

SESSION OF 2005

**SUPPLEMENTAL NOTE ON
HOUSE SUBSTITUTE FOR SENATE BILL NO. 223**

As Recommended by House Committee on
Financial Institutions

Brief*

House Sub. for SB 223 would amend several provisions of the Kansas Mortgage Business Act and the Uniform Consumer Credit Code (UCCC).

Kansas Mortgage Business Act (Sections 1-7)

The bill would amend the Kansas Mortgage Business Act to assign additional powers to the Bank Commissioner. Specifically, the bill would authorize the Commissioner to:

- Subject individuals willfully or knowingly violating the Act, rule or regulation adopted, or any order issued under the Act to a severity level 7 nonperson felony, as authorized in current law, KSA 9-2203. Any subsequent conviction is deemed to have a presumptive sentence of imprisonment. Prosecution of crimes committed under this Act must be conducted within five years of the alleged violation;
- Require fingerprinting of any applicant, registrant, licensee, copartnership or association members, or officers or directors or agents acting on their behalf, or other person as deemed appropriate by the Commissioner. The Commissioner, or designee, may submit fingerprints to the Kansas Bureau of Investigation, Federal Bureau of Investigation, or other law enforcement agency for verification and obtaining records;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Refer evidence regarding any violation of this act, rule or regulation, or order to the Attorney General, county attorney or district attorney, who may institute the appropriate criminal proceedings under this Act. An employed attorney of the Commissioner may be appointed to serve as a special prosecutor, without compensation from the Attorney General, county attorney, or district attorney;
- Issue and apply to enforce subpoenas both in Kansas and other states for violations of this Act;
- Administer oaths and affirmations, subpoena witnesses, compel witness' attendance, adduce evidence and require the production of any matter which is relevant for an examination or investigation; and
- Issue an order requiring the person to appear before the Commissioner, or designee, in the case of refusal to obey a subpoena. No person is excused from attending and testifying or from producing any document or record before the Commissioner, or designee, on the ground that the testimony may incriminate the person.

The bill also would require that persons licensed or registered under the act could not alter or destroy records or impede the investigation process. The fine per incident has increased from \$5,000 to \$10,000. The bill also provides the options of censure, suspension of license, and restitution orders for penalty. Restitution interest is not to exceed 8 percent per year.

Uniform Consumer Credit Code (Sections 8-11; 13-21)

The bill would amend several sections of the Uniform Consumer Credit Code (UCCC). Specifically, the bill would:

- Establish a contract rate. Under current law, the rate is classified as an annual rate. Calculations utilizing the 365/365 method and the 360/360 method for the rate of the finance charge would remain unchanged.

- Amend provisions for the computation of finance charges for consumer loans secured by a first or second lien real estate mortgage by creating an amortization method: contract rate divided by 360 and the resulting rate is multiplied by the outstanding principal amount and 30 assumed days between scheduled due dates. The provision would allow that a creditor assume there are 30 days in the computational period, regardless of the actual number of days between the scheduled dates.
- Amend the license requirements for individuals making supervised loans by requiring an applicant to provide evidence in the form and manner prescribed by the Administrator that establish the applicant will maintain a satisfactory minimum net worth to engage in the credit transactions for which the applicant has proposed.
- Amend the provision for making supervised loans to loans for personal, family, or household purposes.
- Clarify references to applicants and licensees to include persons the applicant or licensee contracts with or employs who is directly engaged in lending activities.
- Amend annual reporting requirements to include a provision to prevent alteration or another destruction of records with the intent to impede, obstruct, or influence any investigation by the Administrator.
- Amend the requirement for first and second loan consumer mortgages to allow that a mortgage shall not be recorded if moneys are not available for disbursement to the mortgagor upon expiration of all applicable waiting periods as required by law, unless the individual informs the mortgagor in writing of a definite date by which payment is to be made and obtains written permission for the delay.
- Authorize a statute of limitations for prosecution of crimes under the Act, no more than 5 years after the alleged violation. A restitution provision is added and includes that an order may include an interest rate not to exceed 8 percent.

- If deemed necessary by the Administrator, require fingerprinting of applicants, licensees, copartnerships or associations, any agents, or others directly engaged in lending activities.

UCCC – Payday Loan Regulation (Sections 12, 22)

The bill would amend the finance charges for payday loans under the UCCC, KSA 16a-2-404. The finance charge for cash advances equal to or less than \$500 would be an amount not to exceed 15 percent of the amount of the cash advance. The bill also would require publication of the notice in payday loan agreements in Spanish. In addition, the bill would enact new law concerning military borrowers, with lender provisions to:

- Not garnish any wages or salary for service in the armed forces;
- Defer all collection activity against a borrower who is deployed to combat or combat support posting for the duration of such posting;
- Not contact any person in the military chain of command of a borrower in an attempt to make collection;
- Honor all terms of the repayment agreement; and
- Not make any loan to any military borrower whenever the base commander has declared such person's place of business off limits to military personnel.

A military borrower is defined as any member of the Armed Forces of the United States, any member of the National Guard, or any member of the Armed Forces Reserve.

Background

The House Committee on Financial Institutions recommended a substitute bill which includes the provisions of SB 196 (as amended by the Senate Committee on Financial Institutions and Insurance); HB 2145; and SB 223 (as amended by the Senate Committee of the Whole). The House Committee further amended HB 2145 to include

two technical amendments in section 9 to insert “or any other crime” in regard to revocation and suspension requirements. The Committee also amended the fingerprinting provision of HB 2145 to allow that requirement for fingerprinting be applicable to “or any agent” directly engaged in lending activities. The fingerprinting requirement was also amended to allow “if deemed necessary by the administrator.” The Committee amended the provisions of SB 223, in section 12, to include a notice requirement published in Spanish for payday loan agreements.