

SENATE BILL No. 87

By Committee on Financial Institutions and Insurance

1-25

1 AN ACT concerning financial institutions; relating to credit services
2 organizations; pertaining to the Kansas credit services organization act;
3 amending K.S.A. 50-1118, 50-1119, 50-1120, 50-1121, 50-1122, 50-
4 1123, 50-1124, 50-1125, 50-1126, 50-1127, 50-1128 and 50-1129 and
5 K.S.A. 2016 Supp. 50-1117 and repealing the existing sections.

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

8 Section 1. K.S.A. 2016 Supp. 50-1117 is hereby amended to read as
9 follows: 50-1117. Definitions as used in this act: (a) "Commissioner"
10 means the state bank commissioner *or designee, who shall be the deputy*
11 *commissioner of the consumer and mortgage lending division of the office*
12 *of the state bank commissioner.*

13 (b) "Consumer" means an individual who is a resident of this state.

14 (c) "Credit services organization" means a person who engages in, or
15 holds out to the public as willing to engage in, the business of debt
16 management services for a fee, compensation or gain, or in the expectation
17 of a fee, compensation or gain.

18 (d) "Debt management service" means:

19 (1) Receiving or offering to receive funds from a consumer for the
20 purpose of distributing the funds among such consumer's creditors in full
21 or partial payment of such consumer's debts;

22 (2) improving or offering to improve a consumer's credit record,
23 history~~or~~, rating *or score*; or

24 (3) negotiating or offering to negotiate to defer or reduce a
25 consumer's obligations with respect to credit extended by others.

26 (e) "Insolvent" means a person whose debts exceed their assets.

27 (f) "Law firm" means a lawyer or lawyers in a law partnership,
28 professional corporation, sole proprietorship or other association
29 authorized to practice law; or lawyers employed in a legal services
30 organization or the legal department of a corporation or other organization.

31 (g) "Licensee" means a person who is licensed by the commissioner
32 as a credit services organization.

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

1 *mortgage loan originators and other financial service providers.*

2 (i) "Person" means any individual, corporation, partnership,
3 association, unincorporated organization or other form of entity, however
4 organized, including a nonprofit entity.

5 ~~(h) (j) "Related interest" means a person:~~

6 ~~(1) With respect to an individual who is:~~

7 ~~(A) The spouse of the individual;~~

8 ~~(B) a brother, brother-in-law, sister, sister-in-law of the individual;~~

9 ~~(C) an ancestor or lineal descendant of the individual or the~~
10 ~~individual's spouse; and~~

11 ~~(D) any other relative, by blood, adoption or marriage, of the~~
12 ~~individual or such individual's spouse who shares the same residence with~~
13 ~~the individual.~~

14 ~~(2) With respect to a corporation, partnership, association,~~
15 ~~unincorporated organization or other form of entity, however organized,~~
16 ~~including a nonprofit entity, which is:~~

17 ~~(A) Directly or indirectly controlling, controlled by or under common~~
18 ~~control by a person; or~~

19 ~~(B) an officer or director of a person or a person performing similar~~
20 ~~functions.~~

21 ~~(i) (k) "Registrant" means a person who is registered by the~~
22 ~~commissioner as a credit services organization.~~

23 ~~(j) (l) (j) "Trust account" means an account established by the~~
24 ~~applicant or registrant licensee in a federally insured financial institution~~
25 ~~used to hold funds paid by consumers to a credit services organization for~~
26 ~~disbursement to creditors of consumers that is designated as a trust account~~
27 ~~or other appropriate designation indicating the funds in the account are:~~

28 (1) Not funds of the applicant or ~~registrant licensee~~ or its owners,
29 officers or employees; and

30 (2) unavailable to creditors of the applicant or ~~registrant licensee~~.

31 Sec. 2. K.S.A. 50-1118 is hereby amended to read as follows: 50-
32 1118. (a) No person shall engage in, or hold such person out as willing to
33 engage in any credit services organization business with a resident of this
34 state without first obtaining ~~registration~~ *licensing* from the commissioner.
35 Any person required to be ~~registered~~ *licensed* as a credit services
36 organization shall submit to the commissioner an application for
37 ~~registration~~ *licensing* on forms prescribed and provided by the
38 commissioner. The application for ~~registration~~ *licensing* shall include:

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

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 credit services
4 organization business;

5 (4) a description of the applicant's consumer education program; and

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

9 (b) Each application for ~~registration~~ *licensing* shall be accompanied
10 by a nonrefundable fee ~~of \$100 which shall be established by the~~
11 ~~commissioner through the adoption of rules and regulations. The amount~~
12 ~~of the registration fee may be increased by rules and regulations adopted~~
13 ~~by the commissioner.~~

