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**Testimony to the Senate Financial Institutions Committee  
on SB 242  
February 17, 2021**

The Office of the State Bank Commissioner (OSBC) appreciates the committee's introduction of our bill, SB 242, and we thank the Chairman for holding a hearing on the bill.

The OSBC has two divisions: the Banking Division and the Consumer & Mortgage Lending (CML) Division. SB 242 relates to our work on the CML side where we oversee and regulate the mortgage industry.

SB 242 amends the Kansas Mortgage Business Act, which is the state law governing mortgage business. Another law that impacts mortgages is the Kansas Uniform Consumer Credit Code (U3C), and that law is also enforced by our agency. The U3C dates to the early 1970s and contains mortgage provisions throughout. Our main points of SB 242 are twofold:

1. This bill moves the mortgage provisions found in the U3C to the KMBA so that all statutes governing mortgages are in one law. In other words, we are creating a one-stop shop for mortgages in Kansas statutes. In 2016, the licensing sections were moved from the U3C to the KMBA, and this bill continues that process of moving all mortgage provisions to one article.
2. We are updating the statutes from the 1970s to reflect current practices for anyone reading the mortgage laws, which includes banks, mortgage companies, loan originators, consumers, and attorneys.

SB 242 does not move all the statutes found in the U3C over to the KMBA. The U3C is about consumer credit and some of its provisions really relate to consumer credit and are not that relevant to mortgages. In other words, this bill effectively reduces regulation on mortgages by not carrying over certain requirements found in the U3C to the KMBA.

For example:

1. The required methods for computation for the finance charge (K.S.A. 16a-2-103) and computation time periods (16a-3-209) that are in the U3C will not transfer over, and therefore, will no longer be applicable.
2. Certain notices to consumers are no longer applicable, including:
  - a. notice to consumer (K.S.A. 16a-3-202),
  - b. notice of consumer's right to cure (K.S.A. 16a-5-110 to -111),
  - c. notice of change in terms of open-end credit accounts (K.S.A. 16a-3-204), and

- d. requirements to provide receipts and statements under certain conditions (K.S.A. 16a-3-205).

These examples are all consumer-protection requirements for general consumer credit and not mortgages. Consumer protections for mortgages mostly exist in federal law and do not need to be repeated in state law.

SB 242 also permits greater use of electronic means by inserting a broader array of electronic payments and allowing electronic delivery of certain documents that currently must be mailed. SB 242 ties in the Kansas Electronic Transactions Act (KETA) and gives the reader notice that electronic transmissions allowed under KETA are allowed under the revised KMBA.

We have kept parties apprised for the last three years of our work on updating the KMBA, and we reached out to the Kansas Bankers Association in November 2020 to share our latest draft and get their feedback. The KBA expressed two concerns:

1. Concern that bank staff would have to read a second law, the KMBA, when they are accustomed to reading the U3C.
2. Concern that banks would need to update their mortgage forms to reflect a new statutory cite because the statutes relating to mortgages would change.

While we appreciate the KBA's concerns and took them under consideration, we decided to pursue a hearing this session to discuss out loud our concept for the KMBA modernization bill and to openly discuss any concerns raised by others. Our office has a positive relationship with the KBA and plans to continue that. We would note, however, that the mortgage industry continues to move to non-bank entities, and that nonbanks originated nearly 60% of new mortgages in 2019 and service nearly half of all mortgage debt outstanding.<sup>1</sup> Based on this trend, our office must consider the benefits of updating mortgage laws for all groups that are in the mortgage market. Our office regulates 187 banks and licenses 463 mortgage companies (+ 1,101 branches) and 7,986 mortgage loan originators. We shared our draft bill with the mortgage industry and they raised no concerns, and in fact we have had positive reactions from a number of people who reviewed it.

Regarding the amendment that the KBA may propose today, if the amendment cross-references or refers back to the U3C, that amendment destroys the very purpose of our bill—which is to move provisions out of the U3C—and we would prefer not to pass the bill rather than have such an amendment.

I appreciate the committee's time today and I would be happy to stand for questions.

