
11 commenced if the warrant so issued is not executed without unreasonable
12 delay.

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

15 Sec. 4. K.S.A. 2015 Supp. 9-2205 is hereby amended to read as
16 follows: 9-2205. (a) A license or registration shall become effective as of
17 the date specified ~~on the face of the certificate~~ *in writing by the*
18 *commissioner.*

19 (b) A license shall be renewed annually by filing with the
20 commissioner, at least 30 days prior to the expiration of the license, a
21 renewal application, containing information the commissioner requires to
22 determine the existence of material changes from the information
23 contained in the applicant's original license application or prior renewal
24 applications.

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

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

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

39 Sec. 5. K.S.A. 9-2206 is hereby amended to read as follows: 9-2206.
40 If the commissioner fails to issue a license or registration within 60 days or
41 grant a renewal within 30 days after ~~a filed~~ *an* application is deemed
42 complete by the commissioner, the applicant may make written request for
43 hearing. The commissioner shall conduct a hearing in accordance with the

1 Kansas administrative procedure act.

2 Sec. 6. K.S.A. 2015 Supp. 9-2208 is hereby amended to read as
3 follows: 9-2208. (a) Each licensee shall ~~prominently display the license of~~
4 ~~any principal place of business and any branch office in a way that~~
5 ~~reasonably assures recognition by customers and members of the general~~
6 ~~public who enter the licensee's place of business~~ *make available the*
7 *evidence of licensure of each licensed location in a way that reasonably*
8 *assures recognition by consumers and members of the general public.*

9 (b) Prior to entering into any contract for the provision of services or
10 prior to the licensee receiving any compensation or promise of
11 compensation for a mortgage loan the licensee shall acquire from the
12 ~~customer~~ *consumer* a signed acknowledgment containing such information
13 as the commissioner may prescribe by rule and regulation. The signed
14 acknowledgment shall be retained by the licensee and a copy shall be
15 provided to the ~~customer~~ *consumer*.

16 (c) All solicitations and published advertisements concerning
17 mortgage business directed at Kansas residents, including those on the
18 internet or by other electronic means, shall contain ~~the words "Kansas~~
19 ~~licensed mortgage company," and must also contain~~ the name and license
20 number *or unique identifier* of the licensee, ~~which shall be the same as the~~
21 ~~name and number~~ on record with the commissioner. Each licensee shall
22 maintain a record of all solicitations or advertisements for a period of ~~25~~
23 *36* months. For the purpose of this subsection, "advertising" does not
24 include business cards or promotional items.

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

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

32 Sec. 7. K.S.A. 2015 Supp. 9-2209 is hereby amended to read as
33 follows: 9-2209. (a) The commissioner may exercise the following
34 powers:

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

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

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

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

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

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

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

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

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

35 (10) 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 commissioner, or
39 the commissioner's designee, and may be made a condition of application
40 approval and renewal;

41 (11) require fingerprinting of any applicant, registrant, licensee,
42 members thereof if a copartnership or association, or officers and directors
43 thereof if a corporation, or any agent acting on their behalf, or other person

1 as deemed appropriate by the commissioner. The commissioner, or the
2 commissioner's designee, may submit such fingerprints to the Kansas
3 bureau of investigation, federal bureau of investigation or other law
4 enforcement agency for the purposes of verifying the identity of such
5 persons and obtaining records of their criminal arrests and convictions. For
6 the purposes of this section and in order to reduce the points of contact
7 which the federal bureau of investigation may have to maintain with the
8 individual states, the commissioner may use the nationwide mortgage
9 licensing system and registry as a channeling agent for requesting
10 information from and distributing information to the department of justice
11 or any governmental agency;

12 (12) refer such evidence as may be available concerning any violation
13 of this act or of any rule and regulation or order hereunder to the attorney
14 general or the proper county or district attorney, who may in the
15 prosecutor's discretion, with or without such a referral, institute the
16 appropriate criminal proceedings under this act. Upon receipt of such
17 referral, the attorney general or the county attorney or district attorney may
18 request that a duly employed attorney of the commissioner prosecute or
19 assist in the prosecution of such violation or violations on behalf of the
20 state. Upon approval of the commissioner, such employee shall be
21 appointed a special prosecutor for the attorney general or the county
22 attorney or district attorney to serve without compensation from the
23 attorney general or the county attorney or district attorney. Such special
24 prosecutor shall have all the powers and duties prescribed by law for
25 assistant attorneys general or assistant county or district attorneys and such
26 other powers and duties as are lawfully delegated to such special
27 prosecutor by the attorney general or the county attorney or district
28 attorney;