14 (c) The application shall be approved and a nontransferable and non-
15 assignable ~~registration~~ *license* shall be issued to the applicant provided:

16 (1) The commissioner has received the complete application and fee
17 required by this section; and

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

23 (d) Each credit services organization ~~registration~~ *license* issued under
24 this section shall expire on ~~June~~ *April* 30 of each year. A ~~registration~~
25 *license* shall be renewed by filing with the commissioner, at least 30 days
26 prior to the expiration of the ~~registration~~ *license*, a complete renewal
27 application, containing information the commissioner requires to
28 determine the existence and effect of any material changes from the
29 information contained in the applicant's original application, annual reports
30 or prior renewal applications. Each renewal shall be accompanied by a
31 nonrefundable renewal fee which shall be established by rules and
32 regulations of the commissioner.

33 (e) If the commissioner fails to issue a ~~registration~~ *license* within 60
34 days after a filed application is deemed complete by the commissioner, the
35 applicant may make written request for hearing. The commissioner shall
36 conduct a hearing in accordance with the Kansas administrative procedure
37 act.

38 Sec. 3. K.S.A. 50-1119 is hereby amended to read as follows: 50-
39 1119. Each applicant or ~~registrant~~ *licensee* shall file with the commissioner
40 a surety bond in a form acceptable to the commissioner. The surety bond
41 shall be issued by a surety or insurance company authorized to conduct
42 business in this state, securing the applicant's or ~~registrant's~~ *licensee's*
43 faithful performance of all duties and obligations of a ~~registrant~~ *licensee*.

1 The surety bond shall:

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

3 (b) provide that the bond may not be terminated without 30 days prior
4 written notice to the commissioner, *and that such termination shall not*
5 *affect the surety's liability for violations of the Kansas credit services*
6 *organization act occurring prior to the effective date of cancellation, and*
7 *principal and surety shall be and remain liable for a period of two years*
8 *from the date of any action or inaction of principal that gives rise to a*
9 *claim under the bond;*

10 (c) provide that the bond shall not expire for two years after the date
11 of surrender, revocation or expiration of the applicant's or ~~registrant's~~
12 ~~registration licensee's~~ license, whichever shall first occur;

13 (d) be available for:

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

16 (2) payment of losses or damages which are determined by the
17 commissioner to have been incurred by any consumer as a result of the
18 applicant's or ~~registrant's~~ licensee's failure to comply with the
19 requirements of this act; and

20 (e) the amount of the bond shall be \$25,000. The amount of the bond
21 may be increased up to \$1,000,000, as further defined by rules and
22 regulations adopted by the commissioner.

23 Sec. 4. K.S.A. 50-1120 is hereby amended to read as follows: 50-
24 1120. ~~No credit services organization~~ *person required to be licensed by*
25 *this act shall engage in debt management services unless:*

26 (a) ~~The registrant provides~~ *licensee has provided* the consumer with a
27 credit education program designed to improve the financial literacy of the
28 consumer.

29 (b) ~~The registrant licensee~~ has:

30 (1) (A) Taken reasonable steps to identify all creditors of a consumer;
31 and

32 (B) prepared and provided to the consumer a written financial
33 analysis of ~~and an~~ initial budget plan for all of the consumer's debt
34 obligations which indicates the consumer can reasonably meet the
35 requirements set forth in the budget plan; ~~and. For purposes of the initial~~
36 ~~budget plan, the licensee shall include all outstanding debt obligations as~~
37 ~~listed on the consumer's credit report as well as any debt obligations~~
38 ~~identified by the consumer; and~~

39 (2) provided to the consumer a list of each creditor the ~~registrant~~
40 ~~licensee~~ reasonably expects:

41 (A) To participate in the ~~plan~~ *debt management services agreement;*
42 and

43 (B) not to participate in the ~~plan~~ *debt management services*

1 *agreement.*

2 (c) The ~~registrant licensee~~ and the consumer have entered into a
3 written debt management services agreement and a copy of the signed
4 agreement has been provided to the consumer by the ~~registrant licensee~~.
5 Such agreement shall be in at least 12 point type, signed and dated by the
6 consumer and ~~registrant licensee~~ and include:

7 (1) The *full legal name, doing business as "dba" name*, address; and
8 phone number of ~~the consumer and the registrant licensee~~;

9 (2) *the name, address and phone number of the consumer*;

10 (3) a description of the debt management services to be provided to
11 the consumer and an itemization of any fees to be charged to the
12 consumer;