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<sup>1</sup> Stability Oversight Council, U.S. Dep't of the Treasury, 2020 Annual Report, 169 (2020), <https://home.treasury.gov/system/files/261/FSOC2020AnnualReport.pdf> (PDF page number is 175).

Attachments:

- Uniform Consumer Credit Code Index of Statutes with Mortgage Provisions Bolded
- Example of Amended KMBA's treatment of "covered transactions" as compared to the U3C definition of a "consumer credit transaction"

## KANSAS STATUTES

### Chapter 16a – CONSUMER CREDIT CODE

#### Article 1 – GENERAL PROVISION AND DEFINITIONS

##### *Part 1 – Short Title, Construction, General Provisions*

- 16a-1-101 Short title.
- 16a-1-102 Purposes; rules of construction.
- 16a-1-103 Supplementary general principles of law applicable.
- 16a-1-104 Construction against implicit repeal.
- 16a-1-105 Severability.
- 16a-1-107 Waiver; agreement to forego rights; settlement of claims.**
- 16a-1-108 Effect of act on powers of organization.
- 16a-1-109 Transactions subject to act by agreement.

##### *Part 2 – Scope and Jurisdiction*

- 16a-1-201 Territorial application.
- 16a-1-202 Exclusions.

##### *Part 3 – Definitions*

- 16a-1-301 General definitions.**
- 16a-1-303 Residential mortgage loan originator; definitions.

#### Article 2 – FINANCE CHARGES AND RELATED PROVISIONS

##### *Part 1 – General Provisions*

- 16a-2-101 Short title.
- 16a-2-102 Scope.
- 16a-2-103 Computation of finance charges.
- 16a-2-104 Payment credit date.**

##### *Part 2 – Consumer Credit Sales: Maximum Finance Charges*

- 16a-2-201 Finance charge for closed end consumer credit sales.
- 16a-2-202 Finance charge for consumer credit sales pursuant to open end credit.

##### *Part 3 – Consumer Loans: Supervised Lenders*

- 16a-2-301 Authority to make supervised loans; residential mortgage loan origination; registration required.
- 16a-2-302 License to make supervised loans; registration for residential mortgage loan originator fees. [already in KMBA]**
- 16a-2-303 Denial, revocation or suspension of license; disciplinary proceedings.
- 16a-2-303a Denial, revocation or suspension of registration of residential mortgage loan originator.
- 16a-2-304 Records; annual reports; maintenance of records; security of records; preservation of records.
- 16a-2-307 Restrictions on interest in land as security.**

- 16a-2-308 Regular schedule of payments; maximum loan term.
- 16a-2-309 Conduct of business; other than making loans.
- 16a-2-310 Prohibited acts by persons licensed or registered under act.

*Part 4 – Consumer Loans: Maximum Finance Charges*

- 16a-2-401 Finance charge for consumer loan; loan secured by mortgage or interest in manufactured home; prepaid finance charges.**
- 16a-2-402 Consumer loans pursuant to open end credit; allowable charges per billing cycle.
- 16a-2-403 Prohibiting surcharge on credit or debit cards.
- 16a-2-404 Payday loans; finance charges; rights and duties.
- 16a-2-405 Payday loans to military borrowers; restrictions.

*Part 5 – Consumer Credit Transactions: Other Charges and Modifications*

- 16a-2-501 Additional charges.**
- 16a-2-502 Delinquency charges.**
- 16a-2-504 Finance charge on refinancing.
- 16a-2-505 Finance charge on consolidation.
- 16a-2-506 Advances to perform covenants of consumer.
- 16a-2-507 Recovery of collection costs and attorney fees.
- 16a-2-508 Conversion to open end credit.
- 16a-2-509 Right to prepay.**
- 16a-2-510 Prepayment; minimum charges; judgments; rebate.

Article 3 – REGULATION OF AGREEMENTS AND PRACTICES

*Part 1 – General Provisions*

- 16a-3-101 Short title.
- 16a-3-102 Scope.