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

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

38 (15) establish relationships or contracts with the nationwide mortgage
39 licensing system and registry or other entities to collect and maintain
40 records and process transaction fees or other fees related to applicants,
41 licensees, registrants or other persons subject to this act and to take such
42 other actions as may be reasonably necessary to participate in the
43 nationwide mortgage licensing system and registry. The commissioner

1 shall regularly report violations of law, as well as enforcement actions and
2 other relevant information to the nationwide mortgage licensing system
3 and registry; ~~and~~

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

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

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

12 (19) *enter into any informal agreement with any mortgage company*
13 *for a plan of action to address violations of law. The adoption of an*
14 *informal agreement authorized by this paragraph shall not be subject to*
15 *the provisions of K.S.A. 77-501 et seq., and amendments thereto, or K.S.A.*
16 *77-601 et seq., and amendments thereto. Any informal agreement*
17 *authorized by this paragraph shall not be considered an order or other*
18 *agency action, and shall be considered confidential examination material*
19 *pursuant to K.S.A. 9-2217, and amendments thereto. All such examination*
20 *material shall also be confidential by law and privileged, shall not be*
21 *subject to the open records act, K.S.A. 45-215 et seq., and amendments*
22 *thereto, shall not be subject to subpoena and shall not be subject to*
23 *discovery or admissible in evidence in any private civil action. The*
24 *provisions of this paragraph shall expire on July 1, 2021, unless the*
25 *legislature reviews and reenacts this provision pursuant to K.S.A. 45-229,*
26 *and amendments thereto, prior to July 1, 2021; and*

27 (20) *issue, amend and revoke written administrative guidance*
28 *documents in accordance with the applicable provisions of the Kansas*
29 *administrative procedure act.*

30 (b) For the purpose of any examination, investigation or proceeding
31 under this act, the commissioner or any officer designated by the
32 commissioner may administer oaths and affirmations, subpoena witnesses,
33 compel such witnesses' attendance, adduce evidence and require the
34 production of any matter which is relevant to the examination or
35 investigation, including the existence, description, nature, custody,
36 condition and location of any books, documents or other tangible things
37 and the identity and location of persons having knowledge of relevant
38 facts, or any other matter reasonably calculated to lead to the discovery of
39 relevant information or items.

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

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

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

18 (e) *Except for refund of an excess charge, no liability is imposed*
19 *under the Kansas mortgage business act for an act done or omitted in*
20 *conformity with a rule and regulation or written administrative*
21 *interpretation of the commissioner in effect at the time of the act or*
22 *omission, notwithstanding that after the act or omission, the rule and*
23 *regulation or written administrative interpretation may be determined by*
24 *judicial or other authority to be invalid for any reason.*

25 Sec. 8. K.S.A. 2015 Supp. 9-2211 is hereby amended to read as
26 follows: 9-2211. (a) Each applicant or licensee who maintains a bona fide
27 office shall file with the commissioner a surety bond in the amount of not
28 less than \$50,000, in a form acceptable to the commissioner, issued by an
29 insurance company authorized to conduct business in this state, securing
30 the applicant's or licensee's faithful performance of all duties and
31 obligations of a licensee meeting the following requirements:

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

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

43 (3) the bond shall be available for the recovery of expenses, fines and

1 fees levied by the commissioner under this act, and for losses or damages
2 which are determined by the commissioner to have been incurred by any
3 borrower or consumer as a result of the applicant's or licensee's failure to
4 comply with the requirements of this act.