13 ~~(3)~~ (4) a notice of the consumer's right to rescind the debt
14 management services agreement at any time by giving written notice of
15 rescission to the ~~registrant licensee~~;

16 ~~(4)~~ (5) a schedule of payments, including the amount and due date of
17 each payment, that the consumer must make to the ~~registrant licensee~~ for
18 disbursement to such consumer's creditors;

19 ~~(5)~~ (6) a list of each participating creditor of the consumer to which
20 payments will be made by the ~~registrant licensee~~ under the debt
21 management services agreement. The listing shall include the:

22 (A) Amount owed to each creditor;

23 (B) amount of each payment;

24 (C) date on which each payment will be made; and

25 (D) anticipated payoff date for each creditor;

26 ~~(6)~~ (7) the name of each creditor that the ~~registrant licensee~~
27 reasonably expects not to participate in the debt management ~~plan services~~
28 *agreement*;

29 ~~(7)~~ (8) a disclosure that the ~~registrant licensee~~ also may receive
30 compensation from the consumer's creditors for providing debt
31 management services to the consumer;

32 ~~(8)~~ (9) a disclosure that the ~~registrant licensee~~ may not, as a condition
33 of entering into a debt management services agreement, require a
34 consumer to purchase any other product or service, nor solicit or offer to
35 sell any other product or service to the consumer during the term of the
36 debt management services agreement;

37 ~~(9)~~ (10) a disclosure that the ~~registrant licensee~~ may not require a
38 voluntary contribution from a consumer for any service provided by the
39 ~~registrant licensee~~ to the consumer;

40 ~~(10)~~ (11) a disclosure that, by executing the debt management
41 services agreement, the consumer authorizes any financial institution in
42 which the ~~registrant licensee~~ has established a trust account for the deposit
43 of the consumer's funds to disclose to the commissioner any financial

1 records relating to the trust account during the course of any investigation
2 or examination by the commissioner; and

3 ~~(H) (12) the following~~ a notice *substantially similar to the following*:
4 "The Kansas Office of the State Bank Commissioner ~~will accept~~ *accepts*
5 questions and complaints from consumers regarding (name and
6 ~~registration license number of registrant licensee)~~ at 700 SW Jackson,
7 Suite 300, Topeka, Kansas, 66603, or by calling toll-free 1-877-387-8523".

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

15 (e) *No solicitation or advertisement shall contain false, misleading or
16 deceptive information.*

17 (f) *No licensee shall conduct credit services organization business in
18 this state using any name other than the name or names stated on its
19 license.*

20 Sec. 5. K.S.A. 50-1121 is hereby amended to read as follows: 50-
21 1121. No person required to be ~~registered~~ *licensed* under this act shall: (a)
22 Delay payment of a consumer's debt for the purpose of increasing interest,
23 costs, fees or charges payable by the consumer.

24 (b) Make any misrepresentation of any material fact or false promise
25 ~~intended to~~:

26 (1) Influence, persuade or induce a consumer to enter into a debt
27 management services agreement; or

28 (2) cause or contribute to any misrepresentation by any other person
29 acting on such person's behalf.

30 (c) Make or use any false or misleading representation in the offer or
31 sale of the services of a debt management services agreement or credit
32 services organization business, ~~including, but not limited to, guaranteeing
33 to "erase bad credit" or words to that effect unless the representation
34 clearly discloses that guaranteed action can be done only if the consumer's
35 credit history is inaccurate or obsolete.~~

36 (d) Engage, directly or indirectly, in any fraudulent or deceptive act,
37 practice or course of business in connection with the offer or sale of the
38 services of a credit services organization.

39 (e) Make, or advise a consumer to make, any statement with respect
40 to a consumer's credit worthiness, credit standing or credit capacity that is
41 false or misleading, or that should be known by the exercise of reasonable
42 care to be false or misleading, to a consumer reporting agency or to a
43 person who has extended credit to a consumer or to whom a consumer is

1 applying for an extension of credit.

2 (f) Advertise or cause to be advertised, ~~in any manner whatsoever~~, the
3 services of a credit services organization to Kansas consumers without first
4 obtaining proper ~~registration~~ *licensure* from the commissioner.

5 (g) Receive compensation for rendering debt management services
6 where the person has otherwise acted as a creditor for the consumer.

7 (h) Transfer, assign or attempt to transfer or assign, a ~~registration~~
8 *license* to any other person.

9 (i) Conduct credit services organization activities using any name
10 other than the name or names approved by the commissioner.

11 (j) Operate as a collection agency.

12 (k) Receive or charge any fee in the form of a promissory note or
13 other promise to pay.