*Part 2 - Disclosure*

- 16a-3-201 Consumer leases.
- 16a-3-202 Notice to consumer.
- 16a-3-203 Notice of assignment.
- 16a-3-203a Receipt of payment by assignor.
- 16a-3-204 Change in terms of open end credit accounts.
- 16a-3-205 Receipts; statements of account; evidence of payment.
- 16a-3-206 Compliance with rules and regulations; truth in lending.
- 16a-3-207 Consumer loans secured by certain real estate mortgages; appraisals and notice.**
- 16a-3-208 Advertising; prohibited conduct.
- 16a-3-209 Calendar days used for computing time.

*Part 3 – Limitations on Agreements and Practices*

- 16a-3-301 Security in sales or leases.
- 16a-3-302 Cross-collateral.
- 16a-3-303 Debt secured by cross-collateral.

- 16a-3-304 Use of multiple agreements.
- 16a-3-305 No assignment of earnings.
- 16a-3-306 Authorization to confess judgment prohibited.**
- 16a-3-307 Certain negotiable instruments prohibited.
- 16a-3-308 Balloon payments.**
- 16a-3-308a Loans secured by mortgages on consumer's principal residence; negative amortization and balloon payments prohibited.**
- 16a-3-309 Referral sales.

*Part 4 – Limitations on Consumer’s Liability*

- 16a-3-401 Restriction on liability in consumer lease.
- 16a-3-402 Limitation on default charges.
- 16a-3-403 Credit card issuer subject to defenses.
- 16a-3-404 Assignee subject to defenses; application of payments received by assignee; limitation of actions; assignee may require seller or lessor to repurchase obligation; joinder of parties; procedure.
- 16a-3-405 Lender subject to defenses arising from sales and leases.

Article 4 – INSURANCE

*Part 1 – Insurance in General*

- 16a-4-101 Short title.
- 16a-4-102 Scope.
- 16a-4-103 Definition: "Consumer credit insurance."
- 16a-4-104 Creditor's provision of and charge for insurance; excess amount of charge.
- 16a-4-105 Conditions applying to insurance to be provided by creditor.
- 16a-4-106 Unconscionability.
- 16a-4-107 Maximum charge by creditor for insurance.
- 16a-4-108 Refund or credit required; amount.
- 16a-4-109 Existing insurance; choice of insurer; notice of option.
- 16a-4-110 Charge for insurance in connection with a refinancing or consolidation; duplicate charges.
- 16a-4-111 Cooperation between administrator and commissioner of insurance.
- 16a-4-112 Administrative action of commissioner of insurance.

*Part 2 – Consumer Credit Insurance*

- 16a-4-201 Term of insurance.
- 16a-4-202 Amount of insurance.
- 16a-4-203 Filing and approval of rates and forms.

*Part 3 – Property and Liability Insurance*

- 16a-4-301 Property insurance.
- 16a-4-302 Insurance on creditor's interest only.
- 16a-4-303 Liability insurance.
- 16a-4-304 Cancellation by creditor.

Article 5 – REMEDIES AND PENALTIES

*Part 1 – Limitations on Creditors' Remedies*

- 16a-5-101 Short title.
- 16a-5-102 Scope.
- 16a-5-103 Restrictions on deficiency judgments.
- 16a-5-107 Extortionate extensions of credit.
- 16a-5-108 Unconscionability; inducement by unconscionable conduct.
- 16a-5-109 Default.
- 16a-5-110 Notice of consumer's right to cure.
- 16a-5-111 Cure of default.
- 16a-5-112 Creditor's right to take possession after default.

*Part 2 – Consumers' Remedies*

- 16a-5-201 Effect of violations on rights of parties.**
- 16a-5-202 Refunds and penalties as setoff to obligation.
- 16a-5-203 Civil liability for violation of disclosure provisions.

*Part 3 – Criminal Penalties*

- 16a-5-301 Intentional violations; penalties.

Article 6 – ADMINISTRATION

*Part 1 – Powers and Functions of Administrator*

- 16a-6-101 Short title.
- 16a-6-102 Applicability.
- 16a-6-104 Powers of administrator; reliance on rules and regulations; written administrative interpretations; nationwide mortgage licensing system and registry.
- 16a-6-105 Administrative powers with respect to supervised financial organizations.
- 16a-6-106 Examination and investigatory powers; costs.
- 16a-6-108 Enforcement of act; cease and desist orders; penalties; appeals.
- 16a-6-109 Assurance of discontinuance.
- 16a-6-110 Injunctions against violations of act.
- 16a-6-111 Injunctions against unconscionable agreements and fraudulent or unconscionable conduct.
- 16a-6-112 Temporary relief.
- 16a-6-113 Civil actions by administrator.
- 16a-6-115 Consumer's remedies not affected.**
- 16a-6-116 Venue.
- 16a-6-117 Rules and regulations; truth in lending.