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

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

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

16 ~~(B) the terms of the bond shall provide that it may not be terminated~~
17 ~~without 30 days prior written notice to the commissioner; and~~

18 ~~(C) the bond shall be available for the recovery of expenses, fines and~~
19 ~~fees levied by the commissioner under this act, and for losses or damages~~
20 ~~which are determined by the commissioner to have been incurred by any~~
21 ~~borrower or consumer as a result of the applicant's or licensee's failure to~~
22 ~~comply with the requirements of this act; set forth in paragraphs (a)(1),~~
23 ~~(a)(2) and (a)(3) of this act; and~~

24 (2) submit evidence that establishes, to the commissioner's
25 satisfaction, that the applicant or licensee shall at all times maintain a
26 minimum net worth of \$50,000. Evidence of net worth shall include the
27 submission of a balance sheet *of the applicant or a consolidated financial*
28 *statement of the entity that owns or controls the applicant* accompanied by
29 a written statement by an independent certified public accountant attesting
30 that the balance sheet *or the consolidated financial statement* has been
31 reviewed in accordance with generally accepted accounting principles.

32 Sec. 9. K.S.A. 2015 Supp. 9-2212 is hereby amended to read as
33 follows: 9-2212. No person required to be licensed or registered under this
34 act shall directly or indirectly:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 Sec. 10. K.S.A. 2015 Supp. 9-2216 is hereby amended to read as
13 follows: 9-2216. (a) A licensee shall keep copies of all documents or
14 correspondence received or prepared by the licensee or registrant in
15 connection with a loan or loan application and those records and
16 documents required by the commissioner by rules and regulations adopted
17 pursuant to K.S.A. 9-2209, and amendments thereto, for such time frames
18 as are specified in the rules and regulations. If the loan is not serviced by a
19 licensee, the retention period commences on the date the loan is closed or,
20 if the loan is not closed, the date of the loan application. If the loan is
21 serviced by a licensee, the retention period commences on the date the
22 loan is paid in full or the date the licensee ceases to service the loan.

23 (b) All books, records and any other documents held by the licensee
24 shall be made available for examination and inspection by the
25 commissioner or the commissioner's designee. Certified copies of all
26 records not kept within this state shall be delivered to the commissioner
27 within three business days of the date such documents are requested.

28 (c) *Each licensee shall maintain the following information:*

29 (1) *The name, address and telephone number of each loan applicant;*

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

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

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

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

43 ~~(f)~~ (f) Any records required to be retained may be maintained and

1 preserved by nonerasable, nonalterable electronic imaging or by
2 photograph on film. If the records are produced or reproduced by
3 photographic film, electronic imaging or computer storage medium the
4 licensee shall meet the following criteria:

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

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

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

15 ~~(f)~~ (g) No person required to be licensed or registered under this act
16 shall:

17 (1) Alter, destroy, shred, mutilate, conceal, cover up or falsify any
18 record with the intent to impede, obstruct or influence any investigation by
19 the commissioner or the commissioner's designee; or

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

23 Sec. 11. K.S.A. 2015 Supp. 9-2216a is hereby amended to read as
24 follows: 9-2216a. ~~(a) Each licensee shall maintain a journal of mortgage~~
25 ~~transactions at the licensee's principal place of business, which shall~~
26 ~~include at least the following information:(1) Name, address and~~
27 ~~telephone number of each loan applicant;(2) type of loan applied for and~~
28 ~~date of application; and(3) disposition of each loan application,~~
29 ~~indicating date of loan funding, loan denial, withdrawal and name of~~
30 ~~lender if applicable and name of loan originator and any compensation or~~
31 ~~other fees received by the loan originator.~~

32 ~~(b)~~—Each licensee shall annually, on or before April 1, file a written
33 report with the commissioner containing the information that the
34 commissioner may reasonably require concerning the licensee's business
35 and operations during the preceding calendar year. The report shall be
36 made in the form prescribed by the commissioner, *which may include*
37 *reports filed with the nationwide mortgage licensing system and registry.*
38 Any licensee who fails to file the report required by this section with the
39 commissioner by April 1 shall be subject to a late penalty of \$100 for each
40 day after April 1 the report is delinquent, but in no event shall the
41 aggregate of late penalties exceed \$5000. The commissioner may relieve
42 any licensee from the payment of any penalty, in whole or in part, for good
43 cause. *The filing of the annual written report required under this section*

1 *shall satisfy any other reports required of a licensee under this act.*

2 Sec. 12. K.S.A. 9-2206 and K.S.A. 2015 Supp. 9-2201, 9-2202, 9-
3 2203, 9-2205, 9-2208, 9-2209, 9-2211, 9-2212, 9-2216 and 9-2216a are
4 hereby repealed.

5 Sec. 13. This act shall take effect and be in force from and after its
6 publication in the statute book.