14 (l) Accept or receive any reward, bonus, premium, commission or
15 any other consideration for referring a consumer to any person ~~or related~~
16 *interest*.

17 (m) Give a reward, bonus, premium, commission or any other
18 consideration for the referral of a consumer to the ~~registrant's~~ *licensee's*
19 credit services organization business *and charge the consumer for the*
20 *amount*.

21 (n) Lend money or provide credit to a consumer.

22 (o) Obtain a mortgage or other security interest in real or personal
23 property owned by a consumer.

24 (p) Structure a debt management services agreement in any manner
25 that would result in a negative amortization of any of the consumer's debts.

26 (q) Charge for or provide credit insurance.

27 (r) Purchase any debt or obligation of a consumer.

28 (s) Use any communication which simulates in any manner a legal or
29 judicial process, or which gives the false appearance of being authorized,
30 issued or approved by a government, governmental agency or attorney-at-
31 law.

32 (t) While operating as a ~~registrant~~ *licensee*, or a director, manager or
33 officer of such ~~registrant or any related interest of such registrant licensee~~,
34 be a director, manager, officer, *or* owner ~~or related interest~~ of any creditor
35 or a subsidiary of any such creditor, that is receiving or will receive
36 payments from the ~~registrant licensee~~ on behalf of a consumer with whom
37 the ~~registrant licensee~~ has entered into a debt management services
38 agreement.

39 (u) Attempt to cause a consumer to waive or agree to forego rights or
40 benefits under this act.

41 Sec. 6. K.S.A. 50-1122 is hereby amended to read as follows: 50-
42 1122. (a) Within four calendar days after receipt of any funds paid to the
43 ~~registrant licensee~~ by or on behalf of a consumer for disbursement to such

1 consumer's creditors, a ~~registrant~~ *licensee* shall deposit such funds in a
2 trust account established for the benefit of consumers.

3 (b) A ~~registrant~~ *licensee* shall:

4 (1) Maintain separate records of account for each consumer to whom
5 the ~~registrant~~ - *licensee* provides debt management services;

6 (2) disburse any funds paid by or on behalf of a consumer to such
7 consumer's creditors within ~~10~~ 20 calendar days after receipt of such funds
8 *or the latest date before the consumer would incur any fee, charge or*
9 *penalty due to delay in payment;*

10 (3) correct any misdirected payments resulting from an error by the
11 ~~registrant~~ *licensee*;

12 (4) reimburse the consumer for any actual fees or other charges
13 imposed by a creditor as a result of the misdirection; and

14 (5) disburse a consumer's funds from the trust account only to such
15 consumer's creditors or back to the consumer.

16 (c) If a consumer rescinds the debt management services agreement,
17 all funds held in the trust account on behalf of such consumer shall be
18 refunded to the consumer within 10 calendar days from receipt of
19 rescission by the ~~registrant~~ *licensee*.

20 (d) A ~~registrant~~ *licensee* shall not commingle any trust account
21 established for the benefit of consumers with any operating accounts of the
22 ~~registrant or its related interests~~ *licensee*.

23 Sec. 7. K.S.A. 50-1123 is hereby amended to read as follows: 50-
24 1123. A ~~registrant~~ *licensee* shall provide a report at least once every three
25 months to each consumer who has entered into a debt management
26 services agreement with the ~~registrant~~ *licensee*. The report shall include
27 the:

28 (a) Total amount received from the consumer to date;

29 (b) total amount paid to each creditor to date;

30 (c) total *payoff* amount ~~any or an estimated balance due to each~~
31 ~~creditor has agreed to accept as payment in full~~ on any debt owed by the
32 consumer;

33 (d) ~~any~~ fees paid to the ~~registrant~~ *licensee* by the consumer; and

34 (e) ~~any~~ amount held in the trust account on behalf of the consumer, *or*
35 *statement that no amount is currently held.*

36 Sec. 8. K.S.A. 50-1124 is hereby amended to read as follows: 50-
37 1124. (a) (1) On or before ~~March~~ *April* 1, of each year, each ~~registrant~~
38 *licensee* shall file with the commissioner an annual report relating to credit
39 services organization business conducted by the ~~registrant~~ *licensee* during
40 the preceding calendar year. The annual report shall be on a form
41 prescribed by the commissioner.

42 (2) *The information contained in the annual report shall be*
43 *confidential and may be published only in composite form. The provisions*

1 *of this paragraph shall expire on July 1, 2022 unless the legislature*
2 *reviews and reenacts the provision prior to July 1, 2022.*

3 (b) Within 15 calendar days ~~after the occurrence~~ of any of the
4 following events, a ~~registrant~~ licensee shall file a written report with the
5 commissioner describing the event and its expected impact on the
6 ~~registrant's licensee's~~ business:

7 (1) The filing for bankruptcy or reorganization by the ~~registrant-~~
8 ~~licensee;~~

9 (2) the institution of a revocation, suspension or other proceeding
10 against the ~~registrant licensee~~ by a governmental authority that is related to
11 the ~~registrant's licensee's~~ credit services organization business in any state;
12 ~~and~~

13 (3) a felony conviction of the ~~registrant licensee~~ or any of its owners,
14 officers, principals, directors, partners, members or debt management
15 counselors;

16 (4) *a change in the licensee's name or legal entity status; and*

17 (5) *the addition or loss of any owner, officer, partner or director.*

18 (c) If a ~~registrant licensee~~ fails to make any report required by this
19 section to the commissioner, the commissioner may require the ~~registrant~~
20 ~~licensee~~ to pay a late penalty of \$100 for each day the report is overdue.

21 Sec. 9. K.S.A. 50-1125 is hereby amended to read as follows: 50-
22 1125. (a) Each ~~registrant licensee~~ shall maintain and preserve complete
23 and adequate business records including a general ledger containing all
24 assets, liabilities, capital, income and expense accounts for a period of five
25 years.

26 (b) Each ~~registrant licensee~~ shall maintain and preserve complete and
27 adequate records of each debt management services agreement during the
28 term of the agreement and for a period of five years from the date of
29 cancellation or completion of the agreement with each consumer. Such
30 records shall contain all consumer information including, but not limited to,
31 the debt management services agreement and any extensions thereto,
32 payments, disbursements, charges and correspondence.

33 (c) If the ~~registrant's licensee's~~ records are located outside this state,
34 the ~~registrant licensee~~ shall provide the records to the commissioner within
35 three calendar days or, at the commissioner's discretion, pay reasonable
36 and necessary expenses for the commissioner or commissioner's designee
37 to examine them at the place where they are maintained.

38 Sec. 10. K.S.A. 50-1126 is hereby amended to read as follows: 50-
39 1126. (a) No ~~registrant licensee~~ shall impose any fees or other charges on a
40 consumer, or receive any funds or other payments from a consumer or
41 another person on behalf of a consumer:

42 (1) Except as provided in ~~paragraph (5) of subsection (b)(5)~~, until
43 after the ~~registrant licensee~~ and consumer have executed a debt

1 management services agreement; and

2 (2) except as allowed under this section, or as permitted by rule and
3 regulation adopted by the commissioner.

4 (b) ~~A registrant licensee~~ may:

5 (1) Charge a one-time consultation fee not exceeding ~~\$50~~ \$75. The
6 cost of a credit report on a consumer shall be paid from the consultation
7 fee paid by the consumer;

8 (2) charge and collect monthly the lesser of a total maintenance fee of
9 ~~\$20~~ \$40 per month, or \$5 per month for each creditor of a consumer that is
10 listed in the debt management services agreement between the ~~registrant~~
11 ~~licensee~~ and the consumer;

12 (3) collect from or on behalf of a consumer the funds for
13 disbursement to creditors that the consumer has agreed to pay to the
14 ~~registrant licensee~~ under the debt management services agreement;

15 (4) accept a voluntary contribution from a consumer for a debt
16 management service provided by the ~~registrant licensee~~ to the consumer if
17 the aggregate amount of the voluntary contribution and any other fees
18 received by the ~~registrant licensee~~ from the consumer does not exceed the
19 total amount the ~~registrant licensee~~ is authorized to charge the consumer
20 under paragraphs (1) and (2) of this subsection;

21 (5) charge the consumer, ~~if provided to the consumer~~, a reasonable
22 fee, ~~not to exceed \$50~~, for ~~a~~ *providing reverse mortgage counseling,*
23 *bankruptcy counseling, student loan counseling, other counseling session*
24 *services authorized by the commissioner*, an educational program, or
25 materials and supplies ~~if the consumer does not enter into a debt~~
26 ~~management services agreement with the registrant~~; and

27 (6) accept fee payments from a consumer's creditors for debt
28 management services rendered to a consumer, provided the consumer's
29 creditor does not assess the fee to the consumer;

30 (7) *charge the consumer up to \$30 one time for each insufficient*
31 *payment; and*

32 (8) *charge the consumer up to \$5 to process a payment made by the*
33 *consumer to the credit services organization through electronic means, if*
34 *authorized by the consumer. No charge shall be assessed where the*
35 *consumer has agreed to make all scheduled payments by electronic means.*