*Part 2 – Notification and Fees*

- 16a-6-201 Applicability.
- 16a-6-202 Notification.
- 16a-6-203 Fees.

*Part 4 – Administrative Procedure and Judicial Review*

- 16a-6-401 Applicability and scope.
- 16a-6-402 Definitions in part.
- 16a-6-403 Public information; adoption of rules; availability of rules and orders.
- 16a-6-404 Procedure for adoption of rules.
- 16a-6-405 Filing and taking effect of rules.
- 16a-6-406 Publication of rules.
- 16a-6-407 Petition for adoption, amendment or repeal of rules.
- 16a-6-408 Declaratory judgment on validity or applicability of rules.
- 16a-6-409 Declaratory rulings by administrator.
- 16a-6-410 Contested cases; orders subject to provisions of Kansas administrative procedure act; informal disposition.
- 16a-6-414 Judicial review of administrator's actions.

Article 9 – EFFECTIVE DATE AND REPEALER

- 16a-9-101 Time of taking effect; provisions for transition.
- 16a-9-102 Continuation of licensing.



## Example of Rewritten Section – Definition

As an example of wording improvements made in the new KMBA bill, the new definition of “covered transaction” in contrast with the UCCC’s current definition of “consumer loan” is explained below.

## Kansas Mortgage Business Act (KMBA) – Covered Transactions

Under the new bill:

### Applicability of the New Sections on Covered Transactions

New Section 3 –

Sections 3 through 12 apply only to covered transactions.

### Definitions

New definition of covered transaction in K.S.A. 9-2201 –

“Covered transaction” means a mortgage loan that:

- (1) is a subordinate mortgage;
- (2) has a loan-to-value ratio at the time when made which exceeds 100%, except for any loan guaranteed by a federal government agency of the United States;
- (3) in the case of section 11, and amendments thereto, the annual percentage rate of the loan exceeds the code mortgage rate.

Mortgage loan is already a defined term in K.S.A. 9-2201 –

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

## Uniform Consumer Credit Code (UCCC or U3C) – Certain Mortgages

Currently, under the UCCC:

### Applicability of the UCCC

K.S.A. 16a-1-201(1) –

Except as otherwise provided in this section, K.S.A. 16a-1-101 through 16a-9-102, and amendments thereto, apply to *consumer credit transactions* made in this state.

## Definitions

Current definition of consumer credit transaction in K.S.A. 16a-1-301(15) –

“Consumer credit transaction” means a consumer credit sale, consumer lease, or *consumer loan* or a modification thereof including a refinancing, consolidation, or deferral.

Current definition of consumer loan in K.S.A. 16a-1-301(17) –

“Consumer loan”:

- (a) Except as provided in paragraph (b), a “consumer loan” is a loan made by a person regularly engaged in the business of making loans in which:
  - (i) The debtor is a person other than an organization;
  - (ii) the debt is incurred primarily for a personal, family or household purpose;
  - (iii) either the debt is payable by written agreement in more than four installments or a finance charge is made; and
  - (iv) either the amount financed does not exceed \$25,000 *or the debt is secured by an interest in land.*
- (b) *Unless the loan is made subject to the uniform consumer credit code by written agreement, a “consumer loan” does not include:*
  - (i) *A loan secured by a first mortgage unless:*
    - (A) *The loan-to-value ratio of the loan at the time when made exceeds 100%;*  
*or*
    - (B) *in the case of subsection (1) of K.S.A. 16a-3-308a and amendments thereto, the annual percentage rate of the loan exceeds the code mortgage rate; or*
  - (ii) a loan made by a qualified plan, as defined in section 401 of the internal revenue code, to an individual participant in such plan or to a member of the family of such individual participant.