36 (c) *A licensee may waive any of the fees permitted in subsections (b)*
37 *(1) through (b)(8) if the licensee determines that the consumer is unable to*
38 *pay the fees.*

39 ~~(e)~~ (d) No ~~registrant licensee~~ shall:

40 (1) Charge ~~a~~ *an additional fee* to a consumer, if the consumer enters
41 into a debt management services agreement with the ~~registrant licensee~~, to:

42 (A) Prepare a financial analysis or an initial budget plan for the
43 consumer;

- 1 (B) counsel a consumer about debt management;
- 2 (C) provide a consumer with the consumer education program
3 described in the ~~registrant's~~ *licensee's* application to engage in business as
4 a credit services organization; or
- 5 (D) rescind a debt management services agreement.
- 6 (2) Require a voluntary contribution from a consumer for any service
7 provided by the ~~registrant~~ *licensee* to the consumer.
- 8 (3) As a condition of entering into a debt management services
9 agreement, require a consumer to purchase for a fee a counseling session,
10 an educational program or materials and supplies.
- 11 (d) If a ~~registrant~~ *licensee* imposes any fee or other charge or receives
12 any funds or other payments not authorized under this section, except as a
13 result of an accidental and bona fide error:
- 14 (1) The debt management services agreement shall be void; and
- 15 (2) the ~~registrant~~ *licensee* shall return the amount of the unauthorized
16 fees, charges, funds or payments to the consumer.
- 17 Sec. 11. K.S.A. 50-1127 is hereby amended to read as follows: 50-
18 1127. The commissioner may deny, suspend, revoke or refuse to renew a
19 ~~registration~~ *license* issued pursuant to this act, and amendments thereto, if
20 the commissioner finds, after notice and opportunity for a hearing
21 conducted in accordance with the provisions of the Kansas administrative
22 procedure act, that:
- 23 (a) The applicant or ~~registrant~~ *licensee* has repeatedly or willfully
24 violated any provision of this act, any rule and regulation promulgated
25 thereunder or any order lawfully issued by the commissioner pursuant to
26 this act;
- 27 (b) the applicant or ~~registrant~~ *licensee* has failed to file and maintain
28 the surety bond required under this act;
- 29 (c) the applicant or ~~registrant~~ *licensee* is insolvent;
- 30 (d) the applicant or ~~registrant~~ *licensee* has filed with the
31 commissioner any document or statement containing any false
32 representation of a material fact or omitting to state a material fact;
- 33 (e) the applicant, ~~registrant~~ *licensee* or any officer, director, member,
34 owner, partner, principal or debt management counselor thereof has been
35 convicted of any crime;
- 36 (f) the applicant or ~~registrant~~ *licensee* fails to keep and maintain
37 sufficient records to permit an audit satisfactorily disclosing to the
38 commissioner the applicant's or ~~registrant's~~ *licensee's* compliance with the
39 provision of this act;
- 40 (g) the applicant, ~~registrant~~ *licensee* or an employee of the applicant
41 or ~~registrant~~ *licensee* has been the subject of any disciplinary action by the
42 commissioner or any other state or federal regulatory agency;
- 43 (h) a final judgment has been entered against the applicant or

1 ~~registrant licensee~~ in a civil action and the commissioner finds the conduct
2 on which the judgment is based indicates that it would be contrary to the
3 public interest to permit such person to be ~~registered~~ *licensed*;

4 (i) the applicant or ~~registrant licensee~~ has engaged in any deceptive
5 business practice;

6 (j) facts or conditions exist which would have justified the denial of
7 the ~~registration license~~ or renewal had such facts or conditions existed or
8 been known to exist at the time the application for ~~registration license~~ or
9 renewal was made; or

10 (k) the applicant or ~~registrant licensee~~ has refused to furnish
11 information required by the commissioner within a reasonable period of
12 time as established by the commissioner.

13 Sec. 12. K.S.A. 50-1128 is hereby amended to read as follows: 50-
14 1128. This act shall be administered by the commissioner. In addition to
15 other powers granted by this act, the commissioner, within the limitations
16 provided by law, may exercise the following powers:

17 (a) Adopt, amend and revoke rules and regulations as necessary to
18 carry out the intent and purpose of this act.

19 (b) Make any investigation and examination of the ~~registrant's~~
20 operations, books and records of a *credit services organization*, as the
21 commissioner deems necessary:

22 (1) ~~For the protection of the public;~~

23 (2) ~~to determine whether any registration should be granted, denied or~~
24 ~~revoked;~~

25 (3) ~~to determine whether any person has violated or is about to violate~~
26 ~~any provision of this act, any rule and regulation promulgated thereunder~~
27 ~~or any order issued thereunder; or~~

28 (4) ~~to aid in the enforcement of this act.~~

29 (e) (1) ~~For examination purposes~~—The commissioner, or the
30 commissioner's designee, shall have free and reasonable access to the
31 offices, places of business and all records of the ~~registrant and the~~
32 ~~registrant's related interests licensee~~ that relate to the debt management or
33 credit services organization business. The commissioner may designate
34 persons, including comparable officials of the state in which the records
35 are located, to inspect the records on the commissioner's behalf.

36 (d) (2) ~~The commissioner may charge reasonable costs, including a~~
37 ~~per diem and actual travel and lodging expenses, of investigation,~~
38 ~~administration or examination to be paid by the applicant or registrant~~
39 ~~under investigation, examination or requiring administrative action, and~~
40 ~~of investigation, examination and administration of this act, to be paid by~~
41 ~~the applicant or licensee, in such amounts as the commissioner may~~
42 ~~determine to be sufficient to meet the budget requirements of the~~
43 ~~commissioner for each fiscal year. The commissioner may maintain an~~

1 action in any court to recover such costs.

2 ~~(e)~~ (c) To order any ~~registrant~~ licensee or person to cease any activity
3 or practice which the commissioner deems to be deceptive, dishonest, or a
4 violation of this act, or of other state or federal law, or unduly harmful to
5 the interests of the public.

6 ~~(f)~~ (d) (1) Exchange any information regarding the administration of
7 this act with any agency of the United States or any state which regulates
8 the applicant or ~~registrant~~ licensee or administers statutes, rules and
9 regulations or programs related to debt management or credit services
10 organization laws.

11 (2) *Examination reports and correspondence regarding such reports*
12 *made by the commissioner or the commissioner's designees shall be*
13 *confidential.* The commissioner may release examination reports and
14 correspondence regarding the reports in connection with a disciplinary
15 proceeding conducted by the commissioner, a liquidation proceeding or a
16 criminal investigation or proceeding. Additionally, the commissioner may
17 furnish to federal or other state regulatory agencies or any officer or
18 examiner thereof, a copy of any or all examination reports and
19 correspondence regarding the reports made by the commissioner or the
20 commissioner's designees. *The provisions of this paragraph shall expire*
21 *on July 1, 2022, unless the legislature reviews and reenacts this provision*
22 *prior to July 1, 2022.*

23 ~~(g)~~ (e) Disclose to any person or entity that an applicant's or
24 ~~registrant's~~ licensee's application or ~~registration~~ license has been denied,
25 suspended, revoked or refused renewal.

26 ~~(h)~~ (f) Require or permit any person to file a written statement, under
27 oath or otherwise as the commissioner may direct, setting forth all the facts
28 and circumstances concerning any apparent violation of this act, any rule
29 and regulation promulgated hereunder, or any order issued pursuant to this
30 act.

31 ~~(i)~~ (g) Receive, as a condition in settlement of any investigation or
32 examination, a payment designated for consumer education to be
33 expended for such purpose as directed by the commissioner.

34 ~~(j)~~ (h) Delegate the authority to sign any orders, official documents or
35 papers issued under or related to this act to the deputy of consumer and
36 mortgage lending in the office of the state bank commissioner.

37 ~~(k)~~ (i) Require fingerprinting of any ~~registrant~~ licensee, agent acting
38 on behalf of a ~~registrant~~ licensee or other person as deemed appropriate by
39 the commissioner, or the commissioner's designee. The commissioner, or
40 commissioner's designee, may submit such fingerprints to the Kansas
41 bureau of investigation, federal bureau of investigation or other law
42 enforcement agency for the purposes of verifying the identity of such
43 persons and obtaining records of their criminal arrests and convictions.

1 *For purposes of this section and in order to reduce the points of contact*
2 *that the federal bureau of investigation may have to maintain with the*
3 *individual states, the commissioner may use the nationwide mortgage*
4 *licensing system and registry as a channeling agent for requesting*
5 *information from and distributing information to the department of justice*
6 *or any governmental agency.*

7 (j) *Use the nationwide mortgage licensing system and registry as a*
8 *channeling agent for requesting and distributing information regarding*
9 *credit services organization licensing to and from any source so directed*
10 *by the commissioner.*

11 (k) *Establish relationships or contracts with the nationwide mortgage*
12 *licensing system and registry or other entities to collect and maintain*
13 *records and process transaction fees or other fees related to applicants,*
14 *licensees or other persons subject to this act, and to take other such*
15 *actions as may be reasonably necessary to participate in the nationwide*
16 *mortgage licensing system and registry.*

17 (l) *Charge, establish and collect from ~~registrants~~ licensees such fees*
18 *as are necessary and in such amounts as the commissioner may determine*
19 *to be sufficient to meet the expense requirements of the commissioner in*
20 *administering this act.*

21 (m) *Seize and distribute a ~~registrant's~~ licensee's trust account funds to*
22 *protect consumers and the public interest.*

23 (n) *For the purpose of any examination, investigation or proceeding*
24 *under this act, the commissioner or the commissioner's designee may*
25 *administer oaths and affirmations, subpoena witnesses, compel such*
26 *witnesses' attendance, adduce evidence and require the production of any*
27 *matter which is relevant to the examination or investigation, including the*
28 *existence, description, nature, custody, condition and location of any*
29 *books, documents or other tangible things and the identity and location of*
30 *persons having knowledge of relevant facts, or any other matter reasonably*
31 *calculated to lead to the discovery of relevant information or items.*

32 (o) *To enter into any informal agreement with any person for a plan*
33 *of action to address violations of this act. The adoption of an informal*
34 *agreement authorized by this subsection shall not be subject to the*
35 *provisions of the Kansas administrative procedure act or the Kansas*
36 *judicial review act. Any informal agreement authorized by this subsection*
37 *shall not be considered an order or other agency action, and shall be*
38 *considered confidential examination material pursuant to K.S.A. 50-*
39 *1128(d), and amendments thereto. All such examination material shall be*
40 *confidential by law and privileged, shall not be subject to the open records*
41 *act, shall not be subject to subpoena and shall not be subject to discovery*
42 *or admissible in evidence in any private civil action. The provisions of this*
43 *subsection shall expire on July 1, 2022, unless the legislature reviews and*

1 *reenacts this provision prior to July 1, 2022.*

2 *(p) Issue, amend and revoke written administrative guidance*
3 *documents in accordance with the applicable provisions of the Kansas*
4 *administrative procedure act.*

5 Sec. 13. K.S.A. 50-1129 is hereby amended to read as follows: 50-
6 1129. (a) If the commissioner determines after notice and opportunity for a
7 hearing pursuant to the Kansas administrative procedure act that any
8 person has engaged, is engaging or is about to engage in any act or
9 practice constituting a violation of any provision of this act or any rule and
10 regulation promulgated or order issued thereunder, the commissioner by
11 order may require any or all of the following:

12 (1) That the person cease and desist from the unlawful act or practice;

13 (2) that the person pay a fine not to exceed \$10,000 per incident for
14 the unlawful act or practice;

15 (3) *if any person is found to have violated any provision of this act*
16 *and such violation is committed against elder or disabled persons as*
17 *defined in K.S.A. 50-676, and amendments thereto, the commissioner may*
18 *impose an additional penalty not to exceed \$10,000 for each such*
19 *violation, in addition to any civil penalty otherwise provided by law;*

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

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

26 ~~(4)~~ (6) that the person be barred from subsequently applying for
27 ~~registration~~ *licensure* under this act.

28 (b) If the commissioner makes written findings of fact that the public
29 interest will be irreparably harmed by delay in issuing an order under
30 subsection (a), the commissioner may issue an emergency cease and desist
31 order.

32 (1) Such emergency order, even when not an order within the
33 meaning of K.S.A. 77-502, and amendments thereto, shall be subject to the
34 same procedures as an emergency order issued under K.S.A. 77-536, and
35 amendments thereto.

36 (2) Upon the entry of such an emergency order, the commissioner
37 shall promptly notify the person subject to the order that it has been
38 entered, of the reasons, and that a hearing will be held upon written request
39 by the person.

40 (3) If the person requests a hearing, or in the absence of any request,
41 if the commissioner determines that a hearing should be held, the matter
42 will be set for a hearing which shall be conducted in accordance with the
43 provisions of the Kansas administrative procedure act. Upon completion of

1 the hearing the commissioner shall, by written findings of fact and
2 conclusions of law vacate, modify or make permanent the emergency
3 order.

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

7 Sec. 14. K.S.A. 50-1118, 50-1119, 50-1120, 50-1121, 50-1122, 50-
8 1123, 50-1124, 50-1125, 50-1126, 50-1127, 50-1128 and 50-1129 and
9 K.S.A. 2016 Supp. 50-1117 are hereby repealed.

10 Sec. 15. This act shall take effect and be in force from and after its
11 publication in the statute